

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

Blue Sheet No. 20070170

- 1. ACTION REQUESTED/PURPOSE:** Execute a Deed of Conservation Easement to the South Florida Water Management District (SFWMD) on lands within the Conservation 2020 Prairie Pines Preserve as required by permits issued for construction of the project known as North Fort Myers Surface Water Restoration.
- 2. FUNDING SOURCE:** Fund – General Fund; Program – Major Maintenance Program; Project - Surface Water Management Plan.
- 3. WHAT ACTION ACCOMPLISHES:** Places land within the Conservation 2020 Prairie Pines Preserve under a conservation easement as required by the SFWMD and U.S. Army Corps of Engineers (ACOE) permits issued for construction of the North Fort Myers Surface Water Restoration project.
- 4. MANAGEMENT RECOMMENDATION:** Approve.

<b>5. Departmental Category:</b> 08		<b>CSA</b>	<b>6. Meeting Date:</b> FEB 20 2007
<b>7. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>8. Requirement/Purpose:</b> <i>(specify)</i>		<b>9. Request Initiated:</b>
	<input type="checkbox"/> Statute	<input type="checkbox"/>	<b>Commissioner</b> _____
	<input type="checkbox"/> Ordinance	<input type="checkbox"/>	<b>Department</b> Public Works
	<input type="checkbox"/> Admin. Code	<input type="checkbox"/>	<b>Division</b> Nat Resources
	<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Easement	<b>By:</b>

**10. Background:**

Conservation 2020 lands (at the Prairie Pines Preserve), permitted as part of the North Fort Myers Surface Water Restoration project will be utilized as wetland and wildlife mitigation for future phases of this Maintenance Project. The County is required to place the lands under a conservation easement to the SFWMD as required by the SFWMD and ACOE permits. The conservation easement will provide for 59.14 acres of wetland enhancement and 4.62 acres of wetland creation as required by the SFWMD and ACOE permits.

A copy of the conservation easement and legal description of the lands to be conveyed is attached. Anticipated recording fees should not exceed \$100. Funds are available in account no. 40098300100.

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
 2-1-07	N/A	N/A	N/A	 2/1/07	Analyst  2/6/07	Risk  2/6/07	Grants  2/6/07	Mgr.  2/6/07	 2-1-07

**12. Commission Action:**

Approved  
 Deferred  
 Denied  
 Other

RECEIVED BY COUNTY ADMIN: 2/ 9:35 AM 1/2 to JD COUNTY ADMIN FORWARDED TO: JR 2/7 11:45 AM	Rec. by CoAtty Date: 2/1/07 Time: 3:50 pm Forwarded To: 2/1/07 4:55 pm
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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 \_\_\_\_\_, 2007, 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 the North Fort Myers Surface Water Restoration ("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. 36-05574-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"

OR BK 03402 PG 1290

**Legal Description of  
LITTLE RANCHES EAST PARCEL  
(Description as Prepared by Surveyor)  
(Lee County Parcel)**

A TRACT OR PARCEL OF LAND LYING IN SECTION 35, TOWNSHIP 42 SOUTH, RANGE 24 EAST, CHARLOTTE COUNTY, FLORIDA AND SECTIONS 1, 2, 3, 11, 12, 13 AND 14, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 12, TOWNSHIP 43 SOUTH, RANGE 24 EAST, THENCE RUN ALONG THE EAST LINE OF THE SOUTHEAST ONE-QUARTER (1/4) OF SAID SECTION, NORTH 00°09'53" EAST, A DISTANCE OF 1742.12 FEET TO A POINT WHICH LIES ON THE WESTERLY RIGHT OF WAY LINE OF THE SEABOARD COASTLINE (120' R/W), THENCE; NORTH 45°45'18" WEST, A DISTANCE OF 4003.52 FEET ALONG SAID RIGHT OF WAY TO A POINT ON THE SOUTH RIGHT OF WAY OF LINE OF NALLE GRADE ROAD RIGHT OF WAY (O.R. 1096, PAGE 1769); THENCE CONTINUE ALONG SAID RAILROAD RIGHT OF WAY NORTH 45°45'18" WEST, A DISTANCE OF 134.19 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF NALLE GRADE ROAD; THENCE CONTINUE ALONG SAID RAILROAD RIGHT OF WAY NORTH 45°45'18" WEST, A DISTANCE OF 10692.00 FEET TO A POINT MARKING THE INTERSECTION OF THE WEST RIGHT OF WAY OF SEABOARD COASTLINE RAILROAD LINE AND THE WEST LINE OF THE SOUTHWEST ONE-QUARTER (1/4) OF SECTION 35, TOWNSHIP 42 SOUTH, RANGE 24 EAST; THENCE ALONG SAID WEST LINE OF THE SOUTHWEST 1/4, SOUTH 01°19'59" WEST, A DISTANCE OF 1392.01 FEET TO THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 43 SOUTH, RANGE 24 EAST; THENCE WITH THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 3, NORTH 89°58'36" WEST, A DISTANCE OF 253.03 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF THE FORMER SEABOARD AIRLINE RIGHT OF WAY (100'); THENCE WITH THE EAST LINE OF SAID RIGHT OF WAY, SOUTH 11°11'01" EAST, A DISTANCE OF 6702.45 FEET TO A POINT ON THE NORTH RIGHT OF WAY OF NALLE GRADE ROAD (125' R/W); THENCE CONTINUE ALONG SAID SEABOARD AIRLINE RIGHT OF WAY, SOUTH 11°11'01" EAST, A DISTANCE OF 127.47 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF SAID NALLE GRADE ROAD; THENCE CONTINUE ALONG SAID SEABOARD AIRLINE RIGHT OF WAY, SOUTH 11°11'01" EAST, A DISTANCE OF 7829.85 FEET TO A POINT MARKING THE NORTHWEST CORNER OF THE NORTH FORT MYERS UTILITY COMPANY PARCEL AS RECORDED IN O.R. BOOK 1820, PAGES 3899-3900; THENCE WITH SAID PARCEL, NORTH 89°55'40" EAST, A DISTANCE OF 1241.53 FEET TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE CONTINUE WITH PARCEL BOUNDARY, SOUTH 00°11'15" EAST, A DISTANCE OF 1400.10 FEET TO A POINT; THENCE NORTH 89°55'40" EAST 11.72 FEET TO THE NORTHWEST CORNER OF AN 18.147 ACRE PARCEL; THENCE WITH THE NORTH LINE OF SAID PARCEL, NORTH 89°55'40" EAST 1387.30 FEET TO A POINT; THENCE SOUTH 89°11'50" EAST, A DISTANCE OF 2709.48 FEET TO A POINT; THENCE S 89°11'50" EAST, A DISTANCE OF 229.05 FEET TO A POINT; THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 02°27'42", HAVING A RADIUS OF 11397.00 FEET, AN ARC DISTANCE OF 489.68 FEET, A CHORD BEARING OF NORTH 89°34'19" EAST, A DISTANCE OF 489.64 FEET TO A POINT; THENCE NORTH 88°20'28" EAST, A DISTANCE OF 1974.97 FEET TO A POINT; THENCE NORTH 87°29'24" EAST, A DISTANCE OF 18.44 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 43 SOUTH, RANGE 24 EAST; THENCE WITH SAID FRACTION LINE, NORTH 00°03'28" WEST, A DISTANCE OF 5060.10 FEET TO THE BEGINNING.

