

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

**Blue Sheet No. 20070702**

**1. ACTION REQUESTED/PURPOSE:** **Approve:** (1) Resolution authorizing conveyance of a non-exclusive Perpetual Easement on Lee County owned land to the State of Florida Department of Transportation for property located at the Southeast corner of Three Oaks and Estero Parkways, identified as Parcels 800-A, 800-B, 800-C, and 800-D, consisting of 25.207 acres, and further identified as STRAP No. 26-46-25-00-00001.2000 and Part of STRAP No. 26-46-25-00-00001.2010; (2) Purchase Agreement to sell the Perpetual Easement to the State of Florida DOT in the amount of \$7,128,000, pursuant to the terms and conditions set forth in the agreement; (3) Joint Pond Use Agreement between the State of Florida DOT and Lee County; (4) Budget Amendment Resolution in the amount of \$7,128,000, and amend the FY 2006/07-2010/11 CIP accordingly.

**Authorize:** (1) Division of County Lands to handle and accept all documentation necessary to complete the transaction; (2) Lee County DOT staff to handle and execute all documentation relating to the SFWMD and ACOE permits in connection with the Joint Pond Use Agreement.

**2. FUNDING SOURCE:** Revenue – Fund: Transportation Capital Improvement Fund; Program: Capital Project; Project: Estero Parkway Extension

**3. WHAT ACTION ACCOMPLISHES:** The sale of an easement needed by the State of Florida DOT for drainage purposes to accommodate the widening of Interstate 75. Reimburses funds to the Estero Parkway Extension Project No. 5021.

**4. MANAGEMENT RECOMMENDATION:** Approve

**5. Departmental Category:** 06 **CLB** **6. Meeting Date:** 05-22-2007

<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: (specify)</b> <input checked="" type="checkbox"/> Statute 125 <input type="checkbox"/> Ordinance <input type="checkbox"/> Admin. Code <input checked="" type="checkbox"/> Other Blue Sheet 20041400 Blue Sheet 20051093	<b>9. Request Initiated:</b> Commissioner Department Independent Division County Lands TLM By: Karen Forsyth, Director <i>K. Forsyth</i>
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**10. Background:**  
The Board previously approved the purchase of property identified as STRAP No. 26-46-25-00-00001.2010 on November 9, 2004, and STRAP No. 26-46-25-00-00001.2000 on August 16, 2005, for the Three Oaks Parkway Widening and Estero Parkway Extension projects.

Lee County utilized a portion of the land for road right-of-way, mitigation (conservation easement), and a retention pond for both projects. FDOT needs to obtain an easement for drainage purposes to accommodate the I-75 Widening project over a portion of the remainder land.

**Property Details:**

STRAP No. 26-46-25-00-00001.2000 and Part of STRAP No. 26-46-25-00-00001.2010  
Location: Southeast corner of Three Oaks and Estero Parkway in South Lee County

**Purchase Details:**

The County's total purchase price for fee simple interest in both parcels (+ 47.71 acres) = \$7,751,046  
FDOT's purchase price of the easement interest over a portion of the land (+25.207 acres) = \$7,128,000 (amount to be received from FDOT)

**Appraisal Information:**

FDOT Review Appraiser's Report dated 1/22/2007, prepared by Patricia A. Silverthorn, MAI, SRA

**Funds to be deposited into Account:** 20502130700.369900.9018

**Attachments:** Resolution, FDOT Purchase Agreement, Joint Pond Use Agreement, Perpetual Easement, Area Maps, and Appraisal Data

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>K. Forsyth</i>			<i>5/9/07</i>	<i>5-9-07</i>	<i>5-9-07</i>	<i>5/9/07</i>	<i>5/9/07</i>	<i>5-9-07</i>	

**12. Commission Action:**  
 Approved  
 Deferred  
 Denied  
 Other

RECEIVED BY COUNTY ADMIN:  
5/9 11:00 AM  
COUNTY ADMIN FORWARDED TO:  
5/9/07 330

Rec. by CoAtty  
Date: 5/8/07  
Time: 2:05 PM  
Forwarded To: *Amica*

*5/9/07 10:14 am*

# RESOLUTION #

Amending the Budget of Transportation Capital Improvements-Fund 30700 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2006-2007.

**WHEREAS**, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the Transportation Capital Improvements-Fund 30700 budget for \$7,128,000 of the unanticipated revenue from FDOT and an appropriation of a like amount for construction costs and;

**WHEREAS**, the Transportation Capital Improvements-Fund 30700 budget shall be amended to include the following amounts which were previously not included.

## ESTIMATED REVENUES

Prior Total: 110,185,921  
Additions

20502130700.369900.9018 Reimbursement from FDOT 7,128,000

Amended Total Estimated Revenues \$117,313,921

## APPROPRIATIONS

Prior Total: \$110,185,921  
Additions

20502130700.506540 Improvements Construction 7,128,000

Amended Total Appropriations \$117,313,921

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lee County, Florida, that the Transportation Capital Improvements-Fund 30700 budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this \_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:  
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
CHAIRMAN

APPROVED AS TO FORM

\_\_\_\_\_  
OFFICE OF COUNTY ATTORNEY

DOC TYPE YA  
LEDGER TYPE BA

**RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS, LEE COUNTY, FLORIDA, AUTHORIZING CONVEYANCE OF A NON-EXCLUSIVE PERPETUAL EASEMENT IN SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, Lee County declares that the purpose of this Resolution is to approve and authorize a non-exclusive perpetual easement to the State of Florida Department of Transportation pursuant to a request by the said Department in order to allow the Department to construct or improve State Road No. 93 (I-75), Section 12075-000, (F.P. No. 4062254), in Lee County, Florida; and;

**WHEREAS**, pursuant to Section 125.38 F.S., the Board of County Commissioners has authority to convey County property to the State of Florida Department of Transportation without advertisement, and;

**WHEREAS**, the State of Florida Department of Transportation has made application to Lee County to execute and deliver to the State of Florida Department of Transportation a non-exclusive perpetual easement, for the purpose of ingress and egress for constructing and maintaining stormwater management facilities, ditches, and all associated structures; and

**WHEREAS**, the Board of County Commissioners has determined and is satisfied that the property is not needed for County purposes; that the application of the State of Florida Department of Transportation for a non-exclusive perpetual easement, is for transportation purposes which will benefit the public or community interest and welfare; and said request has been duly considered.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lee County, Florida, that this Board authorizes the conveyance of a non-exclusive Perpetual Easement as described in Exhibit "A" to the State of Florida Department of Transportation for the consideration of \$7,128,000.00, and authorizes the execution of said easement for and on behalf of Lee County for such purposes, with the form attached hereto and made a part hereof.

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

ROBERT P. JANES \_\_\_\_\_  
BRIAN BIGELOW \_\_\_\_\_  
RAY JUDAH \_\_\_\_\_  
TAMMARA A. HALL \_\_\_\_\_  
FRANKLIN MANN \_\_\_\_\_

THIS RESOLUTION was duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**ATTEST:**  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman or Vice Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney



07-PE.11-06/93

Date: February 8, 2007  
This instrument prepared  
under the direction of:  
Bruce P. Cury, General Counsel  
Post Office Box 1249  
City: Bartow, Florida 33830  
Department of Transportation

F.P. NO. 4062254  
PARCEL 800.1  
SECTION 12075-000  
STATE ROAD 93 (I-75)  
COUNTY Lee

**PERPETUAL EASEMENT**

THIS EASEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20 07,  
by LEE County, a political subdivision of the State of Florida,  
grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,  
its successors and assigns, grantee, whose post office address  
is: Post Office Box 1249, Bartow, Florida 33831-1249.

WITNESSETH: That the grantor for and in consideration of  
the sum of One Dollar and other valuable considerations paid, the  
receipt and sufficiency of which is hereby acknowledged, hereby  
grants unto the grantee, its successors and assigns, a non-  
exclusive perpetual easement for the purpose of constructing and  
maintaining stormwater management facilities, ditches and all  
associated structures in, over, under, upon and through the  
following described land in Lee County, Florida, viz:

**SEE EXHIBIT "A"**

TO HAVE AND TO HOLD the same unto said grantee, its  
successors and assigns forever.

THIS EASEMENT is in conjunction with the Joint Pond Use  
Agreement between the STATE OF FLORIDA DEPARTMENT OF  
TRANSPORTATION and LEE County, a political subdivision of the  
State of Florida, executed on \_\_\_\_\_.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST: \_\_\_\_\_ (SEAL) Lee \_\_\_\_\_ County,  
Clerk(or Deputy Clerk) Florida,  
By Its Board of County  
Commissioners

\_\_\_\_\_  
Name: (SEAL)

Its Chairperson  
(or Vice-Chairperson)

Grantor(s)' Mailing Address:

c/o Division of County Lands  
P.O. Box 398  
Et. Myers, FL 33902-0398

# Exhibit "A"

Page 3 of 5

F.P. NO. 4062254

SECTION 12075-000

PARCEL 800

A) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 1,432.59 feet; thence South 89°59'59" West a distance of 1,797.30 feet for a POINT OF BEGINNING; thence continue South 89°59'59" West a distance of 102.69 feet to the easterly existing right of way line of Three Oaks Parkway (per Lee County Project No. CN-02-06); thence along said easterly existing right of way line North 01°18'01" West a distance of 50.15 feet; thence leaving said easterly existing right of way line, North 89°34'20" East a distance of 123.03 feet; thence South 20°36'48" West a distance of 54.55 feet to the POINT OF BEGINNING.

Containing 5,706 square feet.

ALSO

B) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 400.75 feet; thence South 88°41'59" West a distance of 169.40 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence leaving said right of way line continue South 88°41'59" West a distance of 431.78 feet; thence North 61°57'14" East a distance of 233.19 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) and the beginning of a curve concave northerly and having a radius of 3,506.50 feet; thence along said southerly line the arc of said curve to the left a distance of 202.90 feet through a central angle of 03°18'55" with a chord bearing South 82°47'12" East to said westerly existing limited access right of way line and the end of said curve; thence along said westerly existing limited access right of way line South 18°18'02" East a distance of 78.33 feet to the POINT OF BEGINNING.

EXHIBIT "A"

Page 3

Containing 29,628 square feet.

C) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 850.36 feet; thence leaving said survey base line, South 84°44'28" West a distance of 166.29 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence along said westerly existing limited access right of way line, South 18°18'02" East a distance of 566.17 feet; thence leaving said westerly existing limited access right of way line, South 89°59'59" West a distance of 1,626.67 feet; thence North 20°36'48" East a distance of 127.01 feet; thence North 89°13'39" East a distance of 84.34 feet; thence North 65°20'45" East a distance of 294.50 feet; thence North 69°20'45" East a distance of 315.00 feet; thence North 63°42'59" East a distance of 316.00 feet; thence North 84°44'28" East a distance of 476.12 feet to the POINT OF BEGINNING.

