

Lee County Board Of County Commissioners

Blue Sheet No. 20070279

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Approve the Purchase Agreement in Lieu of Condemnation for a 5 acre ± parcel, further identified as STRAP No. 05-46-25-00-000002.0090, in the amount of \$500,000, for the Alico Widening Project No. 4030 – Alico Filter Marsh; Authorize the payment of costs to close; Authorize the Division of County Lands to handle and accept all documentation necessary to complete the transaction.

2. FUNDING SOURCE:

(\$250,000) Fund-Capital Improvement; Program-Capital Projects; Project-Briarcliff Ditch Filter Marsh.
 (\$250,000) Fund-Transportation Capital Improvement; Program-Capital Projects; Project-Alico Road 4 Lane

3. WHAT ACTION ACCOMPLISHES: Allows the County to proceed with condemnation, if necessary, so the required parcel can be acquired to improve the water quality and comply with the required special conditions set forth in the Alico Road Project No. 4030 permit.

4. MANAGEMENT RECOMMENDATION: Approve

5. Departmental Category:

AGB

6. Meeting Date:

MAR 13 2007

7. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

8. Requirement/Purpose: (specify)

- Statute 73,74,125,127
- Ordinance
- Admin. Code
- Other Blue Sheet 20061400 Resolution of Necessity 06-10-43

9. Request Initiated:

- Commissioner** _____
- Department** Independent
- Division** County Lands *AK*
- By:** Karen Forsyth, Director *AF*

10. Background:

The Alico Road Widening Project No. 4030 was planned to provide a safer corridor (six lanes) to accommodate a significantly higher volume of traffic on Alico Road. Additional runoff was anticipated as a result of the road widening project. Therefore, special permitting conditions were set forth to create a filter marsh to manage the runoff on Alico Road and the Briarcliff Ditch.

Negotiated for: Department of Transportation

Interest to Acquire: Fee Interest for ± 5 acres

Property Details:

Owner: Charlotte A. Briscoe
Address: 7351 Green Acre Lane, Ft. Myers, FL 33912
Strap: 05-46-25-00-00002.0090

Purchase Details:

Binding Offer Amount: \$500,000

In order to expedite acquisition efforts, staff recommends the Board make a binding offer in the amount of \$500,000 and commence Eminent Domain procedures.

Appraisal Information:

Company: Diversified Appraisal, Inc.
Appraised Value: \$500,000 (± 5 acres @ \$100,000/acre)

Staff Recommendation: Staff recommends the Board approve the action requested.

Accounts: \$250,000 from 20854530100 and \$250,000 from 20403030700

Attachments: Purchase Agreement, Title Data, Appraisal Data, Location Map, 5-Year Sales History

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mer.	
<i>K. Forsyth</i>			<i>ADD/23</i>	<i>[Signature]</i>	<i>ebw 2-28-07</i>	<i>mk 2/21/07</i>	<i>RK RB 3/1</i>	<i>[Signature]</i>	<i>3-1-07</i>

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *GR*
 2/28 10:50 AM
 COUNTY ADMIN FORWARDED TO: *PL*
 3/1/07
 3:30pm

CO. ATTY. FORWARDED TO CO. ADMIN. 2/28/07

Rec. by CoAtty
 Date: 2/28/07
 Time: 8:30am
 Forwarded To:

This document prepared by
Lee County Division of County Lands
Project: Alico Filter Marsh Project 4030
STRAP No.: 05-46-25-00-00002.0090

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE
IN LIEU OF CONDEMNATION PROCEEDINGS

THIS AGREEMENT for purchase and sale of real property is made this _____ day of _____, 2007 by and between Charlotte A. Briscoe, hereinafter referred to as SELLER, whose address is 8320 Whiskey Preserve Circle #322, Fort Myers, FL 33919, and Lee County, a political subdivision of the State of Florida, hereinafter referred to as BUYER.