LESS THE AREA FOR NALLE GRADE ROAD AS DESCRIBED IN O.R. BOOK 1096, PAGE 1769.

CONTAINING 2411.56 ACRES AS DESCRIBED.

**AND ... LESS AND EXCEPT THE FOLLOWING:**

A TRACT OR PARCEL OF LAND LYING IN SECTION 35, TOWNSHIP 42 SOUTH, RANGE 24 EAST, CHARLOTTE COUNTY, FLORIDA BEING DESCRIBED AS FOLLOWS:



EXHIBIT "A" cont'd  
      

OR BK 03402 P6 1291

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 35, TOWNSHIP 42 SOUTH, RANGE 24 EAST, SAID POINT ALSO BEING ON THE SOUTH LINE OF CHARLOTTE COUNTY AND ON THE NORTH LINE OF LEE COUNTY, FLORIDA. THENCE ALONG THE WEST LINE OF SAID SECTION 35, NORTH 01°19'59" EAST, A DISTANCE OF 1392.01 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF SEABOARD COASTLINE RAILROAD; THENCE ALONG SAID RAILROAD RIGHT-OF-WAY, SOUTH 45°45'18" EAST, A DISTANCE OF 1993.53 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 35 AND ON THE LEE/CHARLOTTE COUNTY LINE; THENCE ALONG THE SOUTH LINE OF SECTION 35, SAID LINE ALSO BEING THE LEE/CHARLOTTE COUNTY LINE, SOUTH 89°58'23" WEST, A DISTANCE OF 1460.47 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 23.329 ACRES MORE OR LESS.

## Exhibit "B"

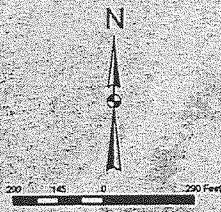
### North Fort Myers Surface Water Restoration Project SFWMD Application No. 011130-16 Prairie Pines Conservation Easement

#### Legal Description:

The point of beginning being at the southeast corner Section 12, Township 43 South, Range 24 East, thence run along the East Line of the Southeast one-quarter (1/4) at said section North 00°09'53" E a distance of 1742.12 feet to a point which lies on the westerly right-of-way line of the Seaboard Coastline (120' right-of-way) thence,

North 45° 45' 18" West a distance of 650 feet to a point, thence South 00° 09' 53" West a distance of 2,450 feet to a point, thence North 89° 50' 07" West a distance of 1,550 feet to a point, thence South 00° 09' 53" West a distance of 1,580 feet to a point, thence South 89° 50' 07" East a distance of 485 feet to a point, thence South 00° 09' 53" West a distance of 1,823 feet to a point, thence South 89° 50' 07" East a distance of 1,546.15 feet more or less to a point on the easterly line of Section 13, Township 43 South, Range 24 East, thence North 00° 03' 28" West a distance of 3,658.72 feet to the point of beginning, and containing 161.7 acres, more or less.

The bearings shown are based on the South line of the Southwest 1/4 of Section 13, Township 45 South, Range 25 East as being South 89° 50' 07 East.



**Prairie Pine Preserve**

**Sketch of Description  
Conservation Easement**

**Basis of Bearing**

The bearings shown are based on the South line of the Southwest 1/4 of Section 13, Township 45 South, Range 25 East as being South 89° 50' 07" East.