Containing 12.894 acres.

ALSO

D) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

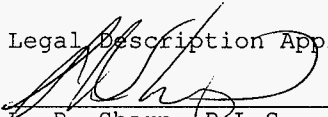
Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 126.24 feet; thence leaving said survey base line, South 61°57'14" West a distance of 350.54 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) for a POINT OF BEGINNING; thence continue South 61°57'14" West a distance of 669.29 feet; thence South 66°54'21" West a distance of 470.84 feet to the beginning of a curve concave southwesterly and having a radius of 120.00 feet; thence along the arc of said curve to the left a distance of 138.31 feet through a central angle of 66°02'25" with a chord bearing North 58°16'40" West to the end of said curve; thence South 88°41'59" West a distance of 60.34 feet to the easterly right of way line of Three Oaks Parkway (per Lee County Project Number CN-02-06); thence along said easterly right of way line North 01°18'01" West a distance of 626.99 feet to the southerly existing right of way line of said Estero Parkway; thence leaving the easterly right of way line of said Three Oaks Parkway run along said southerly line the following three (3) courses: 1) North 44°46'23" East a distance of 29.04 feet to the beginning of a curve concave southerly and having a radius of 2,790.00 feet; 2) thence along the arc of said curve to the right a distance of 747.51 feet through a central angle of 15°21'04" with a chord bearing South 81°13'10" East to the end of said

curve and to the beginning of curve concave northerly having a radius of 3,506.50 feet; 3) thence along the arc of said curve to the left a distance of 464.24 feet through a central angle of 07°35'08" with a chord bearing South 77°20'10" East to the end of said courses and to the POINT OF BEGINNING.

Containing 11.502 acres.

Legal Description Approved by:

  
L. R. Sharp P.L.S. #4388

Date: February 8, 2007

NOT VALID UNLESS EMBOSSED

### REVISED OFFER AND PURCHASE AGREEMENT

ITEM/SEGMENT NO.: 4062254  
 MANAGING DISTRICT: One  
 F.A.P. NO.: N/A  
 STATE ROAD NO.: 93 (I-75)  
 COUNTY: Lee  
 PARCEL NO.: 800

**Seller:** Lee County, a political subdivision of the State of Florida  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Buyer:** State of Florida, Department of Transportation

Buyer and Seller hereby agree that Seller shall sell and Buyer shall buy the following described property pursuant to the following terms and conditions.

**I. Description of Property**

(a) Real property described as: That portion of the NW 1/4 of Section 26, Township 46 South, Range 25 East, containing 25.207 Acres, as described on attached Exhibit "A".  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) Estate being purchased:  Fee Simple  
 Permanent Easement  
 Temporary Easement  
 Leasehold

(c) Buildings, Structures, Fixtures, and Other Improvements: Minor site improvements such as perimeter 3-strand barbed wire fencing, trees, and natural vegetation  
 \_\_\_\_\_  
 \_\_\_\_\_

(d) Personal property described as: None  
 \_\_\_\_\_  
 \_\_\_\_\_

(e) Outdoor Advertising Structure(s) Permit Number(s): None  
 \_\_\_\_\_

Property owned by others described as: N/A  
 is **NOT** included in this agreement. A separate offer is being, or has been, made for this property.



II. PURCHASE PRICE

(a) Real Property			
Land - Easement Only	1.	\$	5,547,000.00
Improvements	2.	\$	0.00
Real Estate Damages (Severance/Cost-to-Cure)	3.	\$	1,581,000.00
<b>Total Real Property - Easement Only</b>	<b>4.</b>	<b>\$</b>	<b>7,128,000.00</b>
(b) Total Personal Property	5.	\$	0.00
<b>Total Purchase Price (Add Lines 4 and 5)</b>		<b>\$</b>	<b>7,128,000.00</b>
(c) Portion of Total Purchase Price to be paid to Seller by Buyer at Closing.		\$	7,128,000.00
(d) Portion of Total Purchase Price to be paid to Seller by Buyer upon surrender of possession.		\$	0.00

Buyer hereby represents to Seller that this offer is not less than Buyer's estimate of market value.

III. Conditions and Limitations

- ~~(a)~~ Seller is responsible for all taxes due on the property up to, but not including, the day of closing. N/A, this parcel is an easement interest only. There is no requirement to collect taxes.
- ~~(b)~~ Seller is responsible for delivering marketable title to Buyer. Marketable title shall be determined according to applicable title standards adopted by the Florida Bar in accordance with Florida Law subject only to those exceptions that are acceptable to Buyer. Seller shall be liable for any encumbrances not disclosed in the public records or arising after closing as a result of actions of the Seller. \*
- ~~(c)~~ Seller shall maintain the property described in Section I of this agreement in the same condition existing on the date of this agreement, except for reasonable wear and tear. \*
- ~~(d)~~ Any occupancy of the property described in Section I of this agreement by Seller extending beyond the day of closing must be authorized, in writing, by Buyer. \*
- (e) The property described in Section I of this agreement is being acquired by Buyer for transportation purposes under threat of condemnation pursuant to Section 337.25 Florida Statutes.
- ~~(f)~~ Pursuant to Rule 14-10.004, Florida Administrative Code, Seller shall deliver completed Outdoor Advertising Permit Cancellation(s) Form(s), Form Number 575-070-12, executed by the outdoor advertising permit holder(s) for any outdoor advertising structure(s) described in Section I of this agreement and shall surrender, or account for, the outdoor advertising permit tag(s) prior to or upon receiving payment for the outdoor advertising structure(s). \*
- (g) Seller agrees that the <sup>easement</sup> real property described in Section I of this agreement shall be conveyed to Buyer by conveyance instrument(s) acceptable to Buyer in form & substance attached hereto as Exhibit "B".
- (h) Seller and Buyer agree that this purchase agreement represents the full and final agreement and no other agreements or representations, unless incorporated into this agreement, shall be binding on the parties, except for the Joint Use Agreement attached as Exhibit "C".
- (i) Other: Seller agrees the purchase price reflected in Section II includes compensation for all fees, costs, and business damage claims, if any. \* Sections III b, c, d and f were intentionally lined out as well as section V. \*

**IV. Closing Date**

The closing will occur no later than 60 days after Final Agency Acceptance.

~~\* V There are no handwritten or typewritten provisions inserted herein or attached hereto.~~

**VI.** Seller and Buyer hereby acknowledge and agree that their signatures as Seller and Buyer below constitute their acceptance of this agreement as a binding real estate contract.

It is mutually acknowledged that this Purchase Agreement is subject to Final Agency Acceptance by Buyer pursuant to **Section 119.0711(2), Florida Statutes**. A closing shall not be conducted prior to 30 days from the date this agreement is signed by Seller and Buyer to allow public review of the transaction. Final agency acceptance shall not be withheld by Buyer absent evidence of fraud, coercion, or undue influence involving this agreement. Final Agency Acceptance shall be evidenced by the signature of Buyer's representative in **Section VII** of this agreement.

Board of County Commissioners

**Seller(s) of Lee County, Florida**

By: \_\_\_\_\_  
Signature Date  
Chairman

Type or Print Name under signature  
ATTEST: Charlie Green, Clerk

By: \_\_\_\_\_  
Signature Date  
\_\_\_\_\_, Deputy Clerk  
Type or Print Name under signature

**Buyer**

State of Florida Department of Transportation

BY: Brenda K. Hall 2/13/07  
Signature Date

Brenda K. Hall  
Type or Print Name  
FDOT Right of Way Agent

**VII. FINAL AGENCY ACCEPTANCE**

The Buyer has granted final agency acceptance this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Type or Print Name and Title under signature

This document delivered by \_\_\_\_\_  
Date

This document received by \_\_\_\_\_  
Date

F.P. NO. 4062254

SECTION 12075-000

PARCEL 800

A) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

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Containing 5,706 square feet.

ALSO

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Containing 29,628 square feet.

C) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

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Containing 12.894 acres.

ALSO

D) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

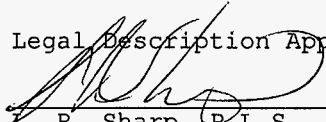
Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 126.24 feet; thence leaving said survey base line, South 61°57'14" West a distance of 350.54 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) for a POINT OF BEGINNING; thence continue South 61°57'14" West a distance of 669.29 feet; thence South 66°54'21" West a distance of 470.84 feet to the beginning of a curve concave southwesterly and having a radius of 120.00 feet; thence along the arc of said curve to the left a distance of 138.31 feet through a central angle of 66°02'25" with a chord bearing North 58°16'40" West to the end of said curve; thence South 88°41'59" West a distance of 60.34 feet to the easterly right of way line of Three Oaks Parkway (per Lee County Project Number CN-02-06); thence along said easterly right of way line North 01°18'01" West a distance of 626.99 feet to the southerly existing right of way line of said Estero Parkway; thence leaving the easterly right of way line of said Three Oaks Parkway run along said southerly line the following three (3) courses: 1) North 44°46'23" East a distance of 29.04 feet to the beginning of a curve concave southerly and having a radius of 2,790.00 feet; 2) thence along the arc of said curve to the right a distance of 747.51 feet through a central angle of 15°21'04" with a chord bearing South 81°13'10" East to the end of said

curve and to the beginning of curve concave northerly having a radius of 3,506.50 feet; 3) thence along the arc of said curve to the left a distance of 464.24 feet through a central angle of  $07^{\circ}35'08''$  with a chord bearing South  $77^{\circ}20'10''$  East to the end of said courses and to the POINT OF BEGINNING.

Containing 11.502 acres.

Legal Description Approved by:

  
L. R. Sharp P.L.S. #4388

Date: February 8, 2007

NOT VALID UNLESS EMBOSSED

07-PE.11-06/93

Date: February 8, 2007  
This instrument prepared  
under the direction of:  
Bruce P. Cury, General Counsel  
Post Office Box 1249  
City: Bartow, Florida 33830  
Department of Transportation

F.P. NO. 4062254  
PARCEL 800.1  
SECTION 12075-000  
STATE ROAD 93 (I-75)  
COUNTY Lee

**PERPETUAL EASEMENT**

THIS EASEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20 07,  
by LEE County, a political subdivision of the State of Florida,  
grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,  
its successors and assigns, grantee, whose post office address  
is: Post Office Box 1249, Bartow, Florida 33831-1249.

WITNESSETH: That the grantor for and in consideration of  
the sum of One Dollar and other valuable considerations paid, the  
receipt and sufficiency of which is hereby acknowledged, hereby  
grants unto the grantee, its successors and assigns, a non-  
exclusive perpetual easement for the purpose of constructing and  
maintaining stormwater management facilities, ditches and all  
associated structures in, over, under, upon and through the  
following described land in Lee County, Florida, viz:

**SEE EXHIBIT "A"**

TO HAVE AND TO HOLD the same unto said grantee, its  
successors and assigns forever.

