

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

**AGENDA  
RIGHT OF WAY COMMITTEE MEETING  
November 15, 2023  
2:00 p.m.**

**Meeting location: Central Florida Expressway Authority  
4974 ORL Tower Road  
Orlando, FL 32807  
Pelican Conference Room**

**A. CALL TO ORDER**

**B. PUBLIC COMMENT**

Pursuant to Section 286.0114, Florida Statutes and CFX Rule 1-1.011, the Right of Way Committee provides for an opportunity for public comment at the beginning of each regular meeting. The Public may address the Committee on any matter of public interest under the Committee's authority and jurisdiction, regardless of whether the matter is on the Committee's agenda but excluding pending procurement issues. Public Comment speakers that are present and have submitted their completed Public Comment form to the Recording Secretary at least 5 minutes prior to the scheduled start of the meeting will be called to speak. Each speaker shall be limited to 3 minutes. Any member of the public may also submit written comments which, if received during regular business hours at least 48 hours in advance of the meeting, will be included as part of the record and distributed to the Committee members in advance of the meeting.

**C. APPROVAL OF SEPTEMBER 20, 2023 RIGHT OF WAY COMMITTEE MEETING MINUTES**  
(action item)

**D. AGENDA ITEM**

- 1. MEDIATED SETTLEMENT AGREEMENT BETWEEN WHISPERING PINES PLANTATION, LLC AND CENTRAL FLORIDA EXPRESSWAY AUTHORITY**  
**PROJECT NUMBER: 528-757**  
*Richard Milian, Nelson Mullins Riley and Scarborough, LLP* (action item)

**E. OTHER BUSINESS**

**F. ADJOURNMENT**

**(CONTINUED ON PAGE 2)**

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

*This meeting is open to the public.*

*Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, they will need a record of the proceedings, and that, for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.*

*Persons who require translation services, which are provided at no cost, should contact CFX at (407) 690-5000 x5316 or by email at [Malaya.Bryan@CFXWay.com](mailto:Malaya.Bryan@CFXWay.com) at least three (3) business days prior to the event.*

*In accordance with the Americans with Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodations to participate in this proceeding, then they should contact the Central Florida Expressway Authority at (407) 690-5000 no later than two (2) business days prior to the proceeding.*

MINUTES  
CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
Right of Way Committee Meeting  
September 20, 2023

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**Committee Members Present:**

Mindy Cummings, Orange County Representative, Chairman  
Laurie Botts, City of Orlando Representative  
Brian Sheahan, Lake County Representative  
Neil Newton, Seminole County Representative  
Juan Diaz, Citizen Representative  
Paul Satchfield, Osceola County Representative  
John Denninghoff, Brevard County Representative

**Committee Member Not Present:**

Christopher Murvin, Citizen Representative

**CFX Staff Present:**

Laura Newlin Kelly, Associate General Counsel  
Lisa Lumbard, Chief Financial Officer  
Mala Iley, Recording Secretary

**Item A: CALL TO ORDER**

The meeting was called to order at 2:00 p.m. by Chairman Mindy Cummings. Recording Secretary, Mala Iley, called the roll and announced there was a quorum.

**Item B: PUBLIC COMMENT**

There was no public comment.

**Item C: APPROVAL OF JULY 26, 2023 RIGHT OF WAY COMMITTEE MEETING MINUTES**

Mr. John Denninghoff stated that there was a scrivener's error on the July 26<sup>th</sup> meeting minutes. The minutes stated that Mr. Denninghoff was in attendance. The meeting minutes were amended to reflect that Mr. Ted Calkins, Brevard County Alternate, was in attendance instead of Mr. Denninghoff.

**A motion was made by Ms. Botts and seconded by Mr. Denninghoff to approve the July 26, 2023 minutes, as amended.**

**Vote: The motion carried unanimously with all seven (7) members present voting AYE by voice vote.**

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**Item D.1: RESOLUTION DECLARING PROPERTY AS SURPLUS PROPERTY AVAILABLE FOR SALE, PROJECT NUMBER: 429-603 PARCELS: 62-161 PART A, PORTION 2- AND 62-161-PART B, PORTION 3**

Associate General Counsel, Laura Kelly, provided the Committee with an overview of the proposed Resolution Declaring Property as Surplus Property Available for Sale. The subject property was previously acquired as part of a larger parcel that was required for the construction of State Road 429 and associated facilities. If declared surplus, the property may be disposed of pursuant to a public sale.

Attorney Kelly respectfully requested the Committee make a recommendation for the Board's approval of the Resolution Declaring Property as Surplus Property Available for Sale.

**A motion was made by Mr. Satchfield and seconded by Mr. Sheahan to recommend to the Board, approval of the Resolution Declaring Property as Surplus Property Available for Sale, subject to any minor or clerical modifications or revisions approved by the General Counsel or designee.**

**Vote: The motion carried unanimously with all seven (7) members present voting AYE by voice vote.**

**Item D.2: RESOLUTION DECLARING PROPERTY AS SURPLUS PROPERTY AND AUTHORIZING THE TRANSFER OF SURPLUS PROPERTY TO THE CITY OF APOPKA, FLORIDA PROJECT NUMBER: 429-201 PARCEL: 837**

Associate General Counsel, Laura Kelly, provided the Committee with an overview of the proposed surplus property. During the construction of State Road 429, CFX acquired an access easement over certain real property known as Parcel 837 ("CFX Parcel") for the benefit of impacted landowners, whose access had been severed by construction of the State Road 429. The purpose of the proposed resolution is to declare any remaining interest in the CFX Parcel as surplus, so CFX can convey the CFX Parcel to the City of Apopka for construction of a public roadway.

Attorney Kelly respectfully requested the Committee make a recommendation for the Board's approval of the Resolution Declaring Property as Surplus Property Available for Sale and Authorizing the Transfer of Surplus property to the City of Apopka, Florida.

**A motion was made by Mr. Sheahan and seconded by Ms. Botts to recommend to the Board, approval of the Resolution Declaring Property as Surplus Property Available for Sale and Authorizing the Transfer of Surplus property to the City of Apopka, Florida, subject to any minor or clerical modifications or revisions approved by the General Counsel or designee.**

**Vote: The motion carried unanimously with all seven (7) members present voting AYE by voice vote.**

**Item E: OTHER BUSINESS**



There was no other business. Associate General Counsel Kelly advised staff will recirculate the 2024 Right of Way Committee Meeting Dates.

Chairman Cummings announced that the next Right of Way Committee meeting is scheduled for Wednesday, November 15, 2023 at 2:00 p.m. in the Pelican Conference Room.

**Item F: ADJOURNMENT**

Chairman Cummings adjourned the meeting at approximately 2:13 p.m.

