

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050776

1. ACTION REQUESTED/PURPOSE: Approve attached Sole Source Purchase Agreement by and between Mariner Properties Development, Inc. and Lee County in the amount of \$977,760.00 for Corkscrew Regional Mitigation Bank Credits in order to provide in basin and in jurisdiction wetland impact mitigation for the construction of the Lee County DOT CIP project known as Three Oaks Parkway South.

2. WHAT ACTION ACCOMPLISHES: Provides in basin and in jurisdiction mitigation for the wetland impacts associated with the construction of the Lee County DOT CIP project known as Three Oaks Parkway South.

3. MANAGEMENT RECOMMENDATION: Management recommends the attached Sole Source Purchase Agreement be approved in order to finalize and receive permits required for construction of the Lee County DOT CIP project known as Three Oaks Parkway South.

4. Departmental Category: <u>CQA</u>		5. Meeting Date: <u>08-02-2005</u>
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify) Statute _____ Ordinance _____ Admin. Code _____ Other _____	8. Request Initiated: Commissioner _____ Department <u>Transportation</u> Division _____ By: <u>Scott M. Gilbertson</u>

9. Background:
Lee County DOT requested the attached Purchase Agreement by and between Mariner Properties Development, Inc. and Lee County for Corkscrew Regional Mitigation Bank Credits in order to satisfy permitting requirements of the South Florida Water Management District (SFWMD) and U.S. Army Corps of Engineers (USACOE). The SFWMD has required (letter attached) the wetland impacts associated with the construction of the Lee County DOT CIP project known as Three Oaks Parkway South be mitigated in the same drainage basin (Estero Bay Drainage Basin) as the proposed impacts.

The Corkscrew Regional Mitigation Bank is the only mitigation bank within the Estero Bay Drainage Basin. The attached Purchase Agreement additionally provides in basin and in jurisdiction mitigation as preferred by Lee County per Resolution #05-04-31 (attached), adopted and passed on April 12, 2005.

The attached Purchase Agreement for Corkscrew Regional Mitigation Bank Credits by and between Mariner Properties Development, Inc. and Lee County is for \$977,760.00 and will satisfy the Three Oaks Parkway South wetland mitigation permitting requirements of the SFWMD and USACOE.

Funds are available in account: 20404318824.506110.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
	<u>6/13/05</u>	NA	<u>BAD 6/8</u>	<u>[Signature]</u>	<u>[Signature]</u>	<u>6/9/05</u>	<u>[Signature]</u>	<u>6/9/05</u>	<u>[Signature]</u> 6-8-05

11. Commission Action:

06-21-05 Approved
 Deferred To 08-02-05 BOCC meeting
 Denied
 Other

RECEIVED BY
COUNTY ADMIN: [Signature]
6-9-05
9:30
COUNTY ADMIN
FORWARDED TO: [Signature]
5:30pm

Rec. by CoAtty
Date: 6/8/05
Time: 2:00
Forwarded To:
6/8/05 Co. Mgr.
5:00pm

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: June 20, 2005

To: Libby Walker, Manager
Public Resources

FROM:



Jed R. Schneck
Assistant County Attorney

RE: **DEFERRAL OF BLUE SHEET #20050776**
BOARD MEETING OF JUNE 21, 2005
CONSENT AGENDA ITEM 9F

We are requesting Blue Sheet #20050776, Consent Agenda Item 9F, be deferred to the Board of County Commissioners' meeting of August 2, 2005.

Thank you for your assistance.

JRS/cdd

xc: David M. Owen, County Attorney
Andrea R. Fraser, Acting Chief Assistant County Attorney
Scott Gilbertson, Department of Transportation Director
Don DeBerry, Department of Transportation, Sr. Project Manager
Lisa Pierce, Minutes Department Director
Kathy Geren, Public Resources

*on recap
06-20-05
[Signature]*

PURCHASE AGREEMENT

FOR

CORKSCREW REGIONAL MITIGATION BANK CREDITS

THIS AGREEMENT is entered into this ____ day of _____, 2005, by and between Mariner Properties Development, Inc. (the "Banker") and Lee County, Florida (the "Purchaser").