THIS EASEMENT is in conjunction with the Joint Pond Use  
Agreement between the STATE OF FLORIDA DEPARTMENT OF  
TRANSPORTATION and LEE County, a political subdivision of the  
State of Florida, executed on \_\_\_\_\_.



IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST: \_\_\_\_\_ (SEAL) Lee \_\_\_\_\_ County,  
Clerk(or Deputy Clerk) Florida,  
By Its Board of County  
Commissioners

\_\_\_\_\_  
Name: (SEAL)

Its Chairperson  
(or Vice-Chairperson)

Grantor(s)' Mailing Address:

c/o Division of County Lands

P.O. Box 398

Et. Myers, FL 33902-0398

F.P. NO. 4062254

SECTION 12075-000

PARCEL 800

A) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 1,432.59 feet; thence South 89°59'59" West a distance of 1,797.30 feet for a POINT OF BEGINNING; thence continue South 89°59'59" West a distance of 102.69 feet to the easterly existing right of way line of Three Oaks Parkway (per Lee County Project No. CN-02-06); thence along said easterly existing right of way line North 01°18'01" West a distance of 50.15 feet; thence leaving said easterly existing right of way line, North 89°34'20" East a distance of 123.03 feet; thence South 20°36'48" West a distance of 54.55 feet to the POINT OF BEGINNING.

Containing 5,706 square feet.

ALSO

B) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 400.75 feet; thence South 88°41'59" West a distance of 169.40 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence leaving said right of way line continue South 88°41'59" West a distance of 431.78 feet; thence North 61°57'14" East a distance of 233.19 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) and the beginning of a curve concave northerly and having a radius of 3,506.50 feet; thence along said southerly line the arc of said curve to the left a distance of 202.90 feet through a central angle of 03°18'55" with a chord bearing South 82°47'12" East to said westerly existing limited access right of way line and the end of said curve; thence along said westerly existing limited access right of way line South 18°18'02" East a distance of 78.33 feet to the POINT OF BEGINNING.

Containing 29,628 square feet.

C) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 850.36 feet; thence leaving said survey base line, South 84°44'28" West a distance of 166.29 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence along said westerly existing limited access right of way line, South 18°18'02" East a distance of 566.17 feet; thence leaving said westerly existing limited access right of way line, South 89°59'59" West a distance of 1,626.67 feet; thence North 20°36'48" East a distance of 127.01 feet; thence North 89°13'39" East a distance of 84.34 feet; thence North 65°20'45" East a distance of 294.50 feet; thence North 69°20'45" East a distance of 315.00 feet; thence North 63°42'59" East a distance of 316.00 feet; thence North 84°44'28" East a distance of 476.12 feet to the POINT OF BEGINNING.

Containing 12.894 acres.

ALSO

D) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

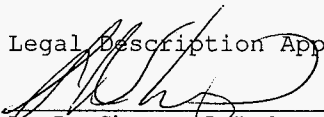
Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 126.24 feet; thence leaving said survey base line, South 61°57'14" West a distance of 350.54 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) for a POINT OF BEGINNING; thence continue South 61°57'14" West a distance of 669.29 feet; thence South 66°54'21" West a distance of 470.84 feet to the beginning of a curve concave southwesterly and having a radius of 120.00 feet; thence along the arc of said curve to the left a distance of 138.31 feet through a central angle of 66°02'25" with a chord bearing North 58°16'40" West to the end of said curve; thence South 88°41'59" West a distance of 60.34 feet to the easterly right of way line of Three Oaks Parkway (per Lee County Project Number CN-02-06); thence along said easterly right of way line North 01°18'01" West a distance of 626.99 feet to the southerly existing right of way line of said Estero Parkway; thence leaving the easterly right of way line of said Three Oaks Parkway run along said southerly line the following three (3) courses: 1) North 44°46'23" East a distance of 29.04 feet to the beginning of a curve concave southerly and having a radius of 2,790.00 feet; 2) thence along the arc of said curve to the right a distance of 747.51 feet through a central angle of 15°21'04" with a chord bearing South 81°13'10" East to the end of said

curve and to the beginning of curve concave northerly having a radius of 3,506.50 feet; 3) thence along the arc of said curve to the left a distance of 464.24 feet through a central angle of 07°35'08" with a chord bearing South 77°20'10" East to the end of said courses and to the POINT OF BEGINNING.

Containing 11.502 acres.

Legal Description Approved by:

  
\_\_\_\_\_  
L. R. Sharp P.L.S. #4388  
Date: February 8, 2007  
NOT VALID UNLESS EMBOSSED

**JOINT POND USE AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
LEE COUNTY**

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (hereinafter, "DEPARTMENT"), whose address is 801 N. Broadway Ave., Bartow, FL 33831, and LEE COUNTY, a political subdivision and Charter County of the State of Florida (hereinafter, "COUNTY,") whose address is P.O. Box 398, Fort Myers, Florida 33902-0398.

**WITNESSETH**

1. WHEREAS, the DEPARTMENT under Fla. Stat. §334.044 , and the COUNTY under Fla. Stat. §125.01, have the authority to enter into and undertake the requirements of this Agreement; and
2. WHEREAS, the DEPARTMENT and the COUNTY possess all the powers and attributes required by South Florida Water Management District (hereinafter, "SFWMD") and the U.S. Army Corps of Engineers (hereinafter, "ACOE") for the DEPARTMENT or the COUNTY to obtain from SFWMD or ACOE an environmental resource permit; and
3. WHEREAS, the DEPARTMENT has constructed or intends to construct improvements to I-75 in Lee County, Florida; and
4. WHEREAS, the COUNTY has constructed or intends to construct improvements to two roadway projects, Three Oaks Parkway, which runs parallel to I-75, and Estero Parkway Extension (hereinafter, "County Projects") in Lee County, Florida; and

5. WHEREAS, the COUNTY requires a stormwater management pond site for its County Projects; and
6. WHEREAS, the COUNTY owns a parcel of land (hereinafter, "Parcel") adjacent to its County Projects, and adjacent to I-75, in Lee County, Florida, as depicted in Exhibit B; the Parcel contains an existing flow-way; and
7. WHEREAS, the COUNTY plans to construct a pond (hereinafter, "COUNTY POND"), located within Portion 800D of the Parcel, as depicted in Exhibit A; and
8. WHEREAS, the COUNTY has granted a conservation easement to SFWMD within the area within the flow-way area of the Parcel, and recorded as a Deed of Conservation Easement on November 29, 2006, as Instrument No. 2006000445582, in the Public Records of Lee County, Florida (hereinafter, "Conservation Easement"); and
9. WHEREAS, the COUNTY obtained a permit from SFWMD and ACOE Permit # 36-05710-P to construct and maintain the COUNTY POND on its Portion 800D to serve as a stormwater management system for its County Projects, as shown in Exhibit A; and
10. WHEREAS, the COUNTY intends to utilize a section of Portion 800D to naturally blend the COUNTY POND with the existing flow-way. The COUNTY POND berm will be planted with vegetation similar to the existing natural features as the flow-way; and
11. WHEREAS, the DEPARTMENT as engendered by the planned or executed improvements to I-75 in LEE County, Florida, requires a stormwater management system for the I-75 improvements; and



12. WHEREAS, the DEPARTMENT would benefit from the incorporation of the DEPARTMENT'S planned stormwater management system with the COUNTY POND; and
13. WHEREAS, in order to serve as a stormwater management system for the County Projects and the DEPARTMENT'S I-75 improvement, incorporation of the DEPARTMENT'S planned stormwater management system with the COUNTY POND requires an increase in the size of the COUNTY POND, and requires construction of a second pond to be located within Portions 800A and 800C. The incorporated stormwater management system will consist of the expanded COUNTY POND, and a second pond to be constructed within Portions 800A and 800C, (hereinafter, the incorporated stormwater management system is the "ISMS"); and
14. WHEREAS, the COUNTY will grant to the DEPARTMENT one non-exclusive perpetual easement, (hereinafter, "Easement") over the area as depicted in Exhibit B, which consists of Portions 800A, 800B, 800C, and 800D within the Parcel for drainage, construction, access and maintenance of the drainage improvements within the area and for construction, access and emergency maintenance of the inflow pipe, control structure and outfall pipe; and
15. WHEREAS, the DEPARTMENT will be required to obtain authorization from SFWMD for any work to be performed within the SFWMD Conservation Easement (Portion 800B); and
16. WHEREAS, the ISMS requires modification of Permit # 36-05710-P from SFWMD and ACOE to increase the size of the COUNTY POND; and
17. WHEREAS, the ISMS requires a new permit from SFWMD and ACOE for construction of a second pond on Portions 800A and 800C within the Easement, as depicted in Exhibit B; and

18. WHEREAS, the COUNTY will provide the DEPARTMENT with authorization to act as its agent to obtain a new permit and permit modification from SFWMD and ACOE, at the DEPARTMENT'S expense; and
19. WHEREAS, the COUNTY, at its expense, will assume responsibility for maintenance of the Easement area; and
20. WHEREAS, the COUNTY, at its expense, will assume responsibility to perpetually maintain and operate the ISMS under the to be modified Permit # 36-05710-P and the to be obtained new permit for construction of a pond within Portions 800A and 800C; and
21. WHEREAS, the DEPARTMENT will pay to the COUNTY the negotiated purchase price for the Easement; and
22. WHEREAS, the DEPARTMENT will be responsible for repairing all damage resulting from an emergency event, including, but not limited to flooding or other natural disasters, to the drainage improvements within the Easement areas for inflow pipe, control structure and outfall pipe; and
23. WHEREAS, the DEPARTMENT will develop Right of Way Maps and legal descriptions depicting the Easement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and representations contained herein, the parties agree as follows:

**I. COUNTY RIGHTS & RESPONSIBILITIES**

1. The COUNTY shall accept, on a perpetual basis, the water runoff from I-75 Right of Way in Lee County, Florida, as defined by the to be modified SFWMD and ACOE Permit # 36-05710-P within Portions 800B and 800D and the to be obtained SFWMD and ACOE permit for the pond within Portions 800A and 800C. The DEPARTMENT'S drainage contribution area for the Pond within Portions 800A and 800C is from station 533+40 to 583+90 and for the Pond within Portions 800B and 800D is from station 583+90 to 626+50.
2. The COUNTY shall grant to the DEPARTMENT a non-exclusive perpetual Easement for the area, as depicted in Exhibit B, for drainage, construction and access within the drainage improvements, and construction, access and emergency maintenance for inflow pipe, control structure and outfall pipe.
3. The COUNTY will assume all responsibilities and expenses for the perpetual operation and maintenance of the Easement area.
4. The COUNTY will assume all responsibilities and expense for the perpetual operation and maintenance of the ISMS except for emergency maintenance of the inflow pipe, control structures and outfall pipe.
5. The County will sign the appropriate section in the South Florida Water Management District Joint Application for Environmental Resource Permit form, designating the Department to act as an authorized agent of the County in obtaining the new permit for the Pond within Portions 800A and 800C.
6. The COUNTY will allow the DEPARTMENT to modify, within the Easement area only, the COUNTY POND under the SFWMD and ACOE Permit # 36-05710-P.