**Minutes approved on \_\_\_\_\_, 2023**

*Pursuant to the Florida Public Records Law and Central Florida Expressway Authority Records and Information Management Program Policy, audio tapes of all Board and applicable Committee meetings are maintained and available upon request to the Custodian of Public Records at (407) 690-5326, [publicrecords@CFXWay.com](mailto:publicrecords@CFXWay.com) or 4974 ORL Tower Road, Orlando, Florida 32807.*

DRAFT

Richard N. Milian  
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richard.milian@nelsonmullins.com

390 North Orange Avenue, Suite 1400  
Orlando, FL 32801  
T: 407.669.4200 F: 407.425.8377  
nelsonmullins.com

### MEMORANDUM

TO: CFX Right of Way Committee Members

FROM: Richard N. Milian, Esq., Right-of-Way Counsel  
Nelson Mullins Riley & Scarborough, LLP *RNM*

DATE: October 27, 2023

SUBJECT: Mediated Settlement Agreement Between Whispering Pines Plantation, LLC  
("Whispering Pines") and the Central Florida Expressway Authority ("CFX")  
Project No: 528-757

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### BACKGROUND

Whispering Pines is the owner of approximately 317.55 acres of land located on the north side of State Road 528, a/k/a the Beach Line Expressway ("SR 528"), just east of the Monument Parkway interchange in Orange County, as depicted on **Attachment "A"** (the "Whispering Pines Property"). The Whispering Pines Property is under a private conservation easement but has been improved by and is utilized by the owners as a private hunting facility.

In 1966, a prior owner of the Whispering Pines Property deeded certain real property to CFX's predecessor in interest for the right of way for SR 528. The deed evidencing this transfer is recorded in the Orange County Official Records Book 1953, Page 594 (the "Quit Claim Deed"). A bridge was constructed on SR 528 at this location to provide clearance for a then-planned north-south public road to be connected to Wewahootee Road to the south which was never constructed. However, subsequently adjacent landowners, including Whispering Pines, utilized the bridge to provide agricultural access to their properties.

In 2020, CFX notified Whispering Pines of its intent to close this access for safety reasons in connection with construction on SR 528 and the adjoining Brightline railway project. In doing so, CFX noted that the Whispering Pines Property has an existing easement providing it alternative access to and from Monument Boulevard and that there was never a formal agreement granting permanent access to SR 528 via the bridge adjacent to the Whispering Pines Property. Whispering

4876-0164-6447 v.1 112842/00748, 9:29 AM, 07/11/2023

Pines disputed CFX's right to close the access, asserting that CFX had never obtained limited-access rights from Whispering Pines' predecessor in title. After lengthy discussions and negotiations between CFX and the landowner, Whispering Pines ultimately filed a lawsuit in the Ninth Judicial Circuit Court in and for Orange County, Florida, seeking to enjoin CFX from closing the access (case styled *Whispering Pines Plantation, LLC v. Central Florida Expressway Authority*, Case No. 2022-CA[1]000076-O. F. On October 13, 2023, the parties mediated the dispute and reached the proposed settlement terms detailed in the Mediated Settlement Agreement attached as **Attachment "B"** ("Agreement"). The Mediated Settlement Agreement includes the terms below:

Alternative Access Agreement. At its cost, Whispering Pines shall permit and construct an alternate access road to the Whispering Pines Property from Monument Parkway as depicted on Exhibit "B" to the Agreement (the "Alternate Access Road"). Whispering Pines shall complete the Alternate Access Road no later than fifteen (15) months from the approval of the Agreement. In order to avoid certain wetlands and conflicts with improvements at the adjoining Florida Department of Corrections Central Florida Reception Center, a portion of the Alternate Access Road shall be constructed along the northernmost edge of the SR 528 right of way as shown in Exhibit "B," with the remainder of the Alternate Access Road to be constructed within Whispering Pines' pre-existing easement area outside of the right of way. The Alternate Access Road shall also provide St. Johns River Water Management District ("SJWMD") personnel access to the adjoining SJWMD property. In the event the Alternate Access Road cannot be permitted, then this settlement shall be null and void. CFX shall maintain reasonable access to and from SR 528 for the Whispering Pines Property until the Alternate Access Road is completed.

Access Easement. CFX will grant Whispering Pines an access easement as attached as Exhibit "C" to the Mediated Settlement Agreement (the "Access Easement") and over the area as generally depicted on Exhibit "D" to the Mediated Settlement Agreement, being about 40 feet wide along the northern property line of SR 528 right of way (the "Easement Area"), with the final Easement Area description to be determined by CFX survey. CFX has the right to review and approve the plans for any work within the SR 528 right of way.

Quit Claim Deed of Access and Abutter's Rights. Upon completion of the Alternative Access Roadway, Whispering Pines shall execute and deliver to CFX a Quit Claim Deed transferring any of Whispering Pines' existing access and abutter's rights to the SR 528 right of way.

Monetary Compensation. In consideration for the terms of the Mediated Settlement Agreement, CFX shall pay the sum of \$375,000.00 to Whispering Pines to fully resolve this matter ("Settlement Amount"), including any and all of the landowner's experts' and attorneys' fees. The

Settlement Amount shall be held in escrow by CFX counsel, Nelson Mullins Riley & Scarborough LLP, until Whispering Pines provides copies of all necessary permit approvals required for the construction of the complete Alternate Access Road.

Final Settlement of Litigation. The parties shall notify the Court that mediation was successful, and a settlement is pending CFX Board approval and shall request a stay of the lawsuit until all conditions of the Settlement Agreement have occurred. No later than fifteen (15) months following final CFX Board Approval of the Mediated Settlement Agreement, Whispering Pines shall dismiss with prejudice it's lawsuit. That will constitute full and final resolution of the litigation and parties shall mutually release each other with regard to the litigation.

### **REQUEST**

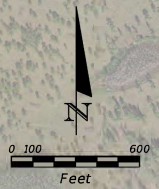
A recommendation by the Right of Way Committee for CFX Board's approval of the Mediated Settlement Agreement between CFX and Whispering Pines, subject to any minor or modifications or revisions approved by the General Counsel or designee.

### **ATTACHMENTS**

- A. Depiction of the Whispering Pines Property
- B. Mediated Settlement Agreement



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 1/23/23 PM  
 11/6/2023  
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**LEGEND**

- CFX EXISTING LA ROW
- CFX EXISTING ROW
- LOCAL EXISTING ROW
- PARCEL LINES
- WHISPERING PINES PARCEL LINES
- FARM ACCESS ROAD
- WHISPERING PINES ALTERNATIVE ACCESS EASEMENT
- WHISPERING PINES ALTERNATIVE ACCESS EASEMENT WITHIN CFX ROW
- WHISPERING PINES TEMPORARY STORAGE EASEMENT

FLORIDA DEPARTMENT OF CORRECTIONS  
 CENTRAL FLORIDA RECEPTION CENTER

OWNER: WHISPERING PINES  
 PLANTATION LLC  
 TAX ID: 29-23-32-0000-00-001

WHISPERING PINES  
 ALTERNATIVE ACCESS  
 EASEMENT

WHISPERING PINES TEMPORARY  
 STORAGE EASEMENT

WHISPERING PINES  
 ALTERNATIVE ACCESS  
 (40' TYP.)

