

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida**

LAMAR SOUTH FLORIDA,

Petitioner,

vs.

DEPARTMENT OF TRANSPORTATION,

Respondent.

DOAH CASE NO.: 19-6312

DOT CASE NO.: 19-002

FINAL ORDER

On January 10, 2019, Lamar South Florida (“Lamar”), initiated this proceeding by filing a Request for an Administrative Hearing. The request was filed in response to a Notice of Denied Outdoor Advertising Permit Application (“Notice of Denied Application”), issued by Respondent, Florida Department of Transportation (“Department”). On November 26, 2019, this matter was referred to the Florida Division of Administrative Hearings. Before the matter could be heard, the parties entered into the attached Stipulation of Settlement, resolving all issues.

FINDINGS OF FACT

1. Lamar maintains active outdoor advertising permit numbers 6266 and 6267 (“Permits”) and permit tags CL067 and CL068 (“Permit Tags”). The Permits and Permit Tags were issued for a conforming sign owned by Lamar that was erected in 1977 and removed in the fall of 2017 (“Former Sign”). The Former Sign was located at milepost 18.751 on the left side of the Tamiami Trail in Fort Myers, Florida.

2. On November 16, 2018, the Department issued Lamar a Notice of Violation— Illegally Erected Sign (“Notice of Violation”), notice number 2900, regarding an alleged illegal outdoor advertising sign located on the left side of the Tamiami Trail at milepost 18.728 in Fort

Myers, Florida (“New Sign”). The New Sign had been erected without obtaining an outdoor advertising permit from the Department in violation of Section 479.105, Florida Statutes. The Notice of Violation stated that the New Sign is illegal and must be removed within 30 days absent a timely request for a hearing or information provided to the Department sufficient to resolve the violation.

3. On December 4, 2018, the Department received a completed outdoor advertising permit application, application numbers 62866 and 62867, from Lamar for its New Sign.

4. On December 10, 2018, the Department issued a Notice of Denied Application for application numbers 62866 and 62867 to Lamar. The Notice of Denied Application stated that the application was being denied due to a spacing conflict with the permitted signs bearing tag numbers CL067/CL068 and CB840/CB841. The Notice of Denied Application contained administrative hearing rights and allowed Lamar 30 days to file a petition for an administrative hearing.

5. On January 10, 2019, the Department received a Request for an Administrative Hearing challenging the Department’s Notice. The Request was assigned DOT Case No. 19-002. Lamar elected not to exercise its administrative hearing rights with respect to the Notice of Violation dated November 16, 2018.

6. On November 26, 2019, the Department referred this matter to the Florida Division of Administrative Hearings.

7. The Department and Lamar have agreed to amicably resolve the issue without the necessity of a hearing, under the terms set forth in the Stipulation of Settlement.

CONCLUSIONS OF LAW

The Department has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapters 120 and 479, Florida Statutes, and Chapters 14-10 and 28-106, Florida Administrative Code.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that Lamar will take **one** of the following actions:

- a. By March 15, 2021, Lamar will remove the New Sign. “Remove” means to disassemble all sign materials above ground level and transport such materials from the site. Lamar will notify the Department upon removal of the New Sign, **or**
- b. By December 15, 2020, Lamar will sell the New Sign to the property owner of Lee County Parcel ID 11-45-24-01-00003.0200 (the “Property Owner”), to be used for on-premise advertising by the Property Owner. Lamar will not lease or otherwise rent the New Sign to the Property Owner. After the sale, Lamar will remove its name from the New Sign, will not retain any interest in the New Sign, and will not receive any income from the New Sign. Lamar will notify the Department upon the sale of the New Sign to the Property Owner and will provide documentation of the sale to the Department.

ORDERED that if Lamar fails to comply with the Order above by the relevant date, the Department will remove the New Sign and Lamar will reimburse the Department for the entire cost of removal. It is further


ORDERED that following the removal or sale of the New Sign as detailed in the Order above, and so long as permit tags CL067 and CL068 are active and in good standing, Lamar may re-erect a sign at the exact location where its Former Sign stood under conforming permit tags CL067 and CL068. This location is identified and marked by a green pole with a red streamer at its top and is depicted in the photographs which comprise composite “Exhibit B” to the attached

Stipulation of Settlement. Once the sign bearing permit tags CL067 and CL068 has been re-erected, if it is determined that the sign was not erected at the permitted location, as depicted in Exhibit B, the Department will notify Lamar and give Lamar 45 days to correct the issue. If the issue is not resolved, the Department will remove the sign structure and Lamar will reimburse the Department for the entire cost of removal.