WITNESSETH:

- 1. AGREEMENT TO PURCHASE AND TO SELL:** SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions set forth below, a parcel of land consisting of five (5) acres more or less, and located at 7351 Green Acre Lane, Fort Myers, FL 33912 and more particularly described in "Exhibit A" attached hereto and made a part hereof, hereinafter called the Property. This property is being acquired for the Alico Filter Marsh Project No. 4030, hereinafter called the Project, with the SELLER'S understanding that the property, if not voluntarily sold, would have been condemned by BUYER through the exercise of its eminent domain powers.
- 2. PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("Purchase Price") will be Five Hundred Thousand (\$500,000), payable at closing by County warrant. The Purchase Price is mutually agreeable to both the SELLER and BUYER and represents the voluntary sale and purchase of the property in lieu of BUYER's condemnation.
- 3. EVIDENCE OF TITLE:** BUYER will obtain at BUYER's expense an American Land Title Association Form B Title Commitment and provide title insurance Owner's Policy in the amount of the purchase price, from a title company acceptable to BUYER. The commitment will be accompanied by one copy of all documents that constitute exceptions to the title commitment. The commitment will also show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning and use restrictions imposed by governmental authority, and restrictions and easements common to the area.

4. **CONDITION OF PROPERTY; RISK OF LOSS:** BUYER has inspected the Property and, except as is otherwise provided herein, accepts the Property in the condition inspected. Any loss and/or damage to the Property occurring between the date of this offer and the date of closing or date of possession by BUYER, whichever occurs first, will be at SELLER'S sole risk and expense. However, BUYER may accept the damaged property and deduct from the purchase price any expenses required to repair the damage, or BUYER may cancel this Agreement without obligation.

5. **SELLER'S INSTRUMENTS AND EXPENSES:** SELLER will pay for and provide:

- (a) A statutory warranty deed, and an affidavit regarding liens, possession, and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance;
- (b) documentary stamps on deed;
- (c) utility services up to, but not including the date of closing;
- (d) taxes or assessments for which a bill has been rendered on or before the date of closing, if closing occurs between October 31 and January 1, then the SELLER is responsible for the full year's ad valorem real estate taxes for the year;
- (e) payment of partial release of mortgage fees, if any;
- (f) SELLER'S attorney fees, if any.

6. **BUYER'S INSTRUMENTS AND EXPENSES:** BUYER will pay for:

- (a) Recording fee for deed;
- (b) survey, (if desired by BUYER).

7. **TAXES:** SELLER will be charged for Real Estate taxes and personal property taxes (if applicable) up to, but not including the date of closing. BUYER is exempt from ad valorem taxation. SELLER will pay all taxes determined to be legally due and payable by the County Tax Collector. If closing occurs between October 31 and January 1, then the SELLER is responsible for the full year's ad valorem real estate taxes for the year without proration.

This voluntary sale and purchase is considered by Florida law to be exempt from the payment of Documentary Stamp Taxes because this transaction was made under the threat of an eminent domain proceeding by the BUYER.

8. **DEFECTS IN TITLE AND LEGAL ACCESS:** Prior to closing, BUYER will have a reasonable time to examine the title and documents establishing legal access to the property. If title or legal access is found to be defective, BUYER will notify SELLER in writing of the defects and SELLER will make a prompt and diligent effort to correct such defects. If SELLER fails to make corrections within 60 days after notice, BUYER may elect to accept the Property in its existing condition with an appropriate reduction to the purchase price, or may terminate this Agreement without obligation.

9. **SURVEY:** BUYER may order the Property surveyed at BUYER's expense. SELLER agrees to provide access to the Property for such survey to be performed. If the survey shows a discrepancy in the size or dimensions of the Property, or shows encroachments onto the Property or that improvements located on the Property encroach onto adjacent lands, or if the survey identifies violations of recorded covenants and/or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat such discrepancies, violations and/or encroachments as a title defect.

10. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER's expense, an environmental audit of the Property. If the audit identifies environmental problems unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition with an appropriate abatement to the purchase price or BUYER may terminate this Agreement without obligation.

11. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER warrants and represents that the Property is free from hazardous materials and does not constitute an environmental hazard under any federal, state or local law or regulation. No hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of any applicable law or regulation. The SELLER further warrants that there is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the property in violation of applicable law or regulation. There are no surface impoundments, waste piles, land fills, injection wells, underground storage areas, or other man-made facilities that have or may have accommodated hazardous materials. There is no proceeding or inquiry by any governmental agency with respect to production, disposal or storage on the property of any hazardous materials, or of any activity that could have produced hazardous materials or toxic effects on humans, flora or fauna.

There are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property. There is no evidence of release of hazardous materials onto or into the Property.

The SELLER also warrants that there have been no requests from any governmental authority or other party for information, notices of claim, demand letters or other notification that there is any potential for responsibility with respect to any investigation or clean-up of hazardous substance releases on the property. All warranties described herein will survive the closing of this transaction.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from all fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the property.