7. SFWMD and ACOE Permit # 36-05710-P shall remain under the COUNTY'S name throughout the entire permit modification process.
8. The COUNTY shall notify the DEPARTMENT of the COUNTY'S aesthetic design plans for the ISMS. That notice will include all aspects of form, aesthetics and function, as well as necessary permit modifications.
9. The COUNTY shall not alter, modify, construct or demolish any aspect of the Easement in any manner which would impact the DEPARTMENT'S use thereof. The COUNTY will obtain SFWMD and ACOE approval of any modifications and forward same to DEPARTMENT prior to any construction.
10. The COUNTY shall not alter, modify, construct or demolish any aspect of the ISMS in any manner which would impact the DEPARTMENT'S use thereof.
11. Upon completion, within the Easement area, of any construction by the DEPARTMENT under any permit(s), the COUNTY shall sign the South Florida Water Management District's "Request for Conversion of District Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity" form, acknowledging they are accepting responsibility for operation and maintenance post-construction.
12. The COUNTY shall have the right and authority to remove and dispose of dirt, rocks, and vegetation within the area identified as the COUNTY POND, as depicted in Exhibit A.

**II. DEPARTMENT RIGHTS & RESPONSIBILITIES**

1. The DEPARTMENT has the right, on a perpetual basis, to put its water runoff from I-75 Right of Way in Lee County, Florida, as defined by the to be modified SFWMD and ACOE Permit # 36-05710-P and the to be obtained SFWMD and ACOE permit for the pond within Portions 800A and 800C; the DEPARTMENT'S drainage contribution area for the Pond within Portions 800A and 800C is from station 533+40 to 583+90 and for the Pond within Portions 800B and 800D is from station 583+90 to 626+50
2. The DEPARTMENT, at any time after the Easement has been granted and at its own expense, may pursue and obtain from SFWMD and ACOE modifications to SFWMD and ACOE Permit # 36-05710-P.
3. The DEPARTMENT, at any time after the Easement has been granted, has the right and authority to remove and dispose of dirt, rocks, and vegetation from the Easement for the I-75 Improvements, except for the COUNTY'S rights and authority pursuant to Section I, Paragraph 12 above.
4. The DEPARTMENT, at any time after the Easement has been granted, may design and may construct a new Pond in Portions 800A and 800C or portions thereof, within the limits of the granted Easement area depicted in Exhibit B.
5. The DEPARTMENT, at any time after the Easement has been granted, may design and may modify the COUNTY POND or portions thereof, within the limits of the granted Easement area as depicted in Exhibit B.
6. The DEPARTMENT shall be responsible for the reasonable expenses related to the Engineering fees and other professional fees and expenses, under this Agreement, for the permit modifications.

7. The DEPARTMENT shall be responsible for construction costs incurred by its design for the POND within Portions 800A and 800C and the modification of the COUNTY POND within Portions 800B and 800D.
8. The DEPARTMENT shall be responsible for obtaining authorization from SFWMD for any work to be performed within the SFWMD Conservation Easement.
9. The DEPARTMENT shall be responsible for preparation of the Environmental Resource/Surface Water Management permit and Surface Water Management System Construction Completion Certification form required by SFWMD (hereinafter, "Certification Form").
10. The DEPARTMENT shall be responsible for providing any additional information/data required to complete the certification form. The DEPARTMENT will ensure that the Engineer overseeing construction within the Easement area prepares, signs and seals a set of as-built plans for completion of the Certification Form.
11. The DEPARTMENT, at its expense, will develop Right of Way Maps and legal descriptions for the Easement as depicted in Exhibit B.
12. The DEPARTMENT will be responsible for repairing all damage resulting from an emergency event, including, but not limited to flooding or other natural disasters, to the drainage improvements within the Easement area for inflow pipe, control structure and outfall pipe.
13. The DEPARTMENT will obtain authorization from SFWMD for any work to be performed within the area (Portion 800B) that is covered by the Deed of Conservation Easement recorded on November 29, 2006, as Instrument No. 2006000445582, in the Public Records of Lee County, Florida.



**III. EASEMENTS**

1. The COUNTY will grant to the DEPARTMENT a non-exclusive Easement for the areas depicted in Exhibit B over Portions 800A, 800B, 800C and 800D.
2. The DEPARTMENT will pay the purchase price of **SEVEN MILLION ONE HUNDRED TWENTY EIGHT THOUSAND DOLLARS (\$7,128,000.00)** to the COUNTY for the Easement.
3. The DEPARTMENT, at its own expense, shall record in the official public records of Lee County, Florida, the Easement, in its entirety, within fourteen (14) days after receipt and shall provide to the COUNTY, within ten (10) days following the recordation, a true and correct copy of the recorded easement in its entirety, including references to the recording date and Instrument Number at which the easement has been recorded. The recorded Easement shall become a part of this agreement.
4. The COUNTY agrees to take no action to inhibit or diminish the use, and/or access and/or accessibility enjoyed by the DEPARTMENT to said Easement.
5. The DEPARTMENT agrees to take no action or inhibit or diminish the use and/or access and/or accessibility enjoyed by the COUNTY to said Easement area.

**IV. COSTS**

1. At no time and under no circumstance shall the DEPARTMENT be responsible to pay or reimburse the COUNTY the costs they or their agents may have incurred in the inspection or maintenance of the Easement area.

2. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year, except if the DEPARTMENT subsequently modifies its pond(s). Any contract, oral or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**V. LIABILITY**

1. The DEPARTMENT and the COUNTY shall each be responsible for the negligent acts, events, or omissions of action of their own respective officers, employees, or agents, and their successors and assigns, arising from or resulting in any contamination or pollution entering the Easement area, to the extent provided by law. Nothing herein shall be construed to waive any rights, in law or equity that the DEPARTMENT or the COUNTY has or may have against third parties for the acts of such third parties resulting in contamination or pollution of the properties of the DEPARTMENT, the COUNTY, or the Easement area.
2. Except during any time of construction and within any area under construction in the Easement by the DEPARTMENT, the COUNTY shall retain responsibility for the liability of the entire Easement area.

**VI. GENERAL PROVISIONS**

1. The DEPARTMENT may unilaterally cancel or terminate this Agreement, whether in whole or in part, at any time the interest of the DEPARTMENT would require such cancellation or termination; the DEPARTMENT shall pay to the COUNTY any remaining cost or expense owed to the COUNTY and incurred under this Agreement.
2. It is understood by the parties that nothing contained in this Agreement shall be construed to constitute any party as the partner, agent, joint venture, employee, consultant, or legal representative of the other, or to create any fiduciary relationship between them. No party shall have the authority to bind the other party to any obligation whatsoever to any third party without the express specific written consent of the other.
3. Unless otherwise specifically stated herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
4. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

5. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree there are no commitments, agreements or understandings concerning the subject matter of this Agreement not contained in this document. Accordingly, it is agreed no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
6. No failure or a succession of failures on the part of the DEPARTMENT to enforce any provision of this Agreement shall operate as a waiver or discharge thereof, render the same provision inoperative, or impair the right of the DEPARTMENT to enforce the same provision.

**VII. ASSIGNMENT**

1. Neither this Agreement nor any of the rights, interests or obligations arising hereunder shall be assigned or transferred by the COUNTY without the written consent of all parties.
2. Neither this Agreement nor any of the rights, interests or obligations arising hereunder shall be assigned or transferred by the DEPARTMENT without the written consent of all parties.

**VIII. EXHIBITS**

1. All Exhibits referenced and/or attached to this Agreement are incorporated into and made part of this Agreement.

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>Page</b>
Exhibit A	County Pond on Parcel 800D	2, 6, 14
Exhibit B	Second Pond on Parcel 800A and 800C	2, 3, 5, 7, 8, 9

IN WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed in its behalf, by the Chairman of the Board of County Commissioners or its designee, as authorized by **Resolution Number** \_\_\_\_\_, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized designee. This Agreement shall become effective upon execution by both parties.

**LEE COUNTY, FLORIDA**

ATTEST  
CHARLIE GREEN, CLERK

BY ITS BOARD OF  
COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
DEPUTY CLERK

