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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

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

DATE: February 21, 2017

RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 158 (Parts A and B)
Approval of Settlement Proposal

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement with Shirley Merrill and S&L Nurseries for Parcel 158 (Parts A and B), which was acquired by eminent domain for construction of the State Road 429 Wekiva Parkway, Project 202. The Court entered an Order of Taking on July 10, 2014.

DESCRIPTION and BACKGROUND:

The subject property was owned by Clifton and Shirley Merrill (Mr. Merrill is now deceased), and is located at 3229 W. Ponkan Road in unincorporated Orange County, Florida, near Apopka. This is a total taking of 2.558 acres, which contained a working nursery known as S & L Nursery, a small residence, and other site improvements such as an office, pole barn, and various storage buildings. The Landowners purchased the property in 1977, and built and operated the nursery themselves. They rented the single-family home for \$7,200 per year, until the tenant vacated the premises in 2012, allegedly as a result of the pending taking.

S & L Nursery specialized in growing Dieffenbachia, an ornamental plant. The nursery contained approximately 44,000 square feet of greenhouse space. The greenhouses were largely constructed in two phases. The greenhouse located towards the front of the property was constructed in a more modern style, using steel beams and a polyethylene covering, and contained 14,080-15,600 square feet (measurements by the parties varied). This greenhouse was initially constructed in 1991, but 63% of it was rebuilt in 2007 after sustaining hurricane damage. The greenhouse located towards the back of the property was constructed in 1977 using wood and fiberglass, and contained approximately 28,800 square feet. At the time CFX took possession of the property, approximately 100,000 plants remained. While the owners attempted to sell as many of the plants as possible, there was no market for these items during the time of year that CFX took possession, and much of the inventory was either donated to local schools, sold at a deep discount, or disposed of.

CFX retained the services of Mr. Chad Durrance with Durrance and Associates to appraise the property. Mr. Durrance found that the highest and best use of the property was for continued use as a nursery, which is consistent with its current zoning of A-1 (Citrus Rural District). To determine land value, Mr. Durrance considered seven comparable sales which occurred between 1/14 and 1/15 (the date of deposit was 7/30/14). The sales prices ranged from \$23,400 to \$29,300 per acre, for uses that included agricultural, rural residential, and residential subdivision. All of Mr. Durrance's sales are located within close proximity to the subject, and have either similar or superior zoning designations. Mr. Durrance reconciled on the high end of the range, concluding on **\$27,500 per acre**, or **\$70,500** for the total value of the property taken.

Mr. Durrance considered the contributory value of the improvements on the property, including the greenhouses, utilizing both the Cost Approach and Sales Comparison Approach. For the Cost Approach, Mr. Durrance relied on the services of John Speer and Fred LaDue to assist in valuing the improvements and immovable fixtures. Mr. Speer estimated that the cost to replace the improvements new, including the greenhouses, would be \$795,100. Mr. Durrance then applied a **70% depreciation rate**, after determining that the economic life for greenhouses generally ranges from 30 to 40 years. He therefore concluded that the improvements have a value of \$238,500. Mr. LaDue estimated the value of the immovable fixtures to be \$119,800, for a total improvement value of \$358,300. Utilizing the Sales Comparison Approach, Mr. Durrance considered seven greenhouse comparable sales to determine that the subject improvements were worth approximately \$8.50 per square foot, for a total improvement value of \$365,000. Mr. Durrance ultimately reconciled on a value in between these two approaches, for a total compensation estimate as follows:

Land Value	\$70,500
Improvement Value	\$244,700
<u>Immovable Equipment</u>	<u>\$119,800</u>
Total Compensation to Landowners	\$435,000

The owner is represented by Kent Hipp of Gray Robinson, P.A., who retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. As to land value, Mr. Dreggors theorized that the proposed Wekiva Parkway and its various alignments have negatively impacted development in this area, and he therefore only considered sales outside the subject neighborhood. These sales ranged in value from about \$38,000-\$68,000 per acre. Mr. Dreggors ultimately reconciled on a value of **\$50,000 per acre**, or **\$128,000** for the total land value.