FARM ACCESS ROAD

BRIGHTLINE RAILROAD

BRIGHTLINE RAILROAD



REVISIONS	
DATE	DESCRIPTION

ATTACHMENT "A"

SR 528 ROW EXHIBIT	
ROAD NO. SR 528	PROJECT NO. 528-___



WHISPERING PINES  
 PLANTATION LLC EXHIBIT

SHEET  
NO.

# ATTACHMENT "B"

## MEDIATED SETTLEMENT AGREEMENT

This Mediated Settlement Agreement (this "Agreement") is entered into by and between Whispering Pines Plantation, LLC ("Whispering Pines") and Central Florida Expressway, a body politic and corporate, and an agency of the State under the laws of the State of Florida ("CFX"). Whispering Pines and CFX are referred to collectively in this Agreement as the "Parties." This Agreement is effective as of the 13th day of October, 2023.

### RECITALS

A. Whispering Pines is the owner of the that certain real property located on State Road 528 a/k/a the Beach Line Expressway in Orange County, Florida and identified as the Orange County Tax ID as Parcel 29-23-32-0000-00-001 and more particularly described on **Exhibit "A"** ("Whispering Pines Property").

B. CFX is the owner of the right of way for State Road 528, which abuts the southern boundary of the Whispering Pines Property.

C. In 1966, a prior owner of the Whispering Pines Property deeded certain real property to CFX's predecessor in interest, the Orlando-Orange County Expressway Authority, for the right of way for S.R. 528. The deed evidencing this transfer is recorded in the Orange County Official Records Book 1953, Page 594 (the "Quit Claim Deed").

D. The Whispering Pines Property has utilized the access off of S.R. 528 since its construction.

E. There is a dispute between the Parties regarding CFX's right to close this access, which resulted in a lawsuit filed in Ninth Judicial Circuit Court in and for Orange County, Florida, *Whispering Pines Plantation, LLC v. Central Florida Expressway Authority*, Case No. 2022-CA-000076-O.

F. On October 13, 2023, the Parties mediated the dispute and this agreement memorializes the agreement reached through mediation.

NOW THEREFORE in consideration of the foregoing and the following covenants, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

1. **Incorporation of Recitals.** The Parties represent and warrant to each other the accuracy of the foregoing recitals which are incorporated by reference herein.

2. **Alternative Access Agreement.** The Parties agree that Whispering Pines shall construct, at its sole cost and expense and at no additional cost to CFX, an alternate access road to the Whispering Pines Property shall be constructed starting at Monument Parkway and terminating at the Whispering Pines Property in accordance with **Exhibit "B"** attached hereto ("Alternate Access Road"). Whispering Pines shall complete the Alternate Access Road no later than no later

than fifteen (15) months from the approval of this Agreement. The Alternate Access Road shall be within the area of CFX's Right of Way shown in **Exhibit "B"**. The remainder of the Alternate Access Road shall be constructed within Whispering Pines' pre-existing easement area on The TIF Division of State Lands/Department of Corrections Property also shown in **Exhibit "B"**.

3. **Access Easement.** CFX shall grant to Whispering Pines an access easement in a form substantially similar to that as **Exhibit "C"** (the "Access Easement") and over an area as generally depicted on **Exhibit "D"**, generally located along the northern property line of S.R. 528 right-of-way from Monument Parkway and measuring 40 feet in width (the "Easement Area"). Within 30 days from the date of this Agreement, CFX shall have a legal description and survey of the access easement area as depicted on **Exhibit "D"** created at its sole cost and expense and shall provide the survey and legal description to Whispering Pines for review and approval. Once the survey and legal description are approved by both Parties, it shall be incorporated into the Access Easement for execution by the Parties, which shall not be unreasonably withheld, conditioned, or delayed.

4. **Approval of Construction for Alternative Access Roadway.** Whispering Pines shall obtain all permissions and permits necessary, including without limitation permissions for wetland impacts and permission from the State of Florida Division of State Lands and the Department of Corrections to construct the remaining access route to ensure both Whispering Pines and the St. Johns River Water Management District personnel can drive from Monument Parkway to the Whispering Pines Property. In the event the Alternate Access Road cannot be permitted, then this settlement shall be null and void.

CFX has the right to review and approve the plans for work within the S.R. 528 right-of-way; however, such review and approval shall not be unreasonably withheld, conditioned, or delayed. CFX shall have 30 days after receipt of such plans to provide any comments to the plans. Should CFX not provide comments within 30 days, then CFX waives its right to review and approve the plans, the plans shall be deemed approved, and Whispering Pines may commence with construction of said plans.

5. **Maintenance of Access During Construction.** CFX shall maintain reasonable access to and from SR 528 for the Whispering Pines Property until the Alternate Access Road is completed.

6. **Quit Claim Deed of Access and Abutter's Rights.** Within fifteen (15) days of the completion of the Alternative Access Roadway, Whispering Pines shall execute and deliver a Quit Claim Deed transferring Whispering Pines' existing Access and Abutter's Rights to the S.R. 528 right of way and deliver the original to CFX. This Quit Claim Deed shall be recorded at the sole cost and expense of CFX.

7. **Compensation.** In consideration for the above, CFX shall pay the sum of \$375,000.00 to Whispering Pines to fully resolve this matter ("Settlement Amount"). This Settlement Amount includes any and all expert fees' and attorneys' fees incurred on behalf of Whispering Pines. The Settlement Amount shall be paid by CFX within sixty (60) days of the full approval and execution of this Agreement to Nelson Mullins Riley & Scarborough LLP to be held




in escrow until Whispering Pines provides copies of the all necessary permit approvals of the construction for the complete Alternate Access Road shown in **Exhibit "B"** from Monument Parkway to the western boundary of the Whispering Pines Property. Nelson Mullins Riley & Scarborough LLP shall deliver the Settlement Amount to Whispering Pines no later than seven (7) business days from receipt of the permits for the Alternate Access Road.

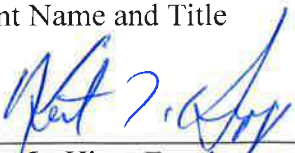
8. **Final Settlement.** The Parties shall notify the Court that mediation was successful, and a settlement is pending CFX Board approval. The Parties shall direct their respective counsel to jointly request a stay of the lawsuit until all conditions included herein have occurred. No later than 15 months following final CFX Board Approval, which shall also be the effective date of this Agreement, Whispering Pines shall dismiss with prejudice the instant action. The above is the full and final settlement of this matter. No further funds or actions will be due or owing on the part of either Whispering Pines or CFX.

9. **Mutual Release.** Whispering Pines, its heirs, successors, and assigns hereby waives and releases any and all claims (except those arising out of a breach of this agreement and/or breach of the Access Easement) arising against CFX, its heirs, successors and assigns for claims that were brought or could have been brought in the lawsuit, including without limitation relating to the closure of access to the S.R. 528 right of way and closure of access to Farm Road #1. CFX, its heirs, successors, and assigns hereby waives and releases any and all claims (except those arising out of a breach of this agreement and/or breach of the Access Easement) arising against Whispering Pines, its heirs, successors and assigns relating to claims that were brought or could have been brought in the lawsuit, including without limitation closure of access to the S.R. 528 right of way and closure of access to Farm Road #1.