ORDERED that Lamar's request for an administrative hearing is **DISMISSED**. It is further

ORDERED that the attached Stipulation of Settlement is incorporated into this Order by reference.

DONE AND ORDERED this 30th day of June, 2020.



KEVIN J. THIBAULT, P. E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2020 JUN 30 AM 10:26

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN 30 DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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Tallahassee, Florida 32399

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**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399-0458**

LAMAR SOUTH FLORIDA,

Petitioner,

**DOAH CASE NO. 19-6312
DOT CASE NO. 19-002**

vs.

DEPARTMENT OF TRANSPORTATION,

Respondent.

STIPULATION OF SETTLEMENT

Lamar South Florida, (“Lamar”), and the Florida Department of Transportation, (“Department”), together referred to as “Parties,” enter into this Stipulation of Settlement (“Stipulation”) and agree as follows:

WHEREAS, Lamar maintains active outdoor advertising permit numbers 6266 and 6267 (“Permits”) and permit tags CL067 and CL068 (“Permit Tags”). The Permits and Permit Tags were issued for a conforming sign owned by Lamar that was erected in 1977 and removed in the fall of 2017 (“Former Sign”). The Former Sign was located at milepost 18.751 on the left side of the Tamiami Trail in Fort Myers, Florida.

WHEREAS, on November 16, 2018, the Department issued a Notice of Violation—Illegally Erected Sign, notice number 2900 (“Notice of Violation”) for an alleged illegal sign located at milepost 18.728 on the left side of the Tamiami Trail in Fort Myers, Florida and identified in attached composite “Exhibit A” (hereinafter “New Sign”). The Department asserts that the New Sign was erected without obtaining an outdoor advertising permit from the Department. The Notice of Violation stated that the New Sign is illegal and must

be removed within 30 days absent a timely request for a hearing or information provided to the Department sufficient to resolve the violation.

WHEREAS, on December 4, 2018, the Department received a completed outdoor advertising permit application, application numbers 62866 and 62867, from Lamar for its New Sign.

WHEREAS, on December 10, 2018, the Department issued a Notice of Denied Outdoor Advertising Permit Application (“Notice of Denied Application”) for application numbers 62866 and 62867 to Lamar. The Notice of Denied Application stated that the application was being denied due to a spacing conflict with the permitted signs bearing tag numbers CL067/CL068 and CB840/CB841. The Notice of Denied Application contained administrative hearing rights and allowed Lamar 30 days to file a petition for an administrative hearing.

WHEREAS, on January 10, 2019, the Department received a petition from Lamar challenging the Notice of Denied Application. Lamar elected not to exercise its administrative hearing rights with respect to the Notice of Violation.

WHEREAS, on November 26, 2019 the Parties referred this matter to the Division of Administrative of Hearings.

WHEREAS, the Department and Lamar, have agreed to amicably resolve this issue without the necessity of a hearing, under the terms set forth in this Stipulation of Settlement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The provisions of the foregoing whereas clauses are incorporated herein and made a part of this Stipulation.
2. Lamar will take one of the following actions:
 - a. By March 15, 2021, Lamar will remove the New Sign. “Remove” means to disassemble all sign materials above ground level and transport such

materials from the site. Lamar will notify the Department upon removal of the New Sign, or

- b. By December 15, 2020, Lamar will sell the New Sign to the property owner of Lee County Parcel ID 11-45-24-01-00003.0200 (the "Property Owner"), to be used for on-premise advertising by the Property Owner. Lamar will not lease or otherwise rent the New Sign to the Property Owner. After the sale, Lamar will remove its name from the New Sign, will not retain any interest in the New Sign, and will not receive any income from the New Sign. Lamar will notify the Department upon the sale of the New Sign to the Property Owner and will provide documentation of the sale to the Department.

3. If Lamar fails to comply with Section 2 above by the relevant date, the Department will remove the New Sign and Lamar will reimburse the Department for the entire cost of removal.