The most significant difference in valuation opinions relates to the nursery improvements. In the interest of minimizing expert fees, the Landowners largely adopted the findings of CFX's experts (in particular, Mr. Speer and Mr. LaDue) regarding the value of the improvements and immovable property. However, Mr. Dreggors then adjusted particular valuation items within CFX's experts' reports. Relying in part on the expertise of IBD Construction, Inc., Mr. Dreggors determined that the depreciation rate for the newer phase of greenhouses should be **35%** (rather than 70%), due in part to the fact that most of the greenhouse was replaced in 2007 after the hurricane. He then determined that the older greenhouse should be depreciated at a rate of **60%**. After making other adjustments to Mr. Speer's and Mr. LaDue's analysis, Mr. Dreggors reconciled on a value of **\$558,100** for improvements and immovable items using the Cost Approach method. Mr. Dreggors did not utilize the Sales Comparison Approach to value the improvements, as it is his

opinion that the subject is a special use property that is unique and cannot be adequately valued by looking at other nursery sales.

In addition, the Landowner submitted a claim for Special Damages resulting from lost plant inventory suffered as a result of the taking. The Landowner is seeking \$70,000 for the value of lost plants, supplies and other inventory.

The Landowner's compensation claims are summarized as follows:

Land Value	\$128,000
Improvement Value	\$558,100*
Immovable Equipment	\$130,800
<u>Special Damages (i.e. plant inventory)</u>	<u>\$ 70,000</u>
Total Compensation to Landowners	\$886,900*

(*these amounts have been updated since the initial reports)

EXPERT and ATTORNEY FEES / SETTLEMENT PROPOSAL:

The Landowners have submitted expert invoices in the amount of \$33,169 as summarized below:

Calhoun, Dreggors & Assoc.	\$32,269.00
<u>IB&S Imperial Builders and Supply</u>	<u>900.00</u>
Total Landowner Expert Fees	\$33,169.00

CFX's expert fees in this case totaled \$58,667, as summarized below:

Durrance & Associates	\$48,464.75
Speer Construction	\$ 3,257.25
<u>Fred B. Ladue II</u>	<u>\$ 6,945.00</u>
Total CFX Expert Fees	\$58,667.00

The undersigned counsel has analyzed the invoice amounts of the Landowner's experts and believes that the negotiated rate included within the "all-in" settlement amount indicated below is reasonable. The Landowner's fees are below CFX's largely because of the cost-saving strategy employed by Landowner's counsel of adapting portions of CFX's experts' analysis rather than unnecessarily duplicating these efforts.

Mediation was conducted on February 2, 2017, which resulted in the mediation settlement agreement whereby the Landowners agreed to accept \$772,250 "all-in" to resolve this case. The parties executed a Settlement Agreement (attached to this memo) which states that the all-inclusive settlement proposal consists of \$650,000 of compensation to the Landowner, subject to apportionment claims, and \$122,250 for attorneys' fees, expert fees and costs. While the settlement proposal does not apportion the attorney's fee and expert fee settlement sum, an estimated break-down of this amount based on the statutory betterment formula is provided for informational purposes:

Compensation to Landowners	\$650,000
Attorney's fees (Kent Hipp) (estimate)	96,250
Expert fees and costs (estimate)	26,000
Total "All-In" Settlement	\$772,250

CFX previously deposited \$345,000 into the court registry as its good faith estimate of value. A settlement in the amount of \$772,250 would require CFX to deposit an additional sum of \$427,250.

This case is scheduled to go to trial during the July 3, 2017 trial docket. Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonged litigation will subject CFX to additional attorneys' 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.

RECOMMENDATION:

The Right of Way Committee recommended CFX Board approval of the proposed settlement on February 22, 2017. The undersigned counsel respectfully requests that this Board approve the proposed settlement in the amount of \$772,250.00 to fully resolve Shirley Merrill's and S & L Nursery's interest in this case, including attorney's fees and expert fees and costs.

ATTACHMENTS:

Exhibit A - Sketch of Subject Property
Exhibit B – Map Depicting Location of Property
Exhibit C – Mediated Settlement Agreement

REVIEWED BY: _____

SECTION 24,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST



LAND SURVEYOR BUSINESS LICENSE NO. 6556

SKETCH OF DESCRIPTION

LEGEND AND ABBREVIATIONS



(C)	= CALCULATED	LT	= LEFT
(D)	= DEED	N:	= NORTHING
(F)	= FIELD	NO.	= NUMBER
CCR	= CERTIFIED CORNER RECORD	ORB	= OFFICIAL RECORDS BOOK
CM	= CONCRETE MONUMENT	PL	= PROPERTY LINE
DB	= DEED BOOK	PG	= PAGE
E:	= EASTING	P.O.B.	= POINT OF BEGINNING
FND	= FOUND	P.O.C.	= POINT OF COMMENCEMENT
ID	= IDENTIFICATION	RT	= RIGHT
IP	= IRON PIPE	R/W	= RIGHT OF WAY
IR	= IRON ROD	SQ	= SQUARE
IRC	= IRON ROD AND CAP	STA	= STATION
LA	= LIMITED ACCESS		