BY: \_\_\_\_\_  
CHAIRMAN OR VICE CHAIRMAN

\_\_\_\_\_  
PRINT NAME DATE

\_\_\_\_\_  
PRINT NAME DATE

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY

BY: \_\_\_\_\_  
COUNTY ATTORNEY DATE

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**

ATTEST

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME

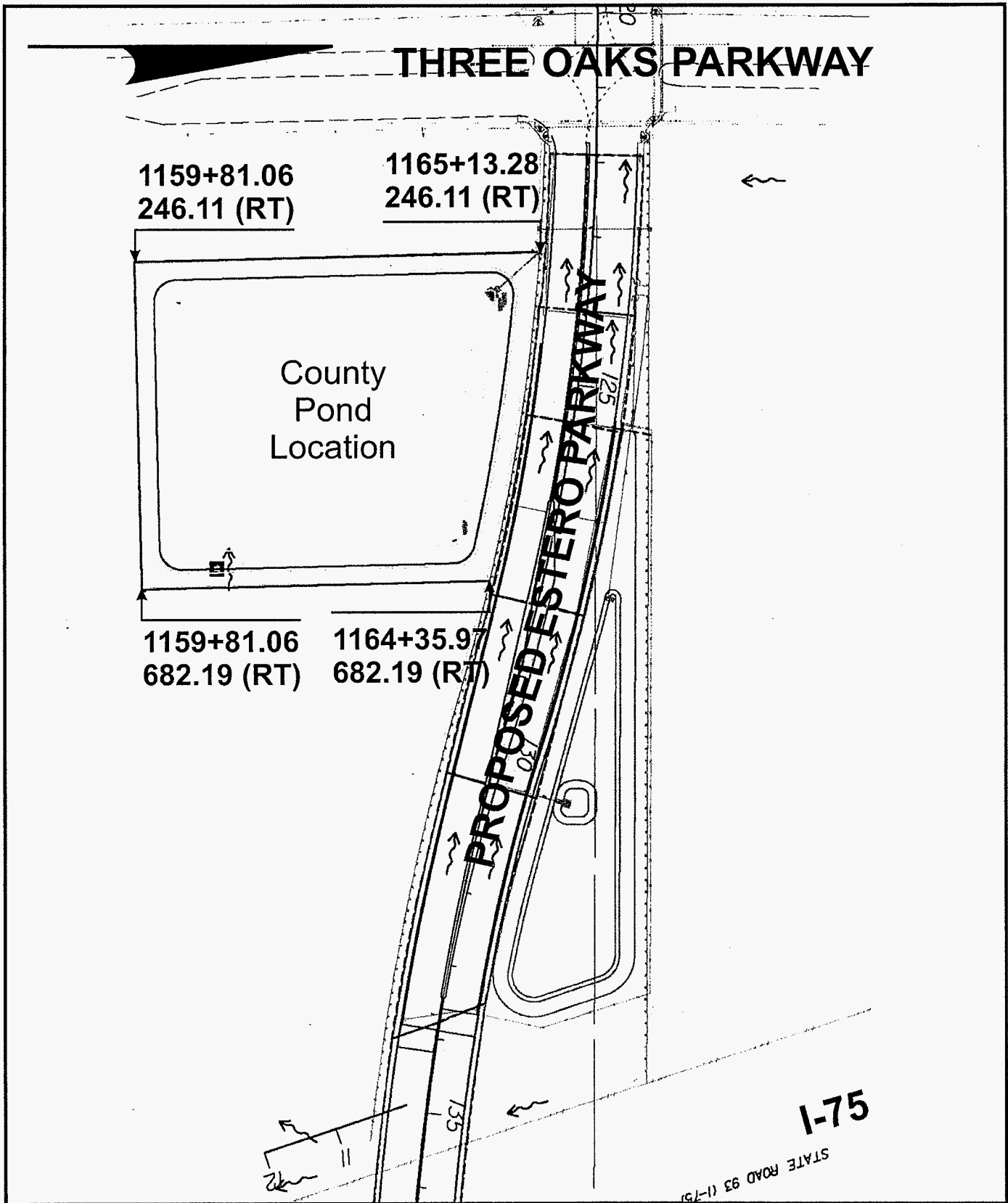
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TITLE DATE

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TITLE DATE

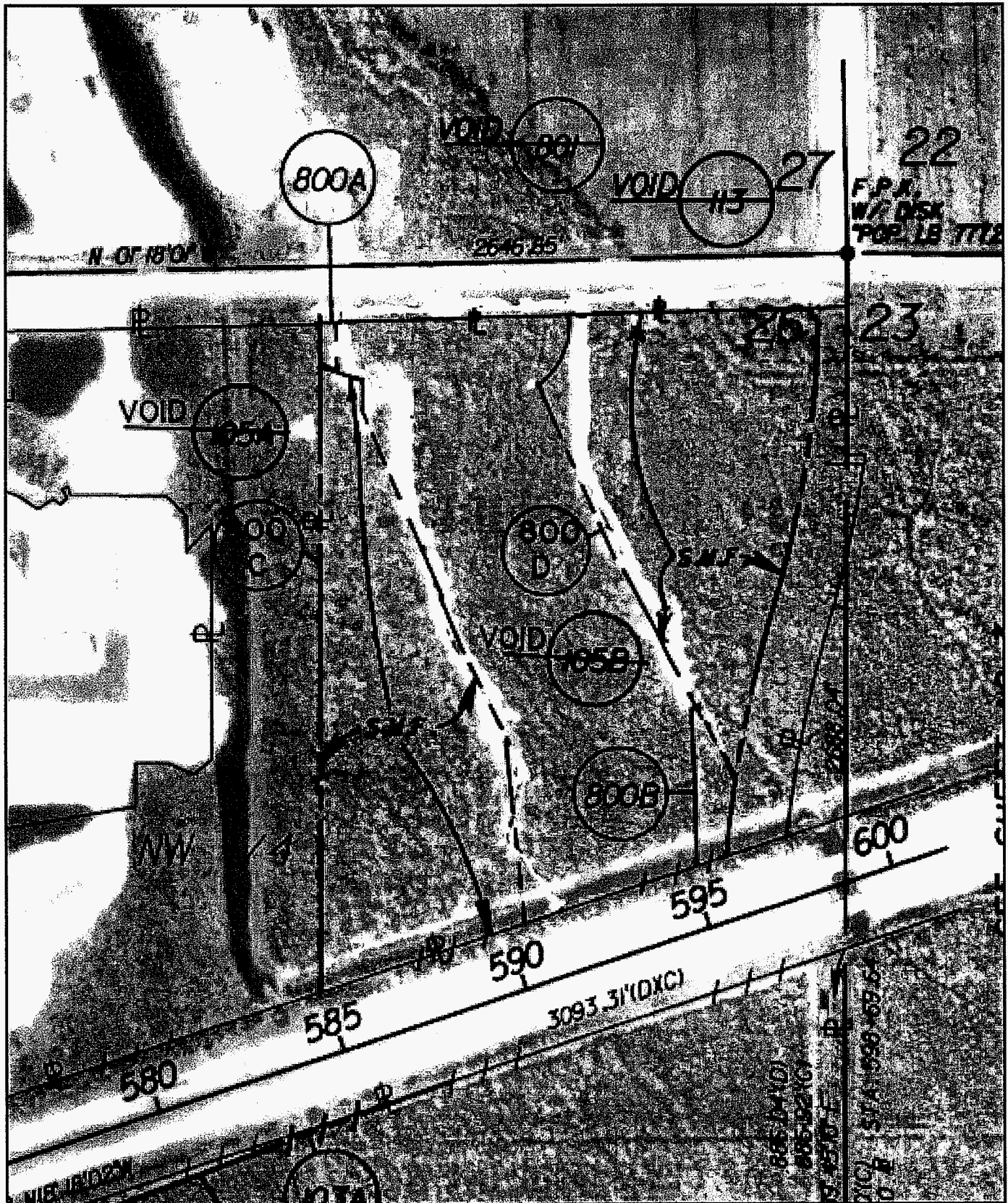
FLA. DEPT. OF TRANS. LEGAL REVIEW:

BY: \_\_\_\_\_  
DATE



**EXHIBIT "A"**  
**County Water Management System**

<b>County Pond Location</b>			
Date	Project No.	Scale	Page
Oct. 2006	N/A	As Shown	14 of 18



<p><b>EXHIBIT "B"</b> ISMS Perpetual Easement</p>	<p><b>Easement Map</b> THIS IS NOT A SURVEY</p>		
	<p>Date Oct. 2006</p>	<p>Project No. 406225-4</p>	<p>Scale As Shown</p>



F.P. NO. 4062254  
SECTION 12075-000  
PARCEL 800

PERPETUAL EASEMENT

A) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 1,432.59 feet; thence South 89°59'59" West a distance of 1,797.30 feet for a POINT OF BEGINNING; thence continue South 89°59'59" West a distance of 102.69 feet to the easterly existing right of way line of Three Oaks Parkway (per Lee County Project No. CN-02-06); thence along said easterly existing right of way line North 01°18'01" West a distance of 50.15 feet; thence leaving said easterly existing right of way line, North 89°34'20" East a distance of 123.03 feet; thence South 20°36'48" West a distance of 54.55 feet to the POINT OF BEGINNING.

Containing 5,706 square feet.

ALSO

B) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 400.75 feet; thence South 88°41'59" West a distance of 169.40 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence leaving said right of way line continue South 88°41'59" West a distance of 431.78 feet; thence North 61°57'14" East a distance of 233.19 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) and the beginning of a curve concave northerly and having a radius of 3,506.50 feet; thence along said southerly line the arc of said curve to the left a distance of 202.90 feet through a central angle of 03°18'55" with a chord bearing South 82°47'12" East to said westerly existing limited access right of way line and the end of said curve; thence along said westerly existing limited access right of way line South 18°18'02" East a distance of 78.33 feet to the POINT OF BEGINNING.

Containing 29,628 square feet.

<b>EXHIBIT "B"</b> ISMS Perpetual Easement	<b>Legal Description</b>			
	Date Oct. 2006	Project No. 406225-4	Scale N/A	Sheet 16 of 18



C) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 850.36 feet; thence leaving said survey base line, South 84°44'28" West a distance of 166.29 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence along said westerly existing limited access right of way line, South 18°18'02" East a distance of 566.17 feet; thence leaving said westerly existing limited access right of way line, South 89°59'59" West a distance of 1,626.67 feet; thence North 20°36'48" East a distance of 127.01 feet; thence North 89°13'39" East a distance of 84.34 feet; thence North 65°20'45" East a distance of 294.50 feet; thence North 69°20'45" East a distance of 315.00 feet; thence North 63°42'59" East a distance of 316.00 feet; thence North 84°44'28" East a distance of 476.12 feet to the POINT OF BEGINNING.

Containing 12.894 acres.

ALSO

D) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

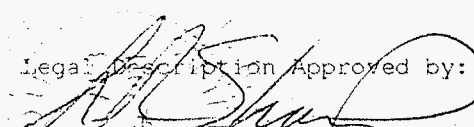
Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 126.24 feet; thence leaving said survey base line, South 61°57'14" West a distance of 350.54 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) for a POINT OF BEGINNING; thence continue South 61°57'14" West a distance of 669.29 feet; thence South 66°54'21" West a distance of 470.84 feet to the beginning of a curve concave southwesterly and having a radius of 120.00 feet; thence along the arc of said curve to the left a distance of 138.31 feet through a central angle of 66°02'25" with a chord bearing North 58°16'40" West to the end of said curve; thence South 88°41'59" West a distance of 60.34 feet to the easterly right of way line of Three Oaks Parkway (per Lee County Project Number CN-02-06); thence along said easterly right of way line North 01°18'01" West a distance of 626.99 feet to the southerly existing right of way line of said Estero Parkway; thence leaving the easterly right of way line of said Three Oaks Parkway run along said southerly line the following three (3) courses: 1) North 44°46'23" East a distance of 29.04 feet to the beginning of a curve concave southerly and having a radius of 2,790.00 feet; 2) thence along the arc of said curve to the right a distance of 747.51 feet through a central angle of 15°21'04" with a chord bearing South 81°13'10" East to the end of said curve and to the beginning of curve concave northerly having a radius of 3,506.50 feet; 3) thence along the arc of said curve to the left a distance of 464.24 feet through a central angle of 07°35'08" with a chord bearing South 77°20'10" East to the end of said courses and to the POINT OF BEGINNING.

Containing 11.502 acres.