WHEREAS, Banker is a lawfully organized corporation in good standing under the laws of the State of Florida doing business as a Mitigation Bank; and

WHEREAS, Banker entered into a Contract (No. C-8302) with the South Florida Water Management District ("SFWMD") dated January 6, 1998 to design, permit, and operate a mitigation bank on SFWMD lands; and

WHEREAS, Chapter 373 F.S. and Section 62-342 FAC encourage the development and use of wetland mitigation banking in order to minimize the uncertainty associated with traditional mitigation practices, provide greater assurance of mitigation success, and in order to yield long-term sustainable regional ecological benefits; and

WHEREAS, Banker has obtained the necessary permits for Banker's operation of the Bank from the State of Florida, Department of Environmental Protection (Permit Number 0198035-001) and the Army Corps of Engineers [Permit Number SAJ-1998-4673 (IP-MN)] and the Federal Interagency Banking Instrument dated September 2003; and

WHEREAS, Purchaser is developing the property as more particularly described on Exhibit "A" attached hereto (the "Impacted Site"); and

WHEREAS, in connection with Purchaser's development of the Impacted Site, Purchaser is required by the applicable authorities, as defined below, to mitigate the impact that Purchaser's development will have on wetlands located on the Impacted Site, either through on-site mitigation or through the purchase of Mitigation Credits; and

WHEREAS, Purchaser desires to achieve the above described mitigation through the purchase of Mitigation Credits from Banker.

NOW THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. Agreement to Purchase. Banker hereby agrees to sell, and Purchaser hereby agrees to purchase 20.37 Forested Freshwater wetland mitigation credits subject to the terms and conditions of this Agreement.



2. Purchase Price, Deposit and Cash to Close. The Purchase Price for the credits is \$977,760. Payment of the Purchase Price is required upon execution of the contract in order to reserve availability of the credits.

3. Delivery Date. Banker shall deliver the credits to Purchaser on or before December 1, 2005 (the "Delivery Date"). Banker shall have fifteen (15) days from the Delivery Date to physically transfer the Credits to Purchaser.

4. Use of Deposit Funds. Purchaser hereby agrees that all deposit funds paid to Banker by Purchaser may be used by Banker, in Banker's sole discretion, to offset any and all costs associated with the operation of the Bank.

5. Approval for use of Credits at Impacted Site. Purchaser shall be solely responsible for obtaining, and shall use its best efforts to obtain, all necessary agency approval for the use of the Credits at the Impacted Site. Should Purchaser fail to obtain said agency approval for any reason, Banker shall not be obligated to deliver the Credits to Purchaser. Purchaser hereby represents and covenants that the agencies listed on Exhibit "B" attached hereto are all of the agencies whose approval is necessary for use of the Credits at the Impacted Site. Purchaser further represents and covenants with Banker that the estimated date Purchaser believes said approvals will be obtained is September 1, 2005.

6. Purchaser's Responsibilities. In addition to the above, Purchaser hereby agrees to timely provide copies to Banker of all permit applications to each and every agency necessary for approval of the use of the Credits at the Impacted Site, as well as any and all amendments thereto. Purchaser further agrees to timely provide Banker with copies of all correspondence to and from said agencies, as well as any other documents relating to the approval of the use of the Credits at the Impacted Site that may reasonably be requested by Banker. Purchaser shall provide copies of the final permit(s) to the Banker within 30 days of the permit date.