**WHISPERING PINES  
PLANTATION, LLC**

  
\_\_\_\_\_  
Brett Evans, Manager  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

  
\_\_\_\_\_  
Kent L. Hipp, Esquire  
V. Nicholas Dancaescu, Esquire  
Gray Robinson, P.A.  
Post Office Box 3068  
Orlando, FL 32802

**CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY**

  
\_\_\_\_\_  
Glenn Pressimone, Chief of Infrastructure  
Print Name and Title

  
\_\_\_\_\_  
Richard N. Milian, Esquire  
NELSON MULLINS  
390 N. Orange Avenue, Suite 1600  
Orlando, FL 32801



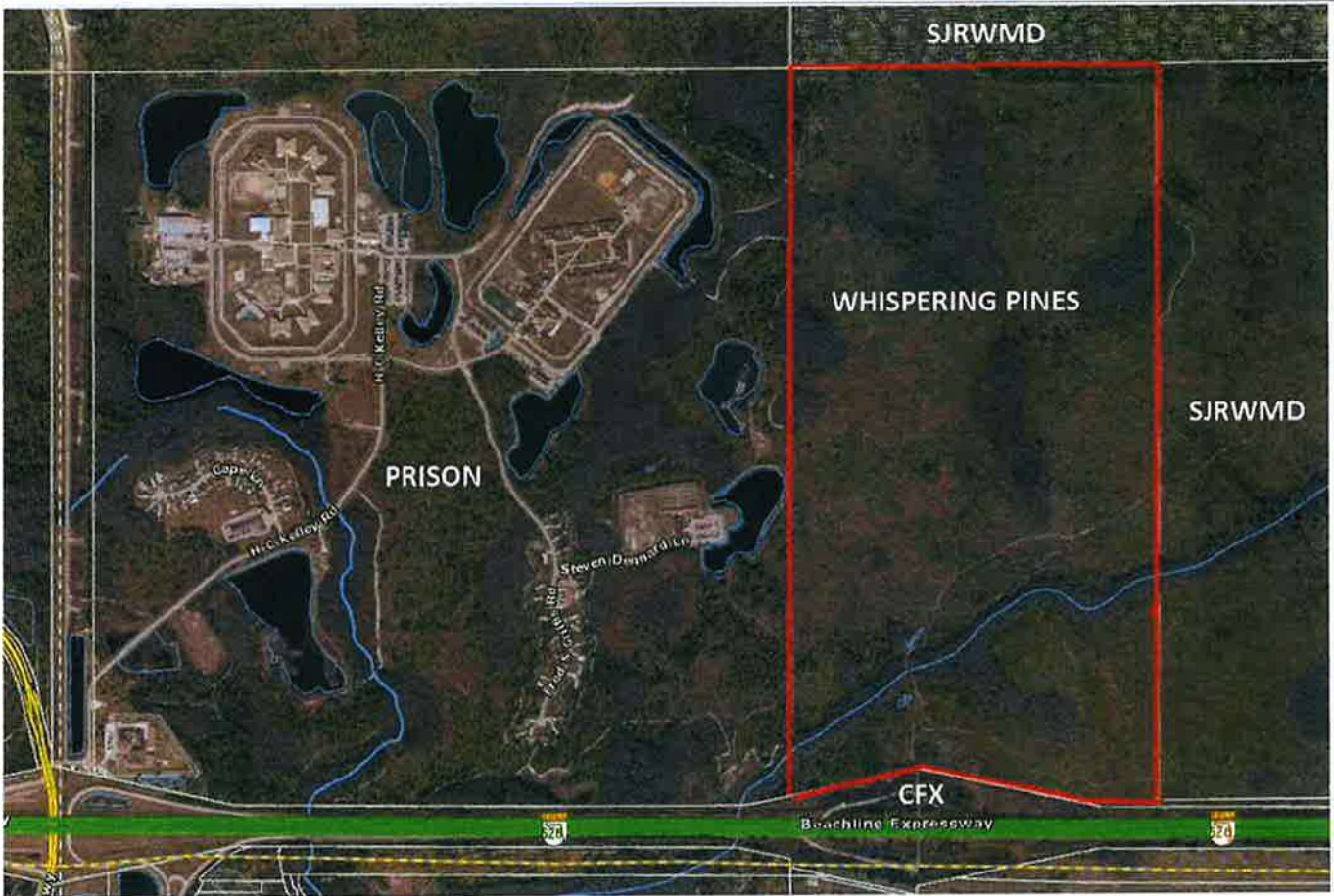


**MEDIATOR**

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Pantaleon Law Firm, P.A.  
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Orlando, Florida 32835  
407-392-2207  
[ed@pantaleonlaw.com](mailto:ed@pantaleonlaw.com)

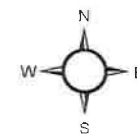
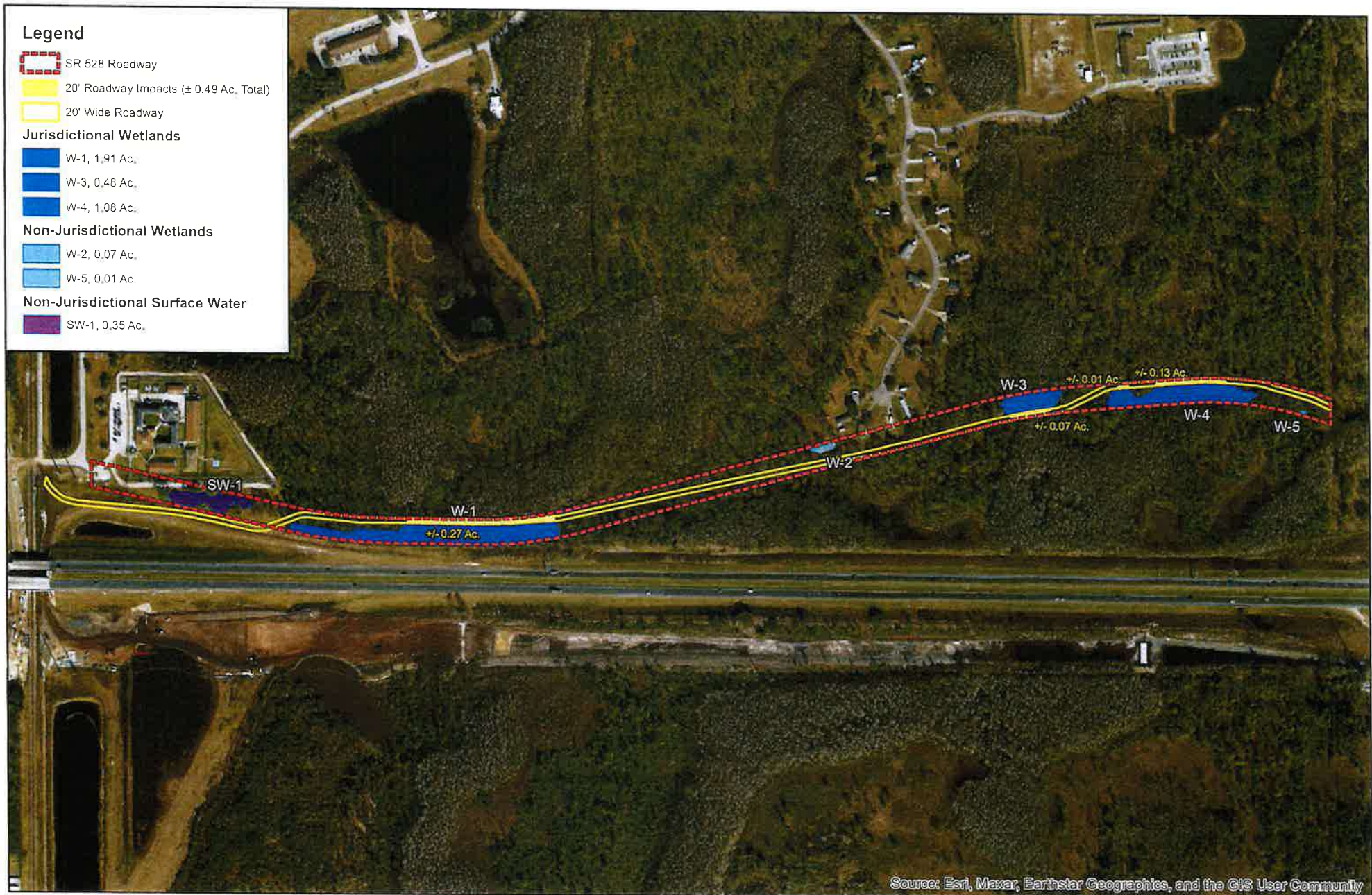
**EXHIBIT "A"**  
**Whispering Pines Property**