<p><b>EXHIBIT "B"</b> ISMS Perpetual Easement</p>	<p><b>Legal Description (Cont.)</b></p>			
	<p>Date Oct. 2006</p>	<p>Project No. 406225-4</p>	<p>Scale N/A</p>	<p>Sheet 17 of 18</p>

Legal Description Approved by:

  
A. R. Sharp, P.E.S. #4388

Date: MARCH 05, 2007

NOT VALID UNLESS EMBOSSED

**EXHIBIT "B"**

**ISMS Perpetual Easement**

**Legal Description (Cont.)**

Date	Project No.	Scale	Sheet
Oct. 2006	406225-4	N/A	18 of 18

**JOINT POND USE AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
LEE COUNTY**

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida (hereinafter, "DEPARTMENT"), whose address is 801 N. Broadway Ave., Bartow, FL 33831, and LEE COUNTY, a political subdivision and Charter County of the State of Florida (hereinafter, "COUNTY,") whose address is P.O. Box 398, Fort Myers, Florida 33902-0398.

**WITNESSETH**

1. WHEREAS, the DEPARTMENT under Fla. Stat. §334.044 , and the COUNTY under Fla. Stat. §125.01, have the authority to enter into and undertake the requirements of this Agreement; and
2. WHEREAS, the DEPARTMENT and the COUNTY possess all the powers and attributes required by South Florida Water Management District (hereinafter, "SFWMD") and the U.S. Army Corps of Engineers (hereinafter, "ACOE") for the DEPARTMENT or the COUNTY to obtain from SFWMD or ACOE an environmental resource permit; and
3. WHEREAS, the DEPARTMENT has constructed or intends to construct improvements to I-75 in Lee County, Florida; and
4. WHEREAS, the COUNTY has constructed or intends to construct improvements to two roadway projects, Three Oaks Parkway, which runs parallel to I-75, and Estero Parkway Extension (hereinafter, "County Projects") in Lee County, Florida; and

5. WHEREAS, the COUNTY requires a stormwater management pond site for its County Projects; and
6. WHEREAS, the COUNTY owns a parcel of land (hereinafter, "Parcel") adjacent to its County Projects, and adjacent to I-75, in Lee County, Florida, as depicted in Exhibit B; the Parcel contains an existing flow-way; and
7. WHEREAS, the COUNTY plans to construct a pond (hereinafter, "COUNTY POND"), located within Portion 800D of the Parcel, as depicted in Exhibit A; and
8. WHEREAS, the COUNTY has granted a conservation easement to SFWMD within the area within the flow-way area of the Parcel, and recorded as a Deed of Conservation Easement on November 29, 2006, as Instrument No. 2006000445582, in the Public Records of Lee County, Florida (hereinafter, "Conservation Easement"); and
9. WHEREAS, the COUNTY obtained a permit from SFWMD and ACOE Permit # 36-05710-P to construct and maintain the COUNTY POND on its Portion 800D to serve as a stormwater management system for its County Projects, as shown in Exhibit A; and
10. WHEREAS, the COUNTY intends to utilize a section of Portion 800D to naturally blend the COUNTY POND with the existing flow-way. The COUNTY POND berm will be planted with vegetation similar to the existing natural features as the flow-way; and
11. WHEREAS, the DEPARTMENT as engendered by the planned or executed improvements to I-75 in LEE County, Florida, requires a stormwater management system for the I-75 improvements; and

12. WHEREAS, the DEPARTMENT would benefit from the incorporation of the DEPARTMENT'S planned stormwater management system with the COUNTY POND; and
13. WHEREAS, in order to serve as a stormwater management system for the County Projects and the DEPARTMENT'S I-75 improvement, incorporation of the DEPARTMENT'S planned stormwater management system with the COUNTY POND requires an increase in the size of the COUNTY POND, and requires construction of a second pond to be located within Portions 800A and 800C. The incorporated stormwater management system will consist of the expanded COUNTY POND, and a second pond to be constructed within Portions 800A and 800C, (hereinafter, the incorporated stormwater management system is the "ISMS"); and
14. WHEREAS, the COUNTY will grant to the DEPARTMENT one non-exclusive perpetual easement, (hereinafter, "Easement") over the area as depicted in Exhibit B, which consists of Portions 800A, 800B, 800C, and 800D within the Parcel for drainage, construction, access and maintenance of the drainage improvements within the area and for construction, access and emergency maintenance of the inflow pipe, control structure and outfall pipe; and
15. WHEREAS, the DEPARTMENT will be required to obtain authorization from SFWMD for any work to be performed within the SFWMD Conservation Easement (Portion 800B); and
16. WHEREAS, the ISMS requires modification of Permit # 36-05710-P from SFWMD and ACOE to increase the size of the COUNTY POND; and
17. WHEREAS, the ISMS requires a new permit from SFWMD and ACOE for construction of a second pond on Portions 800A and 800C within the Easement, as depicted in Exhibit B; and

18. WHEREAS, the COUNTY will provide the DEPARTMENT with authorization to act as its agent to obtain a new permit and permit modification from SFWMD and ACOE, at the DEPARTMENT'S expense; and
19. WHEREAS, the COUNTY, at its expense, will assume responsibility for maintenance of the Easement area; and
20. WHEREAS, the COUNTY, at its expense, will assume responsibility to perpetually maintain and operate the ISMS under the to be modified Permit # 36-05710-P and the to be obtained new permit for construction of a pond within Portions 800A and 800C; and
21. WHEREAS, the DEPARTMENT will pay to the COUNTY the negotiated purchase price for the Easement; and
22. WHEREAS, the DEPARTMENT will be responsible for repairing all damage resulting from an emergency event, including, but not limited to flooding or other natural disasters, to the drainage improvements within the Easement areas for inflow pipe, control structure and outfall pipe; and
23. WHEREAS, the DEPARTMENT will develop Right of Way Maps and legal descriptions depicting the Easement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and representations contained herein, the parties agree as follows:

**I. COUNTY RIGHTS & RESPONSIBILITIES**

1. The COUNTY shall accept, on a perpetual basis, the water runoff from I-75 Right of Way in Lee County, Florida, as defined by the to be modified SFWMD and ACOE Permit # 36-05710-P within Portions 800B and 800D and the to be obtained SFWMD and ACOE permit for the pond within Portions 800A and 800C. The DEPARTMENT'S drainage contribution area for the Pond within Portions 800A and 800C is from station 533+40 to 583+90 and for the Pond within Portions 800B and 800D is from station 583+90 to 626+50.
2. The COUNTY shall grant to the DEPARTMENT a non-exclusive perpetual Easement for the area, as depicted in Exhibit B, for drainage, construction and access within the drainage improvements, and construction, access and emergency maintenance for inflow pipe, control structure and outfall pipe.
3. The COUNTY will assume all responsibilities and expenses for the perpetual operation and maintenance of the Easement area.
4. The COUNTY will assume all responsibilities and expense for the perpetual operation and maintenance of the ISMS except for emergency maintenance of the inflow pipe, control structures and outfall pipe.
5. The County will sign the appropriate section in the South Florida Water Management District Joint Application for Environmental Resource Permit form, designating the Department to act as an authorized agent of the County in obtaining the new permit for the Pond within Portions 800A and 800C.
6. The COUNTY will allow the DEPARTMENT to modify, within the Easement area only, the COUNTY POND under the SFWMD and ACOE Permit # 36-05710-P.

7. SFWMD and ACOE Permit # 36-05710-P shall remain under the COUNTY'S name throughout the entire permit modification process.
8. The COUNTY shall notify the DEPARTMENT of the COUNTY'S aesthetic design plans for the ISMS. That notice will include all aspects of form, aesthetics and function, as well as necessary permit modifications.
9. The COUNTY shall not alter, modify, construct or demolish any aspect of the Easement in any manner which would impact the DEPARTMENT'S use thereof. The COUNTY will obtain SFWMD and ACOE approval of any modifications and forward same to DEPARTMENT prior to any construction.
10. The COUNTY shall not alter, modify, construct or demolish any aspect of the ISMS in any manner which would impact the DEPARTMENT'S use thereof.
11. Upon completion, within the Easement area, of any construction by the DEPARTMENT under any permit(s), the COUNTY shall sign the South Florida Water Management District's "Request for Conversion of District Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity" form, acknowledging they are accepting responsibility for operation and maintenance post-construction.
12. The COUNTY shall have the right and authority to remove and dispose of dirt, rocks, and vegetation within the area identified as the COUNTY POND, as depicted in Exhibit A.



## II. DEPARTMENT RIGHTS & RESPONSIBILITIES

1. The DEPARTMENT has the right, on a perpetual basis, to put its water runoff from I-75 Right of Way in Lee County, Florida, as defined by the to be modified SFWMD and ACOE Permit # 36-05710-P and the to be obtained SFWMD and ACOE permit for the pond within Portions 800A and 800C; the DEPARTMENT'S drainage contribution area for the Pond within Portions 800A and 800C is from station 533+40 to 583+90 and for the Pond within Portions 800B and 800D is from station 583+90 to 626+50
2. The DEPARTMENT, at any time after the Easement has been granted and at its own expense, may pursue and obtain from SFWMD and ACOE modifications to SFWMD and ACOE Permit # 36-05710-P.
3. The DEPARTMENT, at any time after the Easement has been granted, has the right and authority to remove and dispose of dirt, rocks, and vegetation from the Easement for the I-75 Improvements, except for the COUNTY'S rights and authority pursuant to Section I, Paragraph 12 above.
4. The DEPARTMENT, at any time after the Easement has been granted, may design and may construct a new Pond in Portions 800A and 800C or portions thereof, within the limits of the granted Easement area depicted in Exhibit B.
5. The DEPARTMENT, at any time after the Easement has been granted, may design and may modify the COUNTY POND or portions thereof, within the limits of the granted Easement area as depicted in Exhibit B.
6. The DEPARTMENT shall be responsible for the reasonable expenses related to the Engineering fees and other professional fees and expenses, under this Agreement, for the permit modifications.

7. The DEPARTMENT shall be responsible for construction costs incurred by its design for the POND within Portions 800A and 800C and the modification of the COUNTY POND within Portions 800B and 800D.
8. The DEPARTMENT shall be responsible for obtaining authorization from SFWMD for any work to be performed within the SFWMD Conservation Easement.
9. The DEPARTMENT shall be responsible for preparation of the Environmental Resource/Surface Water Management permit and Surface Water Management System Construction Completion Certification form required by SFWMD (hereinafter, "Certification Form").
10. The DEPARTMENT shall be responsible for providing any additional information/data required to complete the certification form. The DEPARTMENT will ensure that the Engineer overseeing construction within the Easement area prepares, signs and seals a set of as-built plans for completion of the Certification Form.
11. The DEPARTMENT, at its expense, will develop Right of Way Maps and legal descriptions for the Easement as depicted in Exhibit B.
12. The DEPARTMENT will be responsible for repairing all damage resulting from an emergency event, including, but not limited to flooding or other natural disasters, to the drainage improvements within the Easement area for inflow pipe, control structure and outfall pipe.
13. The DEPARTMENT will obtain authorization from SFWMD for any work to be performed within the area (Portion 800B) that is covered by the Deed of Conservation Easement recorded on November 29, 2006, as Instrument No. 2006000445582, in the Public Records of Lee County, Florida.