7. Purchaser's Acknowledgment. Purchaser acknowledges and understands that Banker is solely responsible and liable for developing the Corkscrew Regional Mitigation Bank on SFWMD lands and for marketing and selling the mitigation bank credits pursuant to the terms of Banker's Contract with SFWMD. Purchaser further acknowledges and understands that Banker is developing the Corkscrew Regional Mitigation Bank as an independent contractor to the SFWMD, that Banker is not an agent of the SFWMD, nor may Banker in any manner create any obligations or liability on behalf of the SFWMD. Accordingly, Purchaser releases SFWMD and SFWMD's agents, employees, officers, Governing Board members, successors, and assigns from any and all claims, demands, losses, judgments, damages, causes of action, or other liability (including reasonable attorney's fees and costs, whether suit be brought or not and at all levels of litigation) arising in any manner from Purchaser's purchase or prospective purchase of mitigation bank credits from Banker.

8. Banker's Responsibilities. Banker shall be obligated to deliver the Credits to Purchaser in accordance with Paragraph 3 above, subject to agency approval of the minor



modifications of the Bank Permits and forces beyond the control of Banker. Banker shall promptly notify Purchaser if it is anticipated that the Credits will not be available on the Delivery Date. Further, Banker shall provide periodic updates to Purchaser every sixty (60) days to confirm the Delivery Date. If Banker has successfully assisted Purchaser in obtaining the SFWMD and USACOE permits for this project, and if Banker notifies Purchaser that agency approval for the minor modifications of the Bank Permits will not occur on or before the Delivery Date, Banker shall have a sixty (60) day grace period beyond the Delivery Date to secure said agency approval without being in default under this Agreement. Should Banker be unable to obtain said agency approval within the above described grace period, Purchaser or Banker shall have the option of terminating this Agreement and Purchaser shall be entitled to a refund of all deposit funds paid by Purchaser and Banker shall be relieved of any and all liability under this Agreement or Purchaser may choose to continue the reservation for these credits for use on another project. Banker shall have ten (10) days from the date of receipt of Purchaser's demand for a return of the deposit funds to return said funds to Purchaser.

9. Attorney's Fees. In any action, including breach, enforcement or interpretation, arising out of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees, costs and expenses, including those incurred on appeal.

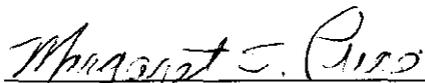
10. Applicable Law. This Agreement and the parties' rights and obligations hereunder shall be construed in accordance with the laws of the State of Florida.

11. Binding Effect. This Agreement shall inure to the benefit and be binding upon the successors, administrators and assigns of the parties.

WHEREFORE, the Parties have hereunto set their hands the day and year first above written.

Banker:

MARINER PROPERTIES DEVELOPMENT, INC.



Witness



Witness



By: Raymond A. Pavelka

Its: President

- SEAL -

Purchaser:

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY, FLORIDA

By: _____

By: _____

APPROVED AS TO FORM:

By: _____
Office of the Lee County Attorney

- SEAL -

Exhibit "A"

Legal Description for _____, subject parcel.

Exhibit "B"

Please check all applicable permits for this project:

- Florida Department of Environmental Protection
- South Florida Water Management District
- Southwest Florida Water Management District
- US Army Corps of Engineers

To be initialed by Purchaser

To be initialed by Banker

A handwritten signature in black ink, consisting of a stylized 'S' followed by a 'B' and a horizontal line, positioned between two horizontal lines.

RECEIVED
APR 20 2005

RESOLUTION # 05-04-31

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA TO ADOPT A POLICY DISCOURAGING OUT-OF-COUNTY ENVIRONMENTAL IMPACT MITIGATION FOR LOCAL PROJECTS AND NOTIFYING THE APPROPRIATE PERMITTING AGENCIES OF SUCH POLICY.