**EXHIBIT "B"**

**Alternate Access Road**





**EXHIBIT "C"**

**Access Easement Agreement**

Prepared By and Return To:  
Kent Hipp, Esq.  
Gray Robinson PA  
301 E. Pines Street, Suite 1400  
Orlando, Florida 32801

For Recording Purposes Only

### **ACCESS EASEMENT AGREEMENT**

**THIS ACCESS EASEMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and an agency of the State of Florida, whose mailing address is 4974 ORI Tower Road, Orlando, FL 32707 ("CFX"), and **WHISPERING PINES PLANTATION, LLC**, whose address is 4739 Patch Road, Orlando, FL 32822 ("Grantee").

#### **RECITALS:**

CFX is the owner of a certain right of way located to the north of State Road 528 in Orange County, Florida, being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference. Grantee is the owner of a certain parcel of property located in Orange County, Florida, near CFX's Property, as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by this reference ("Grantee's Property"). Grantee is the beneficiary of that certain easement across the real property owned by the Department of Corrections and recorded in O.R. Book 3427, Page 1811 of the Orange County Public Records. Grantee desires to obtain from CFX, and CFX desires to grant to Grantee a non-exclusive access easement on, over and through the property described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Easement Area") for the benefit of the Grantee, its assigns and successors in title and/or interest, and their respective guests, licensees and invitees (collectively referred to herein as the "Permitted Users") for the purpose of providing and maintaining access to Grantee's Property.

**NOW, THEREFORE**, for and in consideration of the payment of Ten and No/100 Dollars (\$10.00), the mutual covenants and agreements as set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, CFX and Grantee do hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Grant of Easement.** Subject to the terms and conditions set forth herein, CFX hereby gives, grants and conveys to Grantee a non-exclusive easement in, through, under and upon the Easement Area, for the purpose of vehicular and pedestrian ingress to and egress from Grantee's Property by the Permitted Users. Vehicular access by Grantee and its Permitted Users shall be limited to those



at or below FDOT weight standards. The easement granted herein shall be appurtenant to and run with the Grantee's Property and shall not be assigned, conveyed or transferred by the Grantee except as an appurtenance to Grantee's Property or any portion thereof and the ownership and/or leasehold interest of any successor in interest thereto. The Easement Area shall not be used for any purposes other than as specified herein. CFX expressly reserves the right to use the Easement Area for potential future maintenance, repairs or construction, so long as such use does not substantially impede with Grantee's Access. CFX expressly reserves the right to grant the use thereof or easements therein to other parties or dedicate the easement area to a governmental entity, provided that any such use and/or easement is not inconsistent with the full use and enjoyment of the easement rights granted herein. CFX shall permit Grantee to install gates in CFX's fencing (or to install locks on existing gates) to allow for access to and shall not interrupt Grantees' access to Grantee's Property depicted in attached **Exhibit "B"** at any time; and that at all times, Grantees shall have access to said Property. If required for expansion or modification of S.R. 528 or related transportation improvements, CFX further reserves the right to relocate and reconfigure the Easement Area, provided that any such relocation or reconfiguration shall not impede or interfere with Grantee's access to Grantee's Property and is substantially similar to the access provided for herein. Any such relocation or reconfiguration shall be at CFX's sole cost and expense. Further, any such relocation or reconfiguration shall be performed by CFX in such a manner so as to preserve the full use and enjoyment of the easement rights granted herein.

3. **Design, Permitting and Construction of Access Improvements.** Grantee shall, at its sole cost and expense, design, permit, excavate, install and construct certain stabilized access improvements within the Access Easement Area (collectively, "Access Improvements") in accordance with the conceptual plan more particularly set forth in **Exhibit "C"** attached hereto and incorporated by reference ("Concept Plans") except the size of the Access Path may be, at Grantee's discretion, constructed to be 24 feet wide as opposed to 15 feet wide as shown on Exhibit C. Whispering Pines shall obtain any and all applicable governmental permits, approvals, development orders, and other consents and authorizations of governmental authorities required for construction of the Access Improvements, and shall adhere to any and all applicable laws, ordinance, rules, requirements, policies, and standards governing the design, installation and construction of the Access Improvements, and the terms and conditions of this Agreement.

a. **Design of the Access Plans.** Grantee shall be responsible for the preparation of the construction plans, specifications, drawings or amendments thereto, and any other documentation reasonably required to design of the Access Improvements in accordance with the Concept Plan ("Access Plans"). CFX shall have the right to review and approve the Access Plans, which approval shall not be unreasonably conditioned, withheld, or delayed. Grantee shall coordinate with the CFX to provide CFX with a complete set of the Access Plans for CFX to determine, in its reasonable discretion, if the Access Plans are sufficient and acceptable to the CFX. No later than twenty (20) days following CFX's review of the Access Plans, CFX shall notify Grantee of any revisions or corrections to the Access Improvements as depicted in the Access Plans as may be reasonably required by CFX. Any denial of approval by CFX shall be in accordance with the notice provision set forth herein and shall set forth with reasonable specificity the specific elements that are not approved and shall specify what changes are reasonably necessary in order for approval to

be obtained. Notwithstanding the foregoing, CFX's right to inspect the Access Improvements as set forth herein shall be separate and distinct from any permitting and inspection requirements otherwise required hereunder.