12. TIME AND BINDING AGREEMENT: Time is of the essence for closing this transaction. The BUYER's written acceptance of this offer will constitute an Agreement for the purchase and sale of the Property and will bind the parties, their successors and assigns. In the event the BUYER abandons this project after execution of this Agreement, but before closing, BUYER may terminate this Agreement without obligation.

13. DATE AND LOCATION OF CLOSING: The closing of this transaction will be held at the office of the insuring title company on or before sixty (60) days from the date this Agreement is made. The time and location of closing may be changed by mutual agreement of the parties.

14. ATTORNEYS' FEES: The prevailing party in any litigation concerning this Agreement will be entitled to recover reasonable attorneys' fees and costs.

15. REAL ESTATE BROKERS: SELLER hereby agrees to indemnify and hold the BUYER harmless from and against any claims by a real estate broker claiming by or through SELLER.

16. POSSESSION: SELLER warrants that there are no parties in possession other than SELLER unless otherwise stated herein. SELLER agrees to deliver possession of Property to BUYER at time of closing unless otherwise stated herein.

17. **TYPEWRITTEN/HANDWRITTEN PROVISIONS:** Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all parties, will control all printed provisions in conflict therewith.

18. **SPECIAL CONDITIONS:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.

WITNESSES:

CHARLIE GREEN, CLERK

BY: _____
DEPUTY CLERK (DATE)

SELLER:

Charlotte A. Briscoe (DATE)

BUYER:
LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
CHAIRMAN OR VICE CHAIRMAN

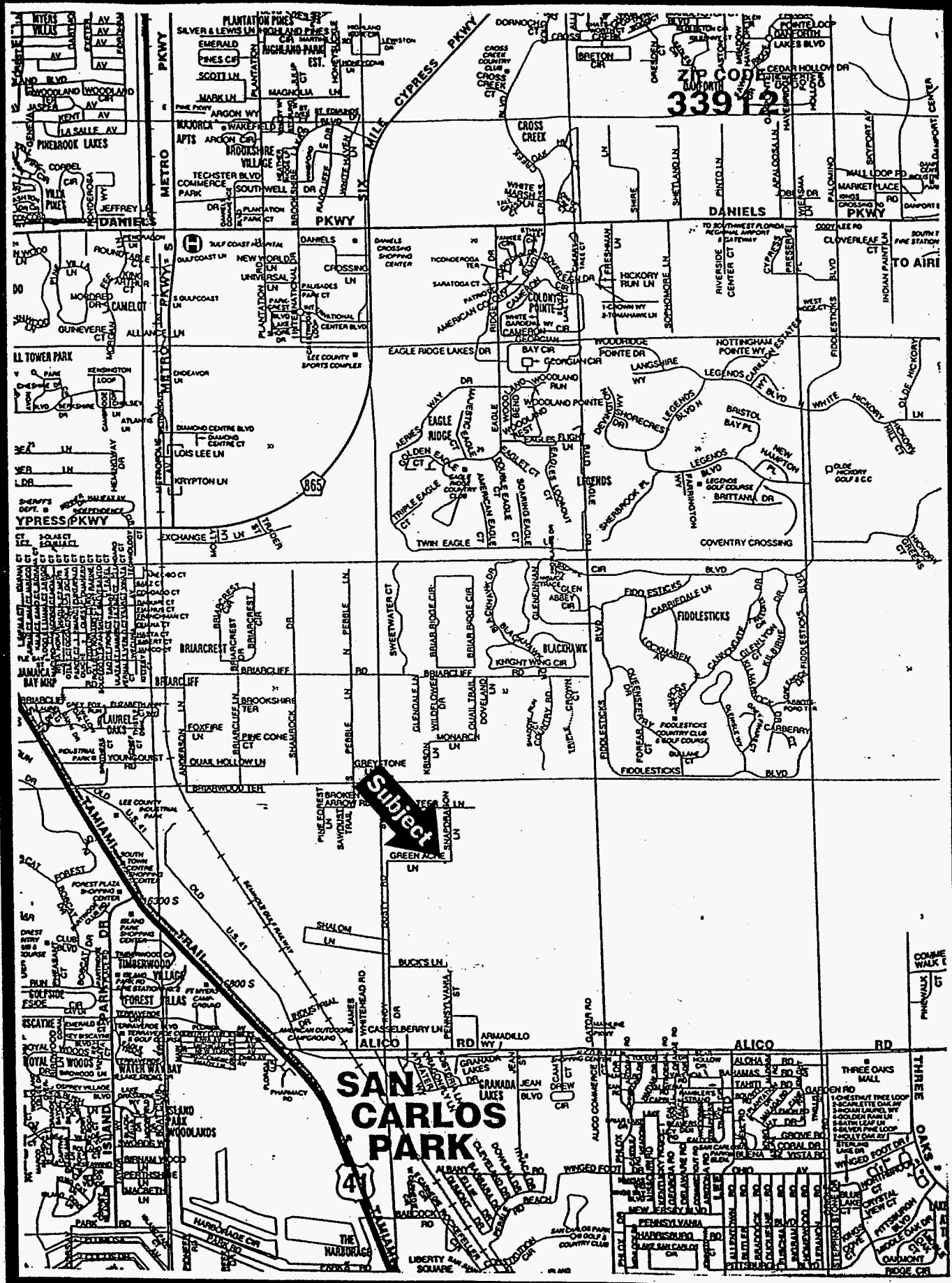
APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