4. Following removal or sale of the New Sign as detailed in Section 2 above, and so long as permit tags CL067 and CL068 are active and in good standing, Lamar may re-erect a sign at the exact location where its Former Sign stood under conforming permit tags CL067 and CL068. This location is identified and marked by a green pole with a red streamer at its top in the photographs attached to this Stipulation as composite "Exhibit B." Once the sign bearing permit tags CL067 and CL068 has been re-erected, if it is determined that the sign was not erected at the permitted location, as depicted in Exhibit B, the Department will notify Lamar and give Lamar 45 days to correct the issue. If the issue is not resolved, the Department will remove the sign structure and Lamar will reimburse the Department for the entire cost of removal.

5. Nothing in this Stipulation prevents the Department from taking all action available under Florida law if a new violation involving the New Sign or Former Sign occurs.

6. Each Party shall bear its own costs and attorney's fees in this proceeding.

7. Lamar, for itself and its attorneys, administrators, heirs, and assigns, unconditionally releases and forever discharges the State of Florida and the Department and its Secretary, agents, employees, representatives, insurers, and attorneys from any and all charges, complaints, claims, liabilities, demands, actions, causes of actions, suits, damages, losses, and expenses of any nature, including attorney's fees and costs, whether known or unknown, whatsoever arising from any or all of the facts or circumstances which give rise to, or related to this issue in any manner.

8. Any failure of any party to insist upon the strict performance of any terms or provisions hereof shall not be deemed to be a waiver of any of the terms and provisions thereof.


9. This Stipulation is contingent upon the approval of the Secretary of the Department of Transportation by Final Order. Until such Final Order is received, the Department incurs no liability or obligation whatsoever pursuant to this Stipulation.

Authority to Sign. Each individual signing this Stipulation directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the documents on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters concerned herein and as stated herein. A signature transmitted by facsimile or as a pdf copy to electronic mail shall be treated as original for all purposes.

IN WITNESS THEREOF, the parties hereto have executed the foregoing Stipulation of Settlement.


Signed this 11th day of JUNE, 2020.

FLORIDA DEPARTMENT OF TRANSPORTATION

By: 

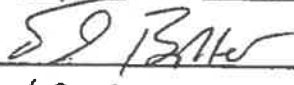
Printed: Kenneth J. Pyt

Legal Review:

By: 
David Tropin
Assistant General Counsel

LAMAR SOUTH FLORIDA

Signed this 11th day of JUNE, 2020.

By: 

Title: VP & G.M.