b. Applicable Permits and Approvals. Prior to commencing construction of the Access Improvements, CFX shall obtain any and all permits reasonably required for construction of the Access Improvements within the right-of-way of State Road 528, including, but not limited to, any and all permits required by the Florida Department of Environmental Protection, the St. Johns River Water Management District or any other applicable governing jurisdiction. CFX, to the extent necessary but at no cost or expense to CFX, shall cooperate with Grantee in any applications for any permits or permit modifications for the Access Improvements; provided, however, in no event shall CFX's existing stormwater drainage capacity or rights under the existing St. Johns River Water Management District permit be impeded, impaired or hindered by said modification. Grantee shall be responsible for locating any and all utilities located within the Easement Area.

c. Construction of Access Improvements. Grantee shall complete the construction of the Access Improvements no later than fifteen (15) months after the Effective Date (hereinafter defined). Grantee shall notify CFX in writing ten (10) business days before the commencement of construction of the Access Improvements and shall coordinate with the CFX throughout the construction of the Access Improvements in order to avoid or minimize any potential service disruptions or impairment or impediment to the Central Florida Expressway System. Grantee shall notify CFX in writing of the completion of the Access Improvements ("Completion Notice"). Grantee's construction activities for the portion of the Access Improvements located within the Easement Area shall be constructed solely from Monument Parkway. Within ten (10) business days of receipt of the Completion Notice, CFX shall have the right, but not the obligation, to review and inspect the Access Improvements to ensure the Access Improvements have been constructed in substantial accordance with the Final Plans. In the event CFX elects to conduct an independent inspection of the Access Improvements, CFX shall notify Grantee within five (5) days of such independent inspection of any deficiencies in work on the Access Improvements, which, in CFX's reasonable discretion, require correction. Grantee shall take any and all actions reasonably necessary to correct the deficiencies to the reasonable satisfaction of CFX. Within thirty (30) days of the completion of construction or correction of deficiencies, if any, of the Access Improvements, Grantee shall provide CFX an as-built survey of the Access Improvements. Upon receipt of the as-built survey and written approval from CFX, which shall not be unreasonably withheld, conditioned or delayed, that the as-built survey is acceptable, CFX shall be deemed to have accepted the Access Improvements.

4. CFX's Grant of Temporary Storage Easement. CFX hereby grants to Grantee, a temporary, non-exclusive, easement for storage of construction materials (the "Temporary Storage Easement") over, under, and through those portions of the CFX's real property more particularly described in **Exhibit "D"** attached hereto and incorporated herein by reference ("Storage Area"). The Temporary Storage Easement shall automatically expire without further action on the part of CFX and Grantee on the earlier of: (i) CFX's acceptance of the Access improvements; or (ii) fifteen (15) months after the Effective Date. During the term of the Temporary Storage Easement, Grantee



shall maintain appropriate erosion control measures for the materials stockpiled within the Storage Area.

5. **CFX's Grant of Temporary Access Easement.** CFX hereby grants to Grantee, a temporary, non-exclusive, access easement for temporary ingress and egress ("Temporary Access Easement") over, under, and through those portions of the CFX's real property more particularly described in **Exhibit "E"** attached hereto and incorporated herein by reference ("Temporary Access Area"). The Temporary Access Easement shall automatically expire without further action on the part of CFX and Grantee on the earlier of: (i) CFX's acceptance of the Access improvements; or (ii) fifteen (15) months after the Effective Date. Grantee understands and acknowledges that the use of the Temporary Access Easement poses a potential inherent risk and threat to the health, safety and welfare of Grantee as the user of the Temporary Access Easement and Grantee hereby assumes the risk of said use and waives and disclaims any potential claims, damages, or liability resulting from the use of the Temporary Access Area by Grantee.

6. **Maintenance of Easement Area.** Grantee shall be entitled to improve and stabilize the Access Easement Area and Access Improvements. The Grantee shall ensure the Access Improvements are maintained in good order and condition. Grantee shall at its sole discretion be able to construct fencing and/or gates on the access easement but shall not construct any structures in the Easement Area. No person or party other than CFX shall have authority to subject any portion of CFX's Property to a lien arising out of work performed in the Easement Area. CFX reserves the right, but not the obligation, to construct, reconstruct, maintain, repair or replace any improvements within the Easement Area as may be deemed reasonably necessary by CFX to ensure the proper maintenance and operation of SR 528, provided that any such construction, reconstruction, maintenance, repair or replacement is not inconsistent with the full use and enjoyment of the easement rights granted herein. Neither Grantee nor any Permitted User shall make any use of the Easement Area which would damage SR 528 or weaken, diminish or impair the lateral or subjacent support to SR 528 or any appurtenant improvements now or hereafter located on CFX's Property. Grantee and any Permitted User's use of the Easement Area shall not damage or interfere with S.R. 528 of CFX's appurtenant property, improvements and systems, including, without limitation, fiber optic facilities.

7. **Indemnification.** Grantee shall indemnify and hold harmless CFX, its agents, employees and elected officials, appointed officers and representatives from and against any and all liens, liability, rights, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and costs (including, without limitation, attorney's and paralegal's fees incurred, whether or not suit be brought, in litigation, mediation, arbitration and bankruptcy proceedings, and any appeal therefrom, and in any post judgment proceeding) of any kind and nature arising out of or resulting from acts of negligence or willful acts of Grantee or the Permitted Users in the exercise of the easement rights and privileges granted hereunder or as a result of their utilization of the Easement Area; provided, however, that Grantee shall not be required to indemnify CFX for any matters arising out of or occasioned by the negligence of CFX, its employees, contractors or agents.

8. **Notices.** Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been duly given as of the date and time same are (a) personally delivered, (b) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, (c) within one (1) day after depositing with an overnight delivery service from which a receipt may be obtained and addressed to a party the address set forth in the preamble to this Agreement, or to such other address as a party may furnish in writing to the other party.

9. **Attorneys' Fees.** In the event of any litigation arising from or concerning this Agreement, the prevailing party shall have the right to recover reasonable attorneys' fees, costs and expenses as awarded by a court of competent jurisdiction, whether such attorneys' fees, costs and expenses were incurred before, during or after trial, or upon any appellate level, or in any administrative proceeding, arbitration, mediation, or any proceeding in bankruptcy or insolvency.

10. **Relationship Between the Parties.** CFX and Grantee acknowledge and agree that the relationship created hereby is solely as a result of and arising from their relationship as the owners of adjacent properties. It is not intended hereby, and nothing contained herein shall be construed, to establish any other relationship between the parties. Specifically, nothing contained in this Agreement, nor the relationship between the parties which may arise as a result of the provisions of this Agreement, are intended to, or shall be construed as, creating a partnership, joint venture, or other such relationship as between CFX and Grantee.

11. **Counterpart Execution.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

12. **Section Headings.** The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

13. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

14. **Time of the Essence.** The time of performance of this Agreement, and of each covenant and provision hereof, is of the essence of this Agreement.

15. **Recording of Agreement.** CFX shall be responsible for recording this Agreement (including all costs associated therewith) within the Public Records of Orange County, Florida.

16. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

17. **Entire Agreement; Modification and Waiver.** This Agreement constitutes the entire agreement and understanding between the parties hereto relating to the subject matter hereof and may not be amended, waived, or discharged, except by an instrument in writing executed by Grantee and CFX, (or their respective successors and/or assigns) which written document shall be recorded in the Public Records of Orange County, Florida. No failure of either party to exercise any power or to insist upon strict compliance with any obligation specified herein, and no custom, practice or course of dealing at variance with the terms hereof, shall constitute a waiver of such party's rights to demand exact compliance with the terms hereof.

18. **Binding Effect.** All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors, assigns, and legal representatives of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns and legal representatives.

19. **Effective Date.** The effective date of this Agreement shall be the date upon which the last of the parties hereto execute this Agreement ("Effective Date").

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties have hereunto executed this Agreement as of the day and year first above written.

**“CFX”**

Witnesses:

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

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

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

APPROVED AS TO FORM FOR  
EXECUTION BY THE AUTHORIZED  
SIGNATORY OF CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY.

By: \_\_\_\_\_  
Nelson Mullins Riley and Scarborough, LLP,  
Attorneys at Law

**STATE OF FLORIDA  
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as the \_\_\_\_\_ of the Central Florida Expressway Authority, a body politic and corporate and an agency of the State of Florida, on behalf of CFX. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
(Notary Seal stamped below)

**“GRANTEE”**

Witnesses:

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

\_\_\_\_\_  
**WHISPERING PINES PLANTATION,  
LLC**

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

**STATE OF FLORIDA  
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as the \_\_\_\_\_ of **Whispering Pines Plantation, LLC**. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
(Notary Seal stamped below)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE EASEMENT AREA**

[to be attached]

**EXHIBIT "B"**

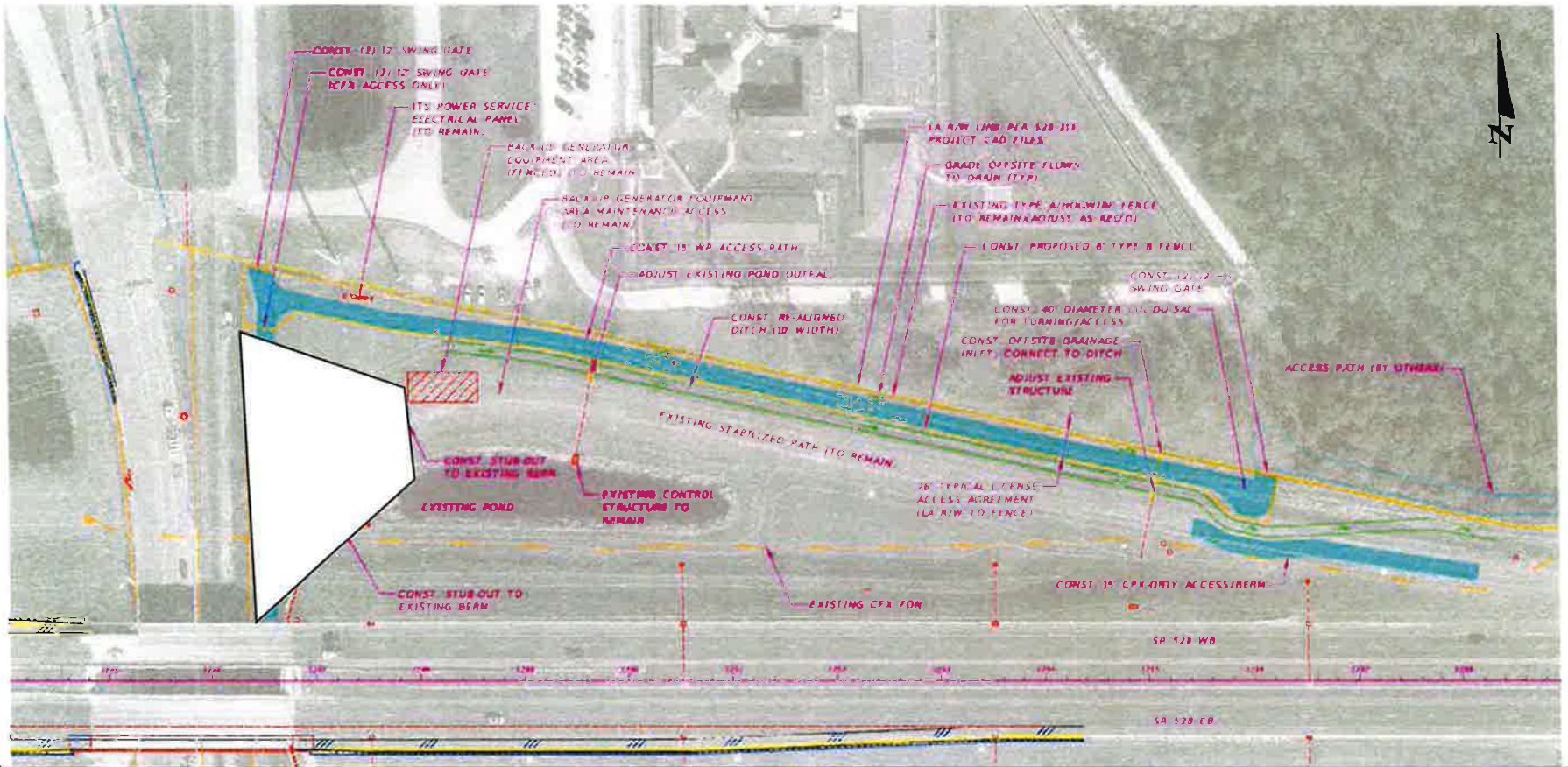
**LEGAL DESCRIPTION OF GRANTEE'S PROPERTY**

[to be attached]

**EXHIBIT "C"**  
**CONCEPT PLANS**

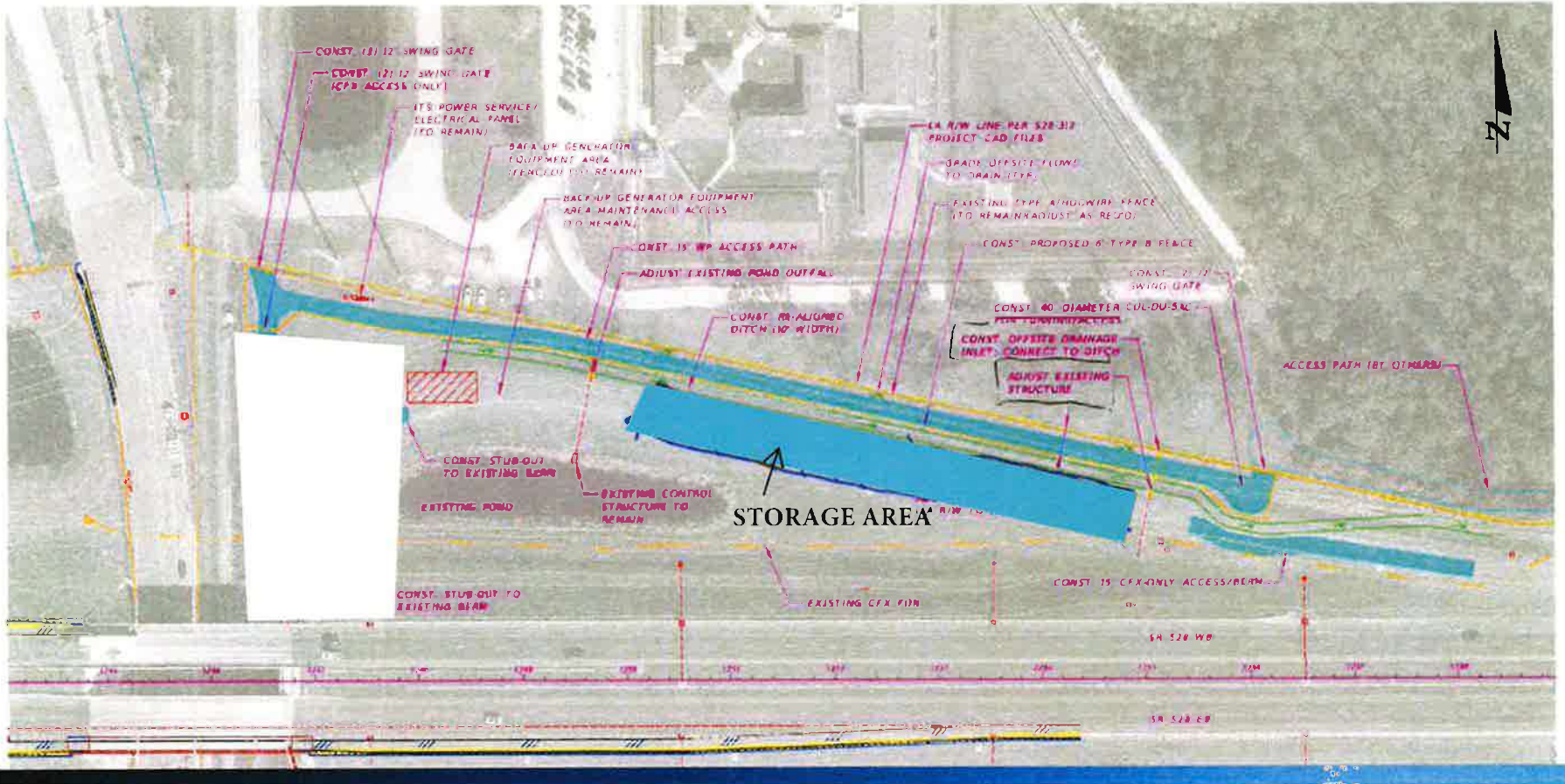


# CFX PROPOSED ACCESS WITHIN 528 RIGHT OF WAY



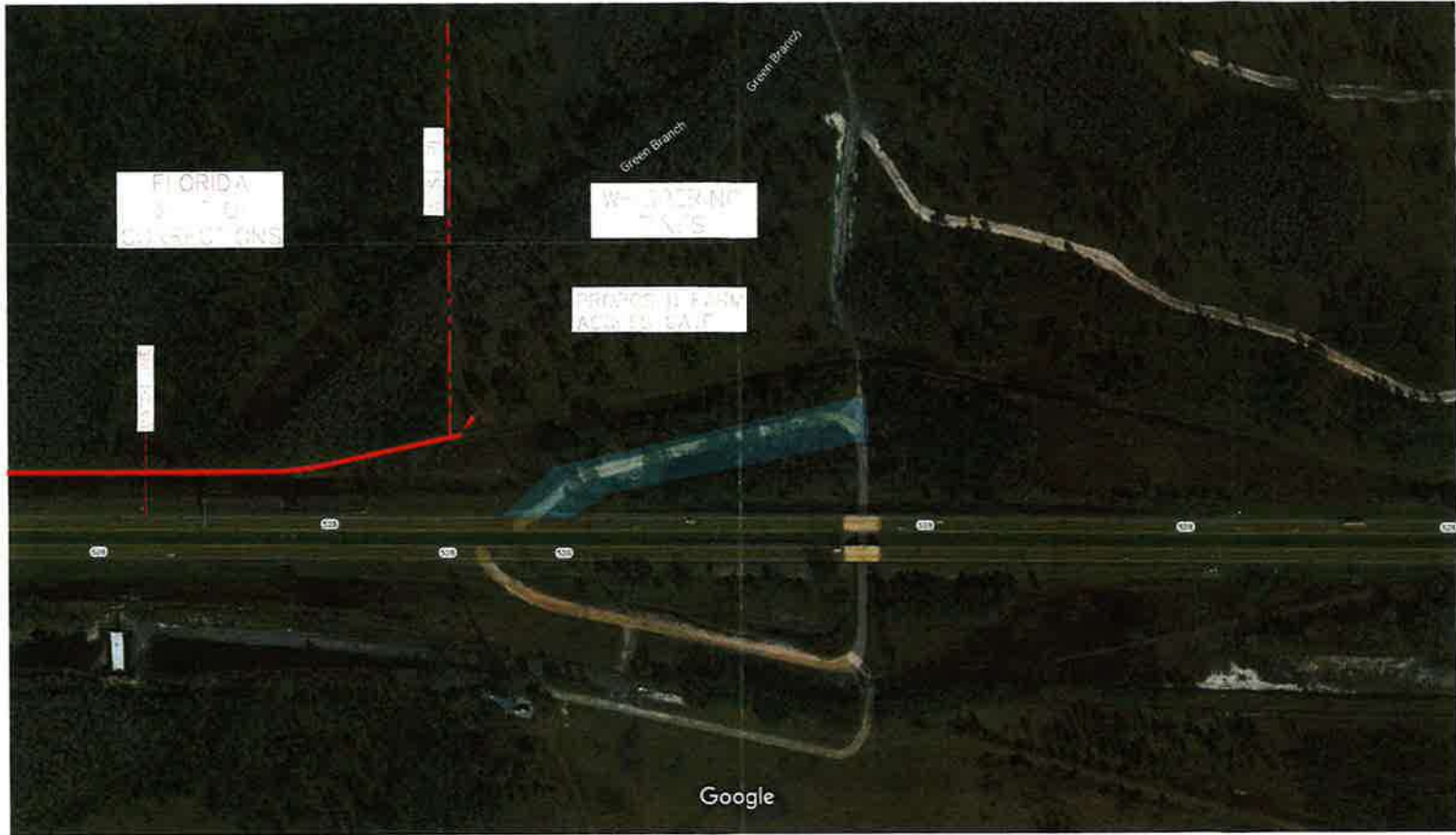
**EXHIBIT "D"**  
**STORAGE AREA**

# TEMPORARY STORAGE AREA



**EXHIBIT “E”**  
**TEMPORARY ACCESS AREA**





Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 100 ft

*WHISPERING PINES  
PROPOSED ACCESS ROUTE*

FIGURE 5

**EXHIBIT "D"**

**Access Easement Area Depiction**

# CFX PROPOSED ACCESS WITHIN 528 RIGHT OF WAY

