

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

Blue Sheet No. 20061571

1. ACTION REQUESTED/PURPOSE:

Authorize Chairman Janes to execute a Deed of Conservation Easement to the South Florida Water Management District (SFWMD) on lands within the Conservation 2020 Estero Marsh Preserve as required by permits issued for construction of the second phase of the mitigation project known as the "Island Park Regional Mitigation Area".

2. WHAT ACTION ACCOMPLISHES:

Places land within the Conservation 2020 Estero Marsh Preserve under a conservation easement as required by the SFWMD and U.S. Army Corps of Engineers (ACOE) permits issued for construction of the second phase of the mitigation project known as the "Island Park Regional Mitigation Area".

3. MANAGEMENT RECOMMENDATION: Approve

4. Departmental Category: 09 **C9C** **5. Meeting Date:** **DEC 12 2006**

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 _____	8. Request Initiated: Commissioner _____ Department <u>Transportation</u> Division _____ By: <u>Scott M. Gilbertson</u>
	Ordinance _____	
	Admin. Code _____	
	Other _____	

9. Background:

Conservation 2020 lands (at the Estero Marsh Preserve) permitted as the second phase of the "Island Park Regional Mitigation Area" will be utilized as wetlands and wildlife mitigation for future Lee County Capital Improvement Projects. The County is required to place the lands under a conservation easement to the SFWMD as required by the SFWMD and ACOE permits issued for the mitigation project. These permits have confirmed 79.22 SFWMD wetland credits and 63.32 ACOE wetland credits are available on the property after the conservation easement is recorded and the mitigation activities (wetland restoration and enhancement) are completed.

A copy of the conservation easement and legal description of the lands to be conveyed is attached.

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.	
 S. Gilbertson Date 11/27/06					 RK 11/29	 11/30	 11/30/06		 J. Lavender Date 11/29/06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN:
11-29-06 4:30
11-29-06 RK 4:45
COUNTY ADMIN
FORWARDED TO:
11/30/06 mp
to PR

Rec. by CoAtty
Date: 11/29/06
Time: 2:10 pm
Forwarded To:
11/29/06
4:00 pm

Behrens, Karleen A.

From: Hiatt, Betsie N.
Sent: Monday, November 27, 2006 12:59 PM
To: Behrens, Karleen A.
Subject: Blue Sheet

Hi Karleen,

Cathy Olson with CO2020 said looks fine (I sent her the attachments). But I am thinking it might be a good idea to send it to John Yarborough – as an FYI in case the BoCC brings it up.

Thanks for your help!

Betsie N. Hiatt
Environmental Manager, Lee County DOT
1500 Monroe St.
Fort Myers, FL 33902
(239) 479-8177
(239) 479-8520 (fax)

11/27/2006

Document prepared by:

Return recorded document to:
South Florida Water Management District
3301 Gun Club Road, MSC _____
West Palm Beach, FL 33406

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this _____ day of _____, 2006, by Lee County, ("Grantor") whose mailing address is P.O Box 398, Fort Myers, FL 33902, to the South Florida Water Management District ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit "A" attached hereto and incorporated herein ("Property"); and

WHEREAS, the Grantor desires to construct Island Park Regional Mitigation Area ("Project") at a site in Lee County, which is subject to the regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Permit No. 36-05430-P ("Permit") authorizes certain activities which affect surface waters in or of the State of Florida; and

WHEREAS, this Permit requires that the Grantor preserve, enhance, restore and/or mitigate wetlands and/or uplands under the District's jurisdiction; and

WHEREAS, the Grantor has developed and proposed as part of the Permit conditions a conservation tract and maintenance buffer involving preservation of certain wetland and/or upland systems on the Property; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes, over the area described on Exhibit "B" ("Conservation Easement").

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged,

Grantor hereby grants, creates, and establishes a perpetual Conservation Easement for and in favor of the Grantee upon the property described on Exhibit "B" which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. Recitals. The recitals hereinabove set forth are true and correct and are hereby incorporated into and made a part of this Conservation Easement.

2. Purpose. It is the purpose of this Conservation Easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland and/or upland areas included in the Conservation Easement which are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this Conservation Easement and to enforce the restoration of such areas or features of the Conservation Easement that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, or other activities described herein that are permitted or required by the Permit, the following activities are prohibited in or on the Conservation Easement:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic or nuisance vegetation in accordance with a District approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural or enhanced condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties having historical, archaeological, or cultural significance.

4. Passive Recreational Facilities. Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any District rule, criteria, the Permit and the intent and purposes of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this Conservation Easement may be permitted upon written approval by the District.

a. The Grantor may conduct limited land clearing for the purpose of constructing such pervious facilities as docks, boardwalks or mulched walking trails.

b. The construction and use of the approved passive recreational facilities shall be subject to the following conditions:

i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Conservation Easement Area and shall avoid materially diverting the direction of the natural surface water flow in such area;

ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices;

iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements;

iv. This Conservation Easement shall not constitute permit authorization for the construction and operation of the passive recreational facilities. Any such work shall be subject to all applicable federal, state, District or local permitting requirements.

5. No Dedication. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

6. Grantee's Liability. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Property Taxes. Grantor shall keep the payment of taxes and assessments on the Easement Parcel current and shall not allow any lien on the Easement Parcel superior to this Easement. In the event Grantor fails to extinguish or obtain a subordination of such lien, in addition to any other remedy, the Grantee may, but shall not be obligated to, elect to pay the lien on behalf of the Grantor and Grantor shall reimburse Grantee for the amount paid by Grantee, together with Grantee's reasonable attorney's fees and costs, with interest at the maximum rate allowed by law, no later than thirty days after such payment. In the event Grantor does not so reimburse the Grantee, the debt owed to Grantee shall constitute a lien against the Easement Parcel which shall automatically relate back to the recording date of this Easement. Grantee may foreclose this lien on the Easement Parcel in the manner provided for mortgages on real property.

8. Enforcement. Enforcement of the terms, provisions and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

9. Assignment. Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.

10. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

11. Terms, Conditions, Restrictions, Purpose. The terms, conditions, restrictions and purpose of this Conservation Easement shall be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Conservation Easement. Any future holder of the Grantor's interest in the Property shall be notified in writing by Grantor of this Conservation Easement.

12. Written Notice. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

13. Modifications. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Easement shall be binding up on Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Conservation Easement is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; and all mortgages and liens on the Conservation Easement area, if any, have been subordinated to this Conservation Easement; and that Grantor has good right and lawful authority to convey this Conservation Easement; and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Lee County (Grantor) has hereunto set its authorized hand this _____ day of _____, 20_____.

Lee County, Florida _____

By: _____

Print Name: Robert Janes

Title: Chairman, Lee County Board of County Commissioners

Signed, sealed and delivered in our presence as witnesses:

By: _____

Print Name: _____

By: _____

Print Name: _____

STATE OF FLORIDA

) ss:

COUNTY OF _____

On this ____ day of _____, 20____ before me, the undersigned notary public, personally appeared _____, the person who subscribed to the foregoing instrument, as the _____ (title), of _____ (Corporation), a Florida corporation, and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized to do so. He/She is personally know to me or has produced a _____ (state) driver's license as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

Print Name:

My Commission Expires:

EXHIBIT A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA
(PARCEL 66 - OVERALL DESCRIPTION)

A PARCEL OF LAND LYING IN SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 12; THENCE S.88°47'40"W. ALONG THE SOUTH LINE OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 12 FOR 1318.79 FEET TO THE SOUTHWEST CORNER OF THE EAST ONE HALF (E 1/2) OF SAID SOUTHWEST ONE QUARTER (SW 1/4); THENCE N.01°12'59"W. ALONG THE WEST LINE OF THE EAST ONE HALF (E 1/2) OF SAID SOUTHWEST ONE QUARTER (SW 1/4) FOR 2644.99 FEET TO THE NORTHWEST CORNER OF SAID FRACTION; THENCE N.88°46'31"E. ALONG THE NORTH LINE OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 12 FOR 360.53 FEET; THENCE S.01°12'18"E. FOR 910.89 FEET; THENCE S.52°45'16"W. FOR 171.45 FEET; THENCE S.37°14'44"E. FOR 60.00 FEET; THENCE N.52°45'16"E. FOR 38.22 FEET; THENCE S.45°02'56"E. FOR 223.61 FEET; THENCE N.55°40'32"E. FOR 227.97 FEET; THENCE N.40°44'44"E. FOR 154.69 FEET; THENCE S.79°37'56"E. FOR 321.18 FEET; THENCE S.43°23'01"W. FOR 40.00 FEET; THENCE S.46°36'58"E. FOR 284.57 FEET; THENCE N.90°00'00"E. FOR 212.83 FEET; THENCE S.73°20'00"E. FOR 25.14 FEET; THENCE S.00°00'00"E. FOR 117.43 FEET; THENCE S.49°30'00"W. FOR 104.42 FEET; THENCE S.25°21'08"W. FOR 56.01 FEET; THENCE S.51°01'28"W. FOR 69.32 FEET; THENCE S.17°20'00"W. FOR 159.82 FEET; THENCE S.16°20'00"E. FOR 147.00 FEET; THENCE S.14°00'00"W. FOR 173.74 FEET; THENCE S.03°52'27"E. FOR 59.93 FEET; THENCE S.25°47'33"W. FOR 50.28 FEET; THENCE S.59°55'19"W. FOR 67.56 FEET; THENCE S.67°32'06"W. FOR 165.69 FEET; THENCE S.22°27'54"E. FOR 20.00 FEET; THENCE N.67°32'06"E. FOR 166.34 FEET; THENCE N.63°50'00"E. FOR 83.20 FEET; THENCE N.02°02'49"W. FOR 18.66 FEET; THENCE N.25°47'33"E. FOR 42.31 FEET; THENCE N.03°52'27"W. FOR 67.12 FEET; THENCE N.20°20'24"E. FOR 89.00 FEET; THENCE N.09°12'55"E. FOR 105.94 FEET; THENCE N.26°39'38"W. FOR 71.72 FEET; THENCE N.09°51'10"W. FOR 64.45 FEET; THENCE N.17°20'00"E. FOR 137.87 FEET; THENCE N.51°01'28"E. FOR 67.82 FEET; THENCE N.25°21'08"E. FOR 52.46 FEET; THENCE N.60°32'00"E. FOR 95.65 FEET; THENCE S.00°00'00"E. FOR 256.90 FEET; THENCE S.81°22'22"E. FOR 541.59 FEET; THENCE S.58°55'17"E. FOR 60.01 FEET; THENCE N.31°04'43"E. FOR 24.80 FEET; THENCE S.81°22'22"E. FOR 58.95 FEET; THENCE S.52°38'56"E. FOR 46.28 FEET; THENCE N.86°37'38"E. FOR 170.34 FEET; THENCE N.00°00'00"E. FOR 132.00 FEET; THENCE N.90°00'00"E. FOR 75.00 FEET; THENCE N.00°00'00"E. FOR 40.00 FEET; THENCE N.90°00'00"E. FOR 195.54 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF ISLAND PARK ROAD (60 FEET WIDE); THENCE S.00°46'23"E. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 944.06 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 89°31'43", A CHORD DISTANCE OF 35.21 FEET, A CHORD BEARING OF S43°59'28"W, AN ARC DISTANCE OF 39.06 FEET; THENCE S88°45'20"W PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST ONE QUARTER (SE 1/4) OF SAID SECTION 12 AND ALONG THE NORTH LINE OF PARK ROAD (60 FEET WIDE) FOR 1257.84 FEET TO THE EAST LINE OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 12; THENCE S01°10'10"E ALONG SAID EAST LINE FOR 30.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 82.927 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST AS BEARING S01°10'10"E.

EXHIBIT B