- WHEREAS:** Lee County is a recreational destination for much of the population of the United States, and has an increasing foreign visitor component of its tourism; and
- WHEREAS:** a large part of the population of Lee County consists of citizens from communities elsewhere who have used their discretion to relocate here because they find the County attractive because of its many environmental assets; and
- WHEREAS:** despite the County's rapid growth and early land use decisions, the County is the home and host of numerous environmental lands, including the State's first aquatic preserve, which is one of its three, four national wildlife refuges, six state parks, two state beach recreational areas, two inland regional open space complexes, and thirty four County preserves; and
- WHEREAS:** the County has repeatedly raised funds through property taxation for environmental purchases, from 6 Mile Cypress Slough in the 1970s, to Corkscrew Swamp in the early 1990s, and to the half mill in place today for the County Conservation 20/20 program, raising nearly \$25 million this year, and more per year in the future; and
- WHEREAS:** the County continues to invest in additional management and open space programs for remediation of past environmental impacts as well as the purchase of sensitive lands for preservation; and
- WHEREAS:** the Environmental Impact Statement performed by the United States Army Corps of Engineers on growth in Southwest Florida highlighted not only the importance of mitigation for individual projects but the cumulative and secondary impacts of projects upon habitat and watersheds; and
- WHEREAS:** the County has performed an assessment of the critical natural resource lands needing management for environmental purposes; and
- WHEREAS:** the quality of these natural resources depend upon having the logical and predicted growth of the County mitigate its impacts in the systems wherein the impacts are expected to occur; and
- WHEREAS:** Federal and State permitting agencies have been given the flexibility in determining the location of mitigation projects, including mitigation outside of our County for impacts occurring within Lee County, for which the Board of Lee County Commissioners is held accountable; and
- WHEREAS:** with the investment in planning and implementation that the County has made, there is no need for out of County mitigation unless it is shown that there is no feasible alternative.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA THAT it is the Board's desire and direction to ensure a balance in growth with environmental sustainability needs. To that end, the Board directs staff as follows:

1. Notify each permitting agency of Lee County's interest and intent to maintain the environmental sustainability of the County's water resources and critical habit by within County mitigation where feasible.

COPY

WO #1
4-12-05

2. Direct appropriate County staff to ensure they are on the Agency notification list for permit notices for construction activities within Lee County.
3. Inform any potential or current Legislative efforts regarding Federal or State law or rule changes that Lee County supports in basin and in jurisdiction mitigation as the first preferred option that permit agencies should consider.

The foregoing Resolution was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Janes and, being put to a vote, the vote was as follows:

ROBERT JANES	<u>Aye</u>
DOUGLAS ST. CERNY	<u>Aye</u>
RAY JUDAH	<u>Aye</u>
TAMMY HALL	<u>Aye</u>
JOHN E. ALBION	<u>Aye</u>

ADOPTED AND PASSED, THIS 12th DAY OF April, 2005.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Michele B. Cooper
Deputy Clerk

By: [Signature]
Chairman



APPROVED AS TO FORM:

By: [Signature]
County Attorney



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

LOWER WEST COAST REGIONAL SERVICE CENTER 2301 McGregor Boulevard, Fort Myers, FL 33901
(239) 338-2929 • FL WATS 1-800-248-1201 • Suncom 748-2929 • Fax (239) 338-2936 • www.sfwmd.gov/org/exo/ftmyers/

February 25, 2005

Forrest H. Banks, P.E.
Johnson Engineering, Inc.
2158 Johnson Street
Fort Myers, FL 33901

RECEIVED

FEB 28 2005

JOHNSON ENGINEERING

Subject: Three Oaks Parkway from the Brooks Development to East Terry Street
Application No: 030915-16
Lee County, Sections 11, 14, 23, 24&25, Township 47S, Range 25E

Dear Mr. Banks:

The staff has completed a review of the additional information received on January 28, 2005 regarding the above referenced application. The District's project analysts are Pierre R. Fortunat and Laura Layman. The information received was incomplete and did not adequately address the following items. According to Rule 40E-0.103, Florida Administrative Code (FAC), the District requests the following information needed to complete the application.