Printed: ED BUTLER



EXHIBIT

A

PERGAM 800-631-8883



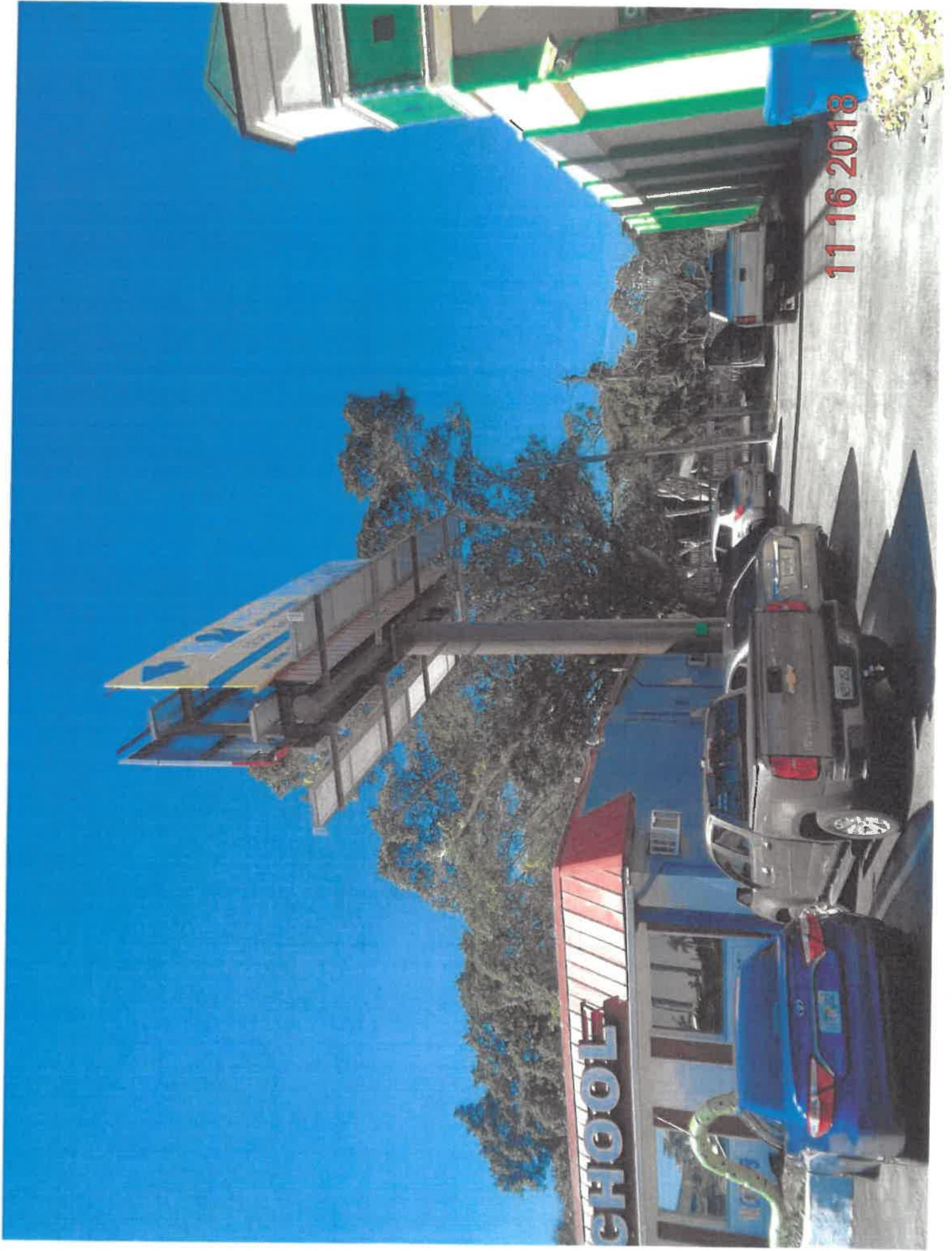
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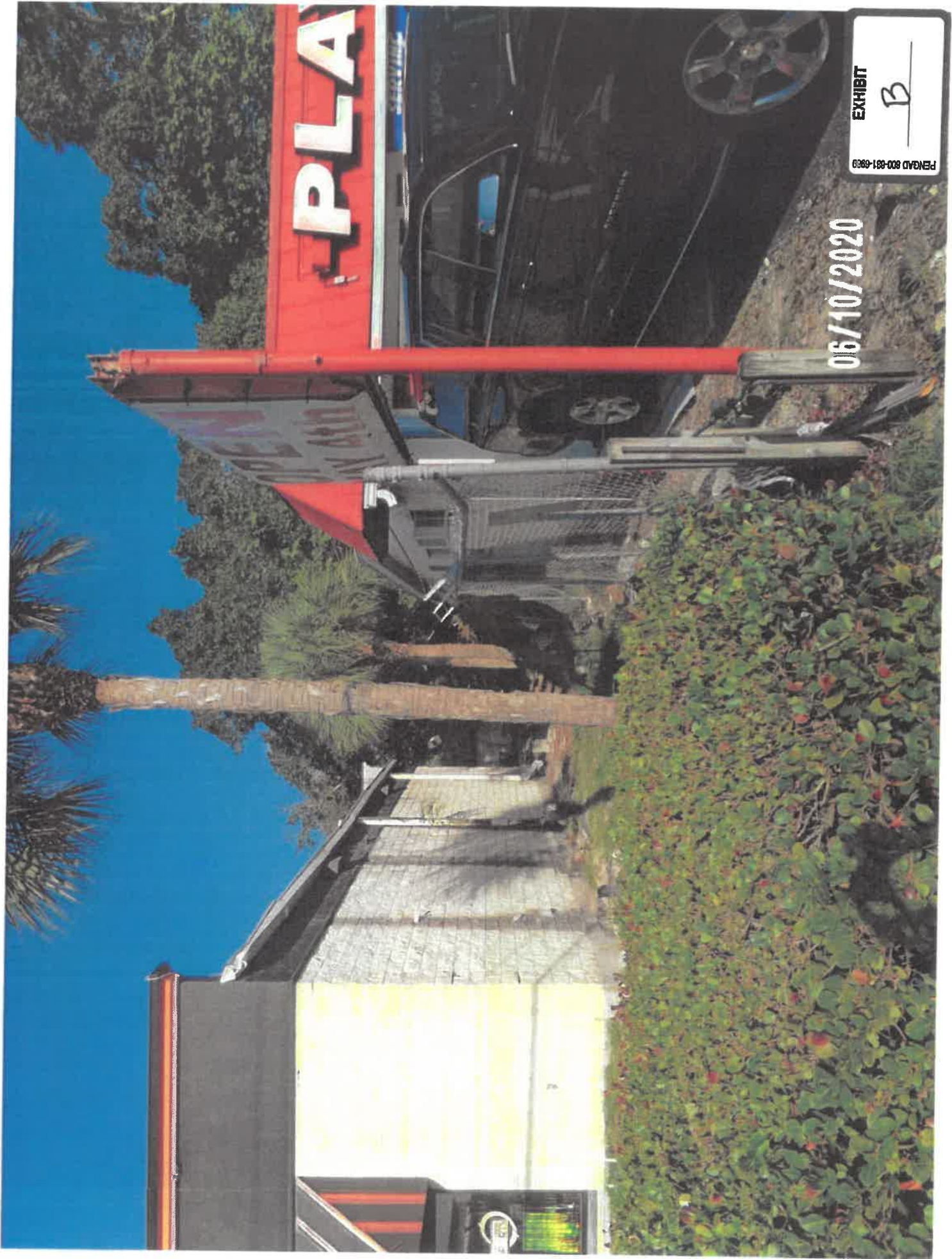
PRESCHOOL