### III. EASEMENTS

1. The COUNTY will grant to the DEPARTMENT a non-exclusive Easement for the areas depicted in Exhibit B over Portions 800A, 800B, 800C and 800D.
2. The DEPARTMENT will pay the purchase price of **SEVEN MILLION ONE HUNDRED TWENTY EIGHT THOUSAND DOLLARS (\$7,128,000.00)** to the COUNTY for the Easement.
3. The DEPARTMENT, at its own expense, shall record in the official public records of Lee County, Florida, the Easement, in its entirety, within fourteen (14) days after receipt and shall provide to the COUNTY, within ten (10) days following the recordation, a true and correct copy of the recorded easement in its entirety, including references to the recording date and Instrument Number at which the easement has been recorded. The recorded Easement shall become a part of this agreement.
4. The COUNTY agrees to take no action to inhibit or diminish the use, and/or access and/or accessibility enjoyed by the DEPARTMENT to said Easement.
5. The DEPARTMENT agrees to take no action or inhibit or diminish the use and/or access and/or accessibility enjoyed by the COUNTY to said Easement area.

### IV. COSTS

1. At no time and under no circumstance shall the DEPARTMENT be responsible to pay or reimburse the COUNTY the costs they or their agents may have incurred in the inspection or maintenance of the Easement area.

2. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year, except if the DEPARTMENT subsequently modifies its pond(s). Any contract, oral or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

#### **V. LIABILITY**

1. The DEPARTMENT and the COUNTY shall each be responsible for the negligent acts, events, or omissions of action of their own respective officers, employees, or agents, and their successors and assigns, arising from or resulting in any contamination or pollution entering the Easement area, to the extent provided by law. Nothing herein shall be construed to waive any rights, in law or equity that the DEPARTMENT or the COUNTY has or may have against third parties for the acts of such third parties resulting in contamination or pollution of the properties of the DEPARTMENT, the COUNTY, or the Easement area.
2. Except during any time of construction and within any area under construction in the Easement by the DEPARTMENT, the COUNTY shall retain responsibility for the liability of the entire Easement area.

## VI. GENERAL PROVISIONS

1. The DEPARTMENT may unilaterally cancel or terminate this Agreement, whether in whole or in part, at any time the interest of the DEPARTMENT would require such cancellation or termination; the DEPARTMENT shall pay to the COUNTY any remaining cost or expense owed to the COUNTY and incurred under this Agreement.
2. It is understood by the parties that nothing contained in this Agreement shall be construed to constitute any party as the partner, agent, joint venture, employee, consultant, or legal representative of the other, or to create any fiduciary relationship between them. No party shall have the authority to bind the other party to any obligation whatsoever to any third party without the express specific written consent of the other.
3. Unless otherwise specifically stated herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
4. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

5. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree there are no commitments, agreements or understandings concerning the subject matter of this Agreement not contained in this document. Accordingly, it is agreed no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
6. No failure or a succession of failures on the part of the DEPARTMENT to enforce any provision of this Agreement shall operate as a waiver or discharge thereof, render the same provision inoperative, or impair the right of the DEPARTMENT to enforce the same provision.

**VII. ASSIGNMENT**

1. Neither this Agreement nor any of the rights, interests or obligations arising hereunder shall be assigned or transferred by the COUNTY without the written consent of all parties.
2. Neither this Agreement nor any of the rights, interests or obligations arising hereunder shall be assigned or transferred by the DEPARTMENT without the written consent of all parties.

**VIII. EXHIBITS**

1. All Exhibits referenced and/or attached to this Agreement are incorporated into and made part of this Agreement.

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>Page</b>
Exhibit A	County Pond on Parcel 800D	2, 6, 14
Exhibit B	Second Pond on Parcel 800A and 800C	2, 3, 5, 7, 8, 9

IN WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed in its behalf, by the Chairman of the Board of County Commissioners or its designee, as authorized by **Resolution Number** \_\_\_\_\_, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized designee. This Agreement shall become effective upon execution by both parties.

**LEE COUNTY, FLORIDA**

ATTEST  
CHARLIE GREEN, CLERK

BY ITS BOARD OF  
COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
DEPUTY CLERK

BY: \_\_\_\_\_  
CHAIRMAN OR VICE CHAIRMAN

\_\_\_\_\_  
PRINT NAME DATE

\_\_\_\_\_  
PRINT NAME DATE

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY

BY: \_\_\_\_\_  
COUNTY ATTORNEY DATE

**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**

ATTEST

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME

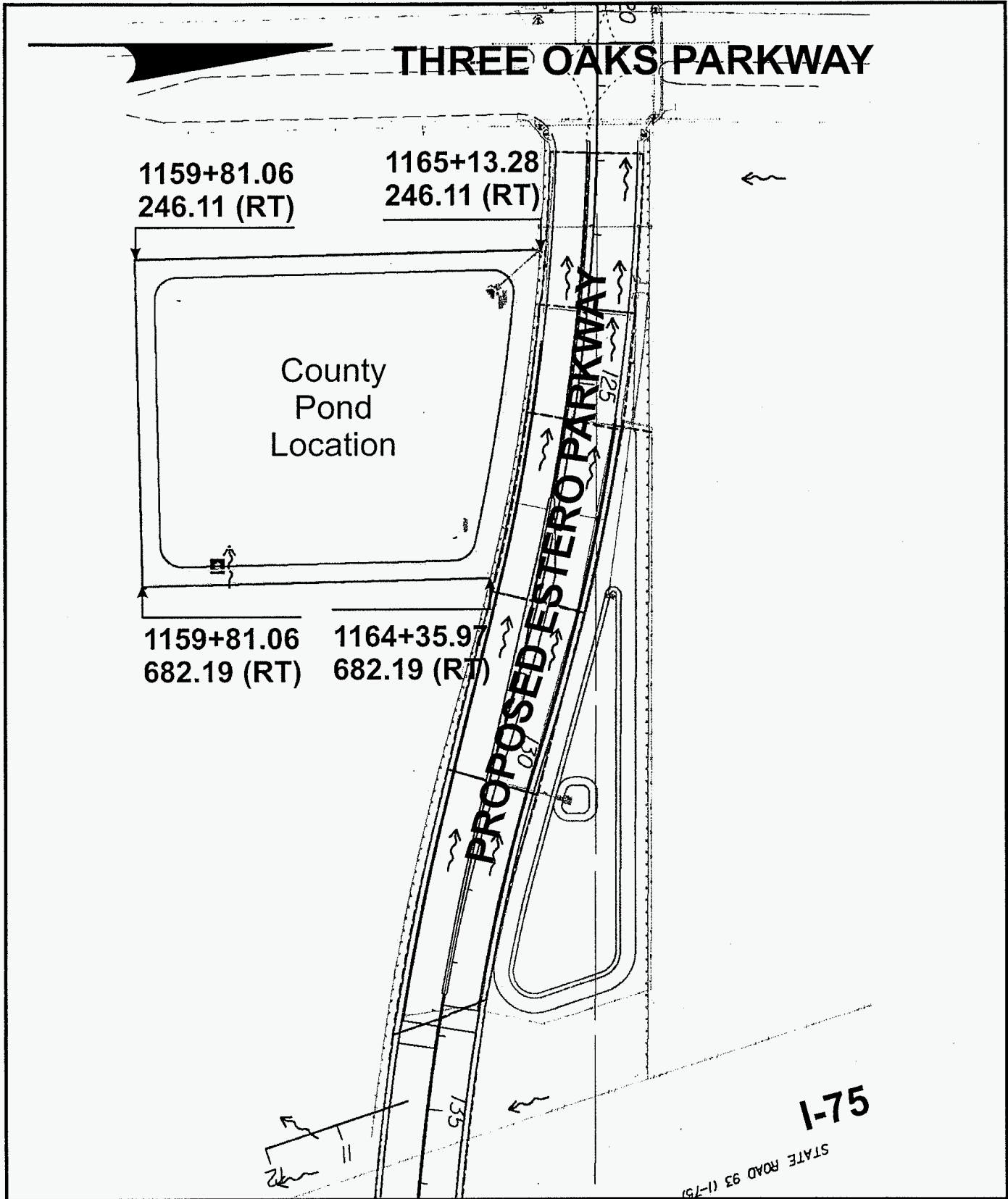
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PRINT NAME

\_\_\_\_\_  
TITLE DATE

\_\_\_\_\_  
TITLE DATE

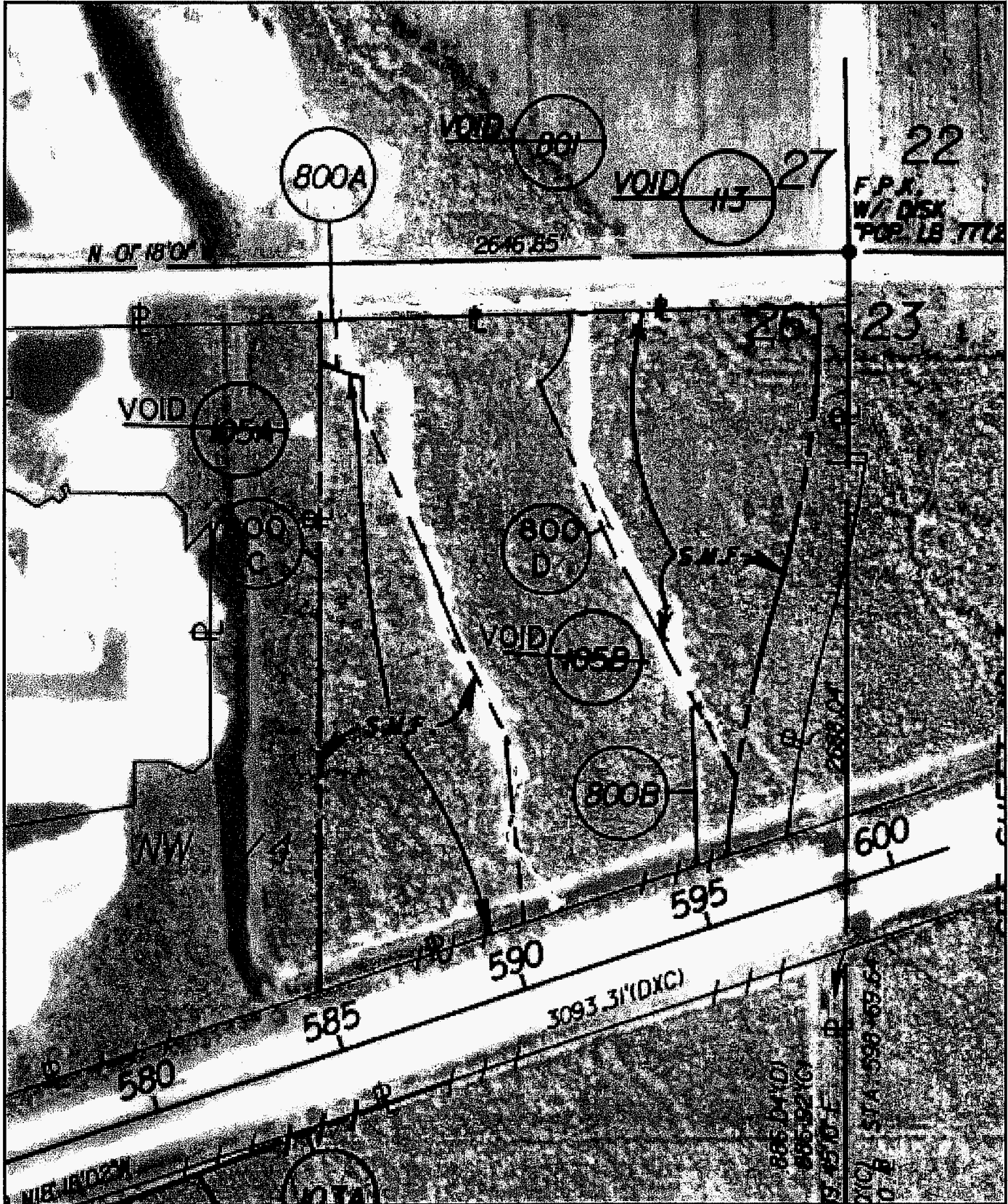
FLA. DEPT. OF TRANS. LEGAL REVIEW:

BY: \_\_\_\_\_  
DATE



<b>EXHIBIT "A"</b> County Water Management System	<b>County Pond Location</b>		
	Date Oct. 2006	Project No. N/A	Scale As Shown





**EXHIBIT "B"**  
**ISMS Perpetual Easement**

**Easement Map**  
 THIS IS NOT A SURVEY

Date	Project No.	Scale	Sheet
Oct. 2006	406225-4	As Shown	15 of 18

F.P. NO. 4062254  
SECTION 12075-000  
PARCEL 800

PERPETUAL EASEMENT

A) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 1,432.59 feet; thence South 89°59'59" West a distance of 1,797.30 feet for a POINT OF BEGINNING; thence continue South 89°59'59" West a distance of 102.69 feet to the easterly existing right of way line of Three Oaks Parkway (per Lee County Project No. CN-02-06); thence along said easterly existing right of way line North 01°18'01" West a distance of 50.15 feet; thence leaving said easterly existing right of way line, North 89°34'20" East a distance of 123.03 feet; thence South 20°36'48" West a distance of 54.55 feet to the POINT OF BEGINNING.

Containing 5,706 square feet.

ALSO

B) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

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Containing 29,628 square feet.

<b>EXHIBIT "B"</b> <b>ISMS Perpetual Easement</b>	<b>Legal Description</b>		
	Date Oct. 2006	Project No. 406225-4	Scale N/A

C) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

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Containing 12.894 acres.

ALSO

D) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 126.24 feet; thence leaving said survey base line, South 61°57'14" West a distance of 350.54 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) for a POINT OF BEGINNING; thence continue South 61°57'14" West a distance of 669.29 feet; thence South 66°54'21" West a distance of 470.84 feet to the beginning of a curve concave southwesterly and having a radius of 120.00 feet; thence along the arc of said curve to the left a distance of 138.31 feet through a central angle of 66°02'25" with a chord bearing North 58°16'40" West to the end of said curve; thence South 88°41'59" West a distance of 60.34 feet to the easterly right of way line of Three Oaks Parkway (per Lee County Project Number CN-02-06); thence along said easterly right of way line North 01°18'01" West a distance of 626.99 feet to the southerly existing right of way line of said Estero Parkway; thence leaving the easterly right of way line of said Three Oaks Parkway run along said southerly line the following three (3) courses: 1) North 44°46'23" East a distance of 29.04 feet to the beginning of a curve concave southerly and having a radius of 2,790.00 feet; 2) thence along the arc of said curve to the right a distance of 747.51 feet through a central angle of 15°21'04" with a chord bearing South 81°13'10" East to the end of said curve and to the beginning of curve concave northerly having a radius of 3,506.50 feet; 3) thence along the arc of said curve to the left a distance of 464.24 feet through a central angle of 07°35'08" with a chord bearing South 77°20'10" East to the end of said courses and to the POINT OF BEGINNING.

Containing 11.502 acres.

<b>EXHIBIT "B"</b> ISMS Perpetual Easement	<b>Legal Description (Cont.)</b>		
	Date Oct. 2006	Project No. 406225-4	Scale N/A

Legal Description Approved by:

  
a. R. Sharp, P.E.S. #4388

Date: MARCH 05, 2007

NOT VALID UNLESS EMBOSSED

## EXHIBIT "B"

ISMS Perpetual Easement

## Legal Description (Cont.)

Date	Project No.	Scale	Sheet
Oct. 2006	406225-4	N/A	18 of 18

07-PE.11-06/93

Date: February 8, 2007  
This instrument prepared  
under the direction of:  
Bruce P. Cury, General Counsel  
Post Office Box 1249  
City: Bartow, Florida 33830  
Department of Transportation

F.P. NO. 4062254  
PARCEL 800.1  
SECTION 12075-000  
STATE ROAD 93 (I-75)  
COUNTY Lee

**PERPETUAL EASEMENT**

THIS EASEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20 07, by LEE County, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee, whose post office address is: Post Office Box 1249, Bartow, Florida 33831-1249.

WITNESSETH: That the grantor for and in consideration of the sum of One Dollar and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a non-exclusive perpetual easement for the purpose of constructing and maintaining stormwater management facilities, ditches and all associated structures in, over, under, upon and through the following described land in Lee County, Florida, viz:

**SEE EXHIBIT "A"**

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever.

THIS EASEMENT is in conjunction with the Joint Pond Use Agreement between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION and LEE County, a political subdivision of the State of Florida, executed on \_\_\_\_\_.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST: \_\_\_\_\_ (SEAL)

Clerk(or Deputy Clerk)

Lee \_\_\_\_\_ County,  
Florida,  
By Its Board of County  
Commissioners

\_\_\_\_\_  
Name: (SEAL)

Its Chairperson  
(or Vice-Chairperson)

Grantor(s)' Mailing Address:

c/o Division of County Lands

P.O. Box 398

Ft. Myers, FL 33902-0398

F.P. NO. 4062254

SECTION 12075-000

PARCEL 800

A) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 1,432.59 feet; thence South 89°59'59" West a distance of 1,797.30 feet for a POINT OF BEGINNING; thence continue South 89°59'59" West a distance of 102.69 feet to the easterly existing right of way line of Three Oaks Parkway (per Lee County Project No. CN-02-06); thence along said easterly existing right of way line North 01°18'01" West a distance of 50.15 feet; thence leaving said easterly existing right of way line, North 89°34'20" East a distance of 123.03 feet; thence South 20°36'48" West a distance of 54.55 feet to the POINT OF BEGINNING.

Containing 5,706 square feet.

ALSO

B) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 400.75 feet; thence South 88°41'59" West a distance of 169.40 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence leaving said right of way line continue South 88°41'59" West a distance of 431.78 feet; thence North 61°57'14" East a distance of 233.19 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) and the beginning of a curve concave northerly and having a radius of 3,506.50 feet; thence along said southerly line the arc of said curve to the left a distance of 202.90 feet through a central angle of 03°18'55" with a chord bearing South 82°47'12" East to said westerly existing limited access right of way line and the end of

Containing 29,628 square feet.

C) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 850.36 feet; thence leaving said survey base line, South 84°44'28" West a distance of 166.29 feet to the westerly existing limited access right of way line of said State Road 93 (per Section 12075-2402) for a POINT OF BEGINNING; thence along said westerly existing limited access right of way line, South 18°18'02" East a distance of 566.17 feet; thence leaving said westerly existing limited access right of way line, South 89°59'59" West a distance of 1,626.67 feet; thence North 20°36'48" East a distance of 127.01 feet; thence North 89°13'39" East a distance of 84.34 feet; thence North 65°20'45" East a distance of 294.50 feet; thence North 69°20'45" East a distance of 315.00 feet; thence North 63°42'59" East a distance of 316.00 feet; thence North 84°44'28" East a distance of 476.12 feet to the POINT OF BEGINNING.

Containing 12.894 acres.

ALSO

D) That portion of the northwest 1/4 of Section 26, Township 46 South, Range 25 East, Lee County, Florida.

Being described as follows:

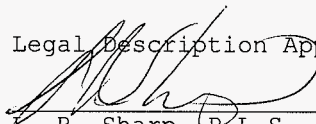
Commence at the northeast corner of the northwest 1/4 of said Section 26; thence along the north line of said Section 26, North 89°45'10" West a distance of 1,056.80 feet to the survey base line of State Road 93 (I-75); thence along said survey base line South 18°18'02" East a distance of 126.24 feet; thence leaving said survey base line, South 61°57'14" West a distance of 350.54 feet to the southerly existing right of way line of Estero Parkway (per Lee County Project Number 5021) for a POINT OF BEGINNING; thence continue South 61°57'14" West a distance of 669.29 feet; thence South 66°54'21" West a distance of 470.84 feet to the beginning of a curve concave southwesterly and having a radius of 120.00 feet; thence along the arc of said curve to the left a distance of 138.31 feet through a central angle of 66°02'25" with a chord bearing North 58°16'40" West to the end of said curve; thence South 88°41'59" West a distance of 60.34 feet to the easterly right of way line of Three Oaks Parkway (per Lee County Project Number CN-02-06); thence along said easterly right of way line North 01°18'01" West a distance of 626.99 feet to the southerly existing right of way line of said Estero Parkway; thence leaving the easterly right of way line of said Three Oaks



curve and to the beginning of curve concave northerly having a radius of 3,506.50 feet; 3) thence along the arc of said curve to the left a distance of 464.24 feet through a central angle of 07°35'08" with a chord bearing South 77°20'10" East to the end of said courses and to the POINT OF BEGINNING.

Containing 11.502 acres.

Legal Description Approved by:

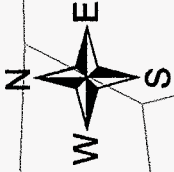


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L. R. Sharp P.L.S. #4388

Date: February 8, 2007

NOT VALID UNLESS EMBOSSED



**BEN HILL GRIFFIN PKWY**

**SUBJECT  
PROPERTIES**

**I-75**

2646250000012000

2646250000012010

**THREE OAKS PKWY**

**ESTERO PKWY**