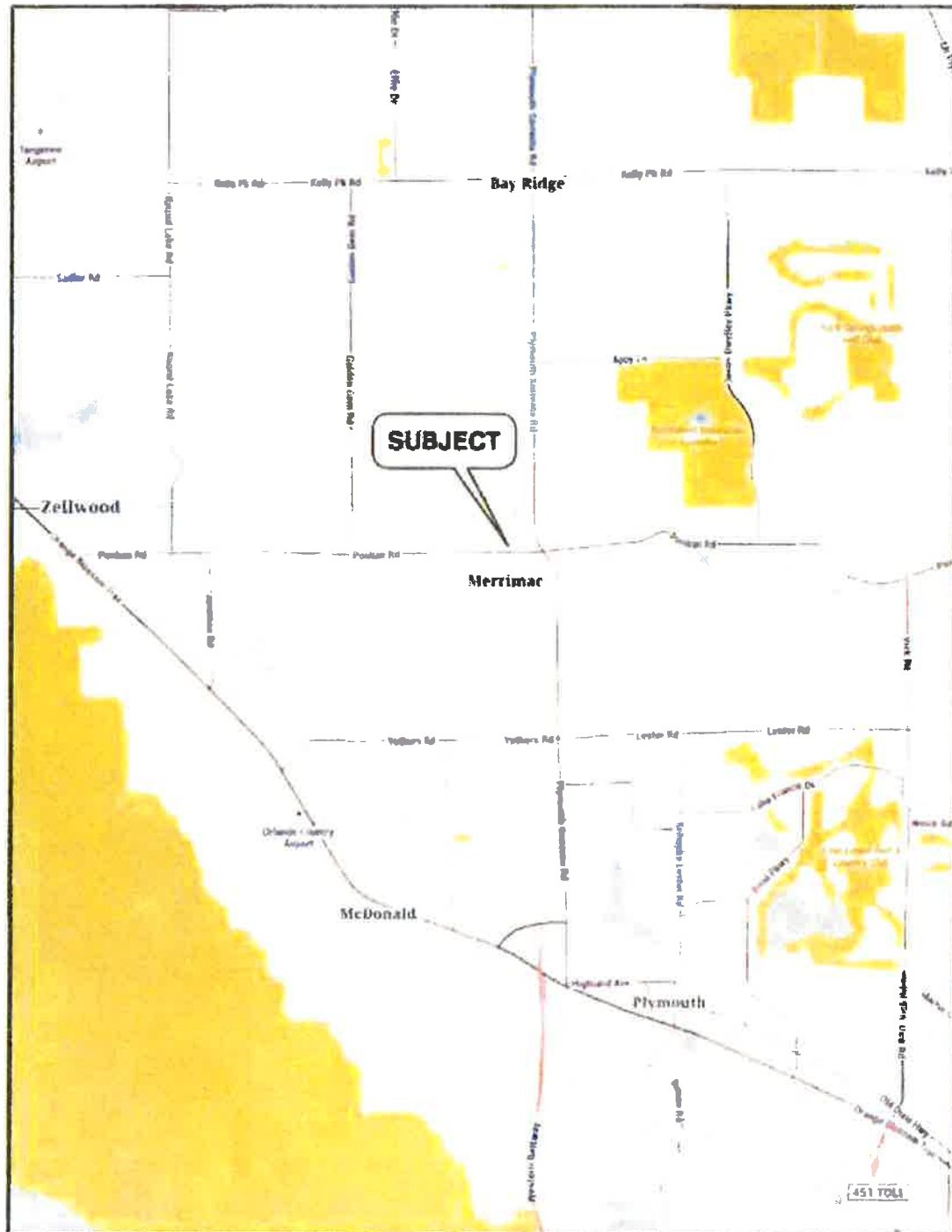
GENERAL NOTES:

1. THE PURPOSE OF THIS SKETCH IS TO DELINEATE THE DESCRIPTION ATTACHED HERETO. THIS DOES NOT REPRESENT A BOUNDARY SURVEY.
2. THE BEARINGS SHOWN HEREON ARE RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983/2007 ADJUSTMENT (NAD83/07), EAST ZONE, WITH THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 20 SOUTH, RANGE 27 EAST, HAVING A BEARING OF NORTH 89°49'04" WEST.
3. UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS SKETCH IS FOR INFORMATIONAL PURPOSES ONLY.
4. THIS SKETCH MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
5. A CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY DATED OCTOBER 24, 2012, FILE NO. 2037-2833368, WAS REVIEWED BY THE SURVEYOR. EXCEPTIONS LISTED THEREIN (IF ANY) WHICH AFFECT THE PARCEL DESCRIBED HEREON, WHICH CAN BE DELINEATED OR NOTED, ARE SHOWN HEREON.
6. CITY LIMITS SHOWN HEREON ARE TAKEN FROM THE ORANGE COUNTY GEOGRAPHIC INFORMATION SYSTEM SITE AND ARE APPROXIMATE.
7. ALL RECORDING REFERENCES SHOWN ON THIS SKETCH REFER TO THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, UNLESS OTHERWISE NOTED.
8. THIS SKETCH IS NOT A SURVEY.

SEE SHEET 1 FOR LEGAL DESCRIPTION
SEE SHEET 2 FOR SKETCH OF DESCRIPTION

SHEET 3 OF 3

		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 51-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SEE SHEET 20 NOTES AND NOTATIONS SHOWN HEREON.	
REVISED PER COMMENTS	PMM	05/09/2013	 9-11-2013 DATE
REVISION	BY	DATE	
FOR: ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAD 429	
DATE: MARCH 28, 2013		OOCEA PROJECT NO. 429-202	
PROJECT NO.: H20-01		PARCEL NO. 158	
DRAWN: PMM CHECKED: JMS		 GEODATA CONSULTANTS, INC. SURVEYING & MAPPING 2700 WESTHALL LANE SUITE 137 MAITLAND, FLORIDA 32751 VOICE: (407) 660-2322 FAX: 660-8223 LAND SURVEYOR BUSINESS LICENSE NO. 6556	



LOCATION MAP

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: 2014-CA-001972-0

Subdivision 39

Petitioner,

Parcel 158 (Parts A + B)

vs.

Clifton J Merrill, Jr., Shirley Ann Merrill,
St L Nursery, et. al.

Respondent(s).

MEDIATED SETTLEMENT AGREEMENT

At the Mediation Conference held on Feb 2, 2017,
Respondent(s), Clifton J Merrill, Jr., Shirley Ann Merrill + St L Nursery and
representatives of the Central Florida Expressway Authority reached the following Settlement
Agreement:

1. Petitioner will pay to Respondent(s), Clifton J. Merrill, Jr., Shirley Ann Merrill, and St L Nursery
(referred to as "Respondent") the sum of Seven Hundred Seventy-Two Thousand Two Hundred Fifty Dollars
exactly (\$772,250), in full settlement of all claims for compensation from Petitioner
whatsoever for the taking of Parcel 158 (Parts A + B), including statutory interest and all
claims related to real estate and business damages, severance damages, tort damages, attorney's
fees and litigation costs, expert witness fees, and 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
Three Hundred Forty-Five Thousand
Dollars (\$345,000). 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 Four Hundred
Twenty-Seven Thousand Two Hundred Fifty Dollars Dollars
exactly (\$427,250), representing the difference between the total settlement sum
referenced above and the Petitioner's previous deposit in this case.

2. 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 S.M.
conditioned upon final approval by the ROW Committee and then the CFX Board.

* This amount consists of \$650,000 of compensation for
to the Respondents, subject to apportionment claims, and
\$122,250 of attorneys' fees, expert fees and costs

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

4. 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.

5. Counsel for Petitioner will submit to the Court a standard Motion for 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. This Agreement resolves all claims whatsoever, including claims of J.M. compensation arising from the taking of Parcel 158 (B & A B). severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim. In addition, this sum resolves all appportionment claims including supplemental attorneys fees and costs related to

7. This Settlement Agreement, executed by the parties and their counsel on this appportionment day of February, 2017, contains all the agreements of the parties.

claims

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

Print Name: Richard Weinman
Counsel for CFX

Print Name: LAWRENCE M. WATSON JR
Mediator

Print Name: Shirley Ann Merrill
as Owner, Owner of S & L Nursery and as Personal Representative of the Estate of Clifton J. Merrill, Jr.

Print Name: Clifton J. Merrill, Jr.
Owner Personal Representative of the Estate of Clifton J. Merrill, Jr.

Print Name: Kent L. Hipp
Attorney for Owner