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NO OFF CAMPUS

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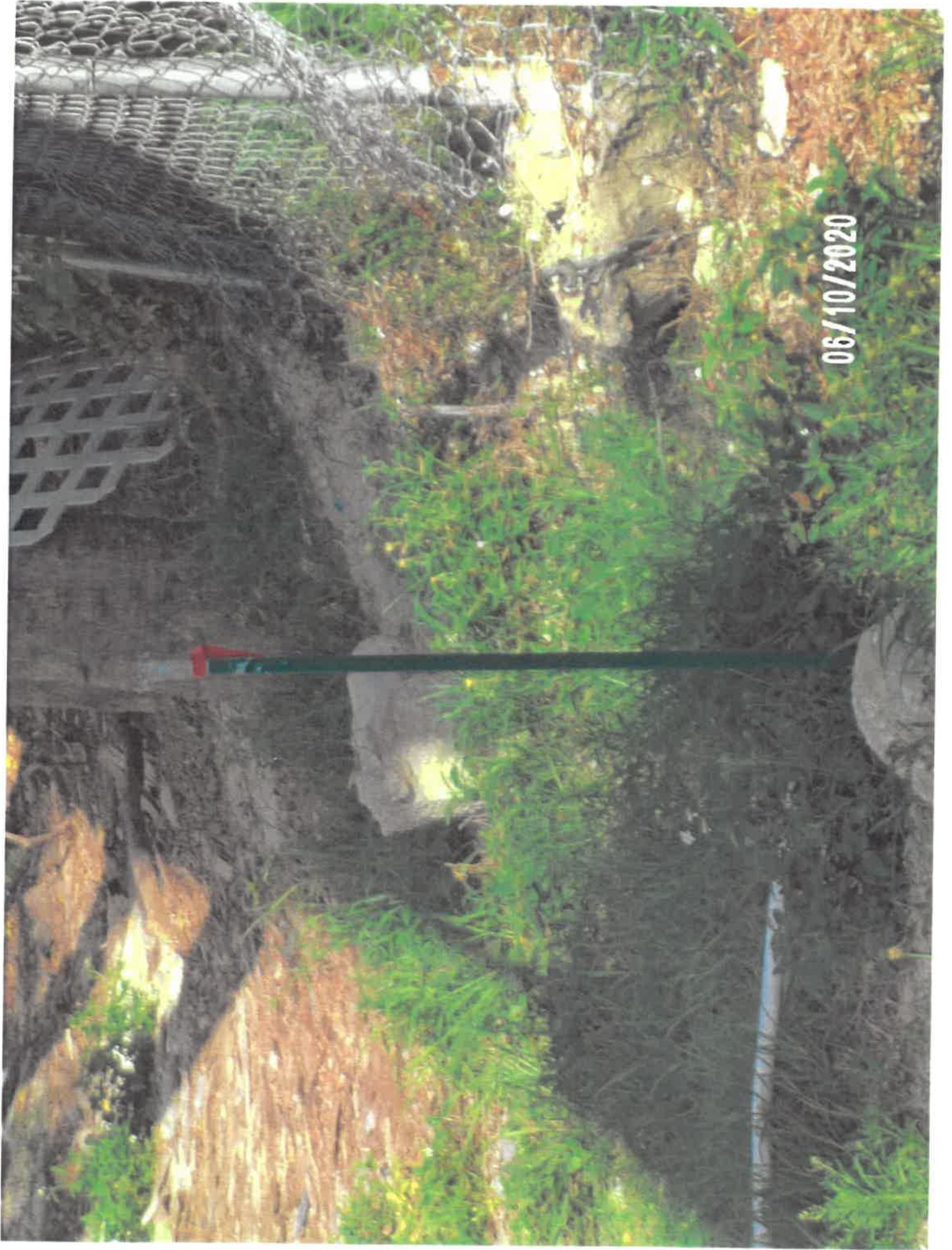