COUNTY ATTORNEY (DATE)

Lee County Division of County Lands
Project: Alico Filter Marsh Project No. 4030
STRAP No. 05-46-25-00-00002.0090

Exhibit "A"

Beginning at the NE corner of S $\frac{1}{2}$ of N $\frac{2}{3}$ of NW $\frac{1}{4}$ of Section 5, T46S, R25E; thence S $89^{\circ}07'20''$ W, 330.0', alg the N line of said S $\frac{1}{2}$ of N $\frac{2}{3}$ of NW $\frac{1}{4}$ of said Section 5; thence S $0^{\circ}36'00''$ E, 636.71'; parallel to the E line of said NW $\frac{1}{4}$, to the centerline of 60' road easement; thence N $89^{\circ}07'50''$ E, 330.0', alg the centerline of said road easement to the said E line of NW $\frac{1}{4}$; thence N $0^{\circ}36'00''$ W, 636.76' alg said E line of said NW $\frac{1}{4}$ to the P.O.B.



MARKET AREA MAP

7351 Green Acre Lane STRAP 05-46-25-00-00002-0090



Division of County Lands**Updated Ownership and Easement Search**

Search No. 05-46-25-00-00002.0090

Date: February 13, 2007

Parcel:

Project: Alico Filter Marsh, Project # 4030

To: Pat Fischer
Property Acquisition AgentFrom: Bill Abramovich *B.A.*
Real Estate Title Examiner

STRAP: 05-46-25-00-00002.0090

Effective Date: February 10, 2007, at 5:00 p.m.

Subject Property: Beginning at the NE corner of S ½ of N 2/3 of NW ¼ of Section 5, T46S, R25E; thence S 89°07'20"W, 330.0', alg the N line of said S ½ of N 2/3 of NW ¼ of said Section 5; thence S 0°36'00"E, 636.71'; parallel to the E line of said NW ¼, to the centerline of 60' road easement; thence N89°07'50"E, 330.0', alg the centerline of said road easement to the said E line of NW ¼; thence N 0°36'00"W, 636.76' alg said E line of said NW ¼ to the P.O.B.

Title to the subject property is vested in the following:

Charlotte Ann Briscoe

By that certain instrument dated May 8, 2006, recorded May 9, 2006, in Instrument Number 2006000189110, Public Records of Lee County, Florida.

Easements:

1. Easement for road purposes over the South thirty feet as recited in Official Record Book 1015, Page 948, Public Records of Lee County, Florida.

NOTE (1): Oil, Gas and Mineral Lease in Miscellaneous Book 23, Page 5, Public Records of Lee County, Florida.

NOTE (2): Assignment of Oil, Gas and Mineral Lease in Miscellaneous Book 24, Page 19, Public Records of Lee County, Florida.

NOTE (3): Lee County Ordinances relating to garbage and solid waste collection, recorded in Official Record Book 2189 Pages 3281 and 3334, Public Records of Lee County, Florida.

NOTE (4): Final Judgment of Dissolution of Marriage recorded May 9, 2006, in Instrument Number 2006000189110, Public Records of Lee County, Florida.

Tax Status: Taxes for 2006 in the amount of \$3,141.61 have been paid on February 5, 2007.
(The end user of this report is responsible for verifying tax and/or assessment information.)