In addition to the items needed to complete the application, comment number 1 below also requests revisions necessary for this project to meet the conditions for issuance specified in Chapter 40E-4, F.A.C.

1. More information is needed to demonstrate that all of the proposed direct and secondary wetland impacts will be offset pursuant to Chapter 40E-4, F.A.C and that project will not result in cumulative impacts within the Estero Bay Drainage Basin. The District has reviewed the proposed mitigation plan and has the following comments:
 - a. District staff had previously determined that 4.50 freshwater herbaceous credits at Little Pine Island Mitigation Bank and 28.10 freshwater forested credits at a mitigation bank utilizing MWRAP credits would adequately offset the project's proposed wetland impacts (including mitigation for the BSU plant). Once the appropriate mitigation bank has been determined, please provide the appropriate mitigation bank contracts for these credits.
 - b. District staff has reviewed the draft UMAM assessment provided and the submitted functional assessment for the impact areas appear to reflect current site conditions. The impact acreages provided, however, do not correspond with those on the wetland impact drawings. In addition, the post-development functional assessment in the secondarily impacted areas does not appear to take into account all the potential adverse affects of the roadway. District staff will

GOVERNING BOARD

Nicolás J. Gutiérrez, Jr., Esq., *Chair*
Pamela Brooks-Thomas, *Vice-Chair*
Irela M. Baeñé

Michael Collins
Hugh M. English
Lennart E. Lindahl, P.E.

Kevin McCarty
Harkley R. Thornton
Trudi K. Williams, P.E.

EXECUTIVE OFFICE

Henry Dean, *Executive Director*

Forrest H. Banks, P.E.

Application No: 030915-16

Page 2

be contacting the environmental consultant to resolve these issues and determine the credit amount necessary for UMAM assessed impacts.

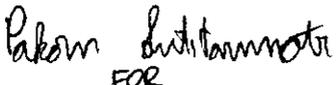
- c. As previously requested, please provide documentation that the Corkscrew Mitigation Bank has credits available for purchase, if that bank is chosen to offset the project's wetland impacts. Otherwise, offsite mitigation on a parcel located within the Basin will be necessary.
 - d. As previously requested, please provide a cumulative impact analysis clearly demonstrating that the project will not result in cumulative impacts to the Estero Bay Drainage Basin.
2. As previously requested please provide an additional 50% water quality. District staff acknowledges the January 27, 2005 response but in accordance with the previously provided correspondence between FDOT and the District in December 2004 the additional 50% requirement is required. Please note that the December 2004 correspondence allows the 50% volume to be replaced with other reasonable assurance that must demonstrate the proposed activity will not contribute to the existing violations.
 3. For basins A & C, it appears from the input data of the stage/area table of the routings that the areas accounted for the water quality requirements are greater than the areas of the proposed lakes. As previously requested, please revise the stage/area table of the models to account water quality storage only from the lakes.
 4. It appears that for basins D, surrounding areas are within the proposed roadway extension. These surrounding areas include existing residential developments. As previously requested, please provide information on the existing lowest house finished floor elevation. Be sure that the 25 year/3 day peak stage is at or below the lowest house finished floor elevation.

Please be advised that insufficient information was submitted and staff was unable to complete the review of this application. Additional comments may be forthcoming upon the review of the response to this letter.

In accordance with 40E-1.603(1)(c) FAC, if the requested information is not received within 30 days of the date of this letter, this application may be processed for denial, if not withdrawn by the applicant. Please provide three (3) copies of the requested information to Pierre R. Fortunat and Laura Layman of this office. If you have any questions about the above comments, please contact the appropriate analysts at (239) 338-2929.

Forrest H. Banks, P.E.
Application No: 030915-16
Page 3

Sincerely,


FOR
Pierre R. Fortunat
Staff Engineer
Lower West Coast Service Center


Laura Layman
Senior Environmental Analyst
Lower West Coast Service Center

C: Lee County DOT