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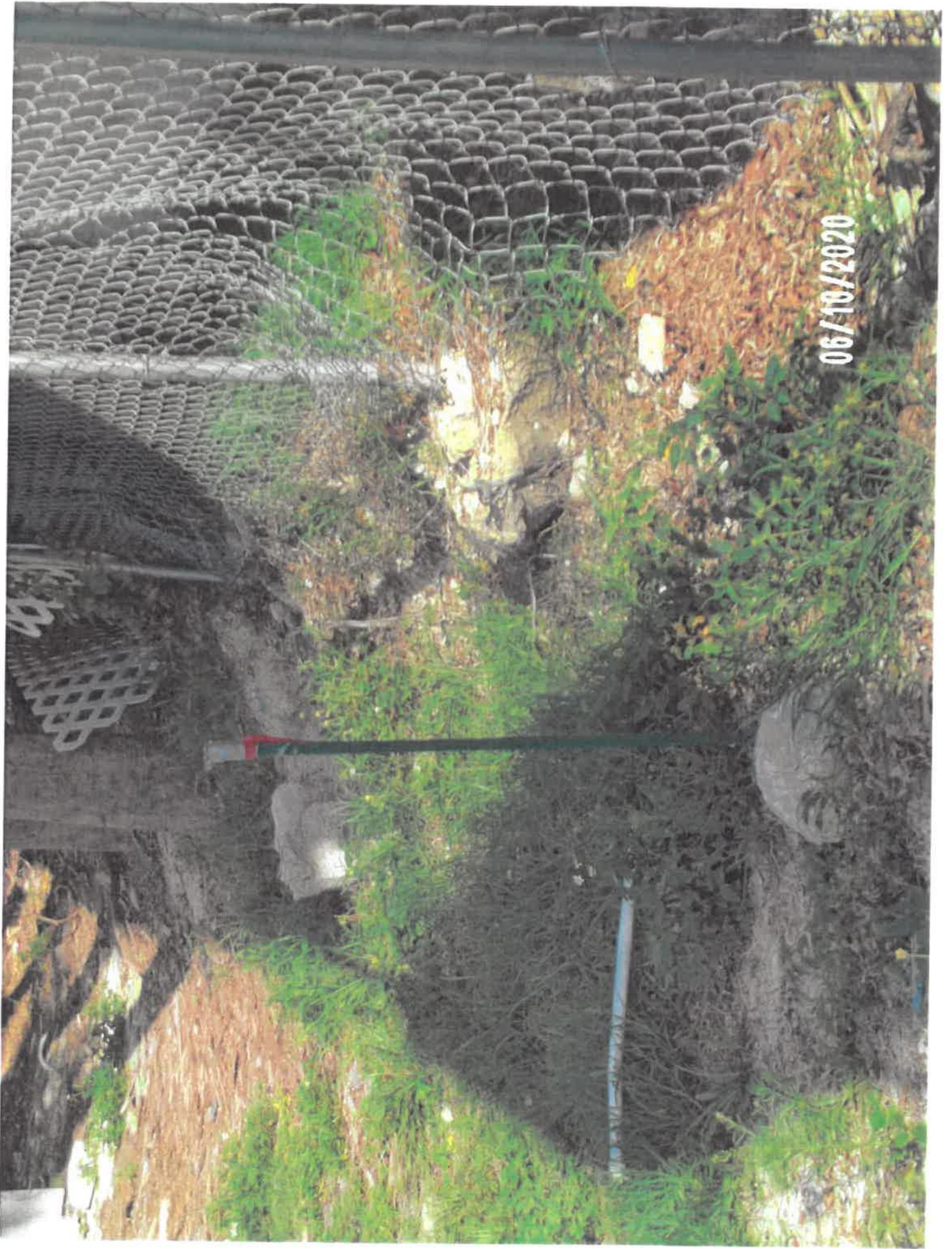
EXHIBIT