The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.

Diversified Appraisal, Inc.
Real Estate Appraisers and Consultants

Ted A. Dickey, MAI
State-Certified General Appraiser
Certification #0000570

David C. Vaughan, MAI, MBA
State-Certified General Appraiser
Certification #0000569



30 January 2007



Lee County Division of County Lands
P.O. Box 398
Fort Myers, Florida 33902-0398

Attention: Mr. Robert Clemens

RE: Job #110630 - Summary Appraisal Report of a parcel located
at 7351 Green Acre Lane, Fort Myers, FL, STA
42, Alico Road Widening Filter Marsh Project
No. 4030

Dear Robert:

As requested, a detailed on-site inspection and analysis of the subject property has been made as of 29 January 2007. Within the attached summary appraisal report, please find enclosed a legal description of the subject property.

This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. As a complete appraisal process was performed, no departure from the specific guidelines of the Uniform Standards of Professional Appraisal Practice was invoked. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

This appraisal is not based upon a minimum valuation, a specific valuation or the approval of a loan. The appraisal report is

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intended to comply with the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation, as well as the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. I have complied with the Standards of Professional Appraisal Practice, Competency Rule. I certify that I have had no past, present or future contemplated interest in the real estate, and to the best of my knowledge, the facts contained herein are true and correct.

The purpose of the appraisal is to estimate the just compensation due the property owner as a result of a possible acquisition by the county. The just combination is the combination of any land/improvement taken plus any legal compensable severance damages. Just compensation is best determined by estimating the market value. Market value as set forth in Title 12 of the Code of Federal Regulations 564.2 (f) is:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. Buyer and seller are typically motivated.
- b. Both parties are well informed or well advised, and each acting in what they consider their own best interest.
- c. A reasonable time is allowed for exposure in the open market.
- d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

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The intended use of the appraisal is understood to be for use as a basis for negotiating the acquisition of the property. The intended user of this appraisal is Lee County Division of County Lands who is the client. The subject property is vacant land.

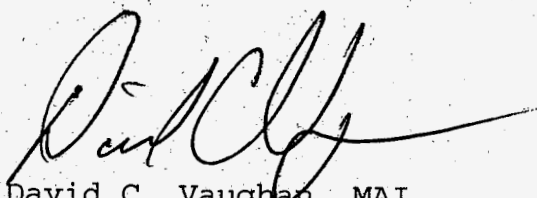
The appraiser did not detect and has no knowledge of the existence of any hazardous materials or substances on the site. This appraisal assumes that no such materials exist to the extent that they would have an effect on the value. If any hazardous materials or substances are found on the site, then this appraisal is subject to reanalysis. The appraiser is not an expert in this field.

The subject property is appraised as of 29 January 2007. A detailed on-site inspection and analysis was made on that date by David C. Vaughan, MAI.

Based on my inspection, analysis, data research, and information contained in the appraiser's work file, it is my opinion that the market value of the undivided fee simple interest of the subject property, "as is" and as of 29 January 2007, is:

"As Is"
FIVE HUNDRED THOUSAND DOLLARS. (\$500,000)

Sincerely,



David C. Vaughan, MAI
State-Certified General Appraiser
Certification #0000569

EXECUTIVE SUMMARY

PROJECT NAME: Plantation Road Extension

PARCEL LOCATION: 7351 Green Acre Lane

PROJECT NUMBER: 4030

OWNER OF RECORD: Jon M + Charlotte Briscoe

STRAP NUMBER: 05-46-25-00-00002.0090

SIZE: 5 Acres

IMPROVEMENTS: None

ZONING/LAND USE: Ag-2/ Open Lands

HIGHEST AND BEST USE: Residential Development

ESTIMATE OF VALUE - COST APPROACH: N/A

ESTIMATE OF VALE - SALES COMPARISON APPROACH: \$500,000

ESTIMATE OF VALUE - INCOME APPROACH: N/A

JUST COMPENSATION DUE PROPERTY OWNER: \$500,000

PRICE PER ACRE: \$100,000

INTEREST APPRAISED: Fee Simple

DATE OF VALUATION: 29 January 2007

APPRAISER: David C. Vaughan, MAI

5-Year Sales History

Project: Alico Road Widening – Alico Filter Marsh

No.: 4030

STRAP No. 05-46-25-00-00002.0090

NO SALES in PAST 5 YEARS