B

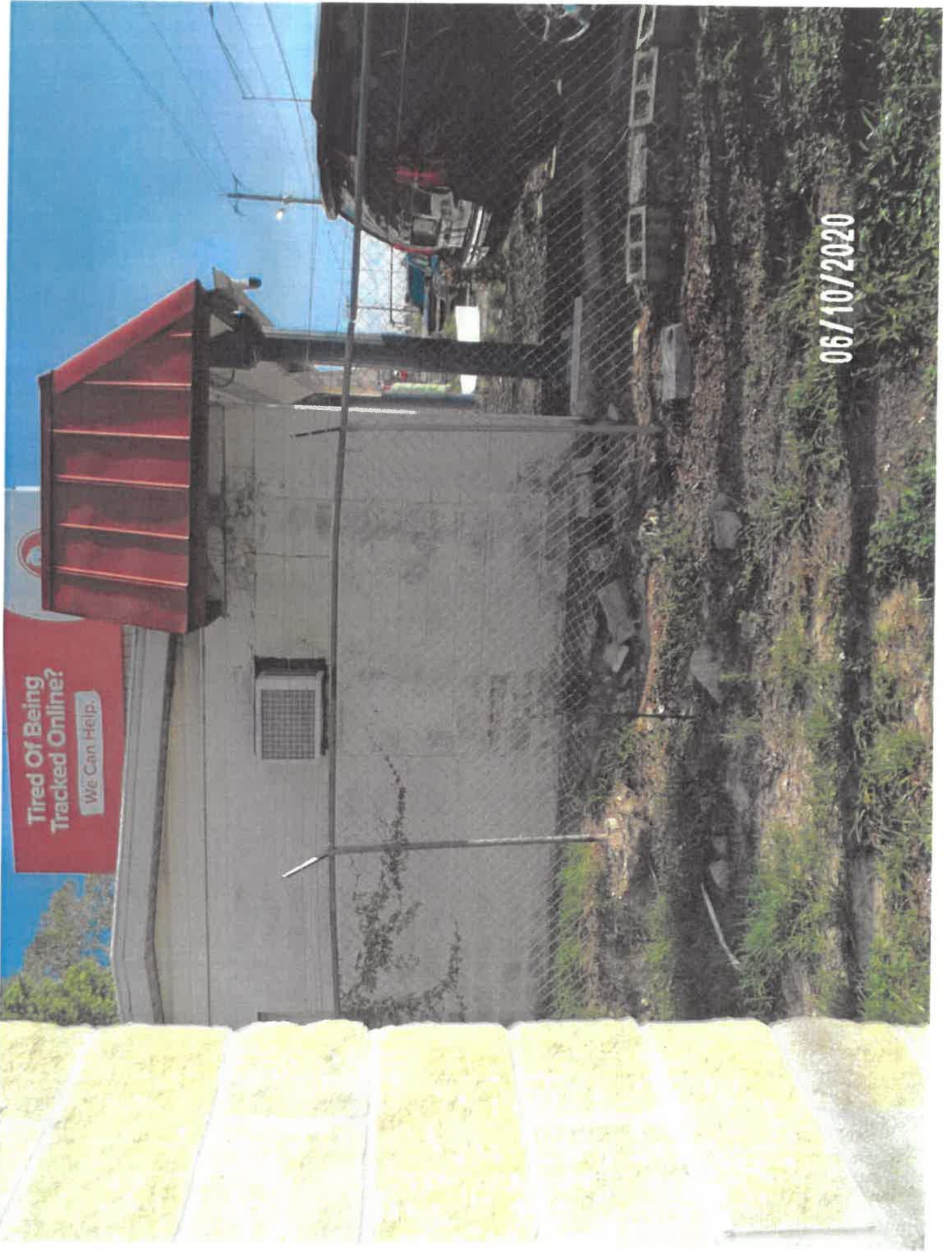
PENQAD 800-831-0929



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GEICO
Local Office
We're Local
12123 South Cleveland Ave, Ft. Myers

LAMAR

PLAYMATH
PRESCHOOL

03/27/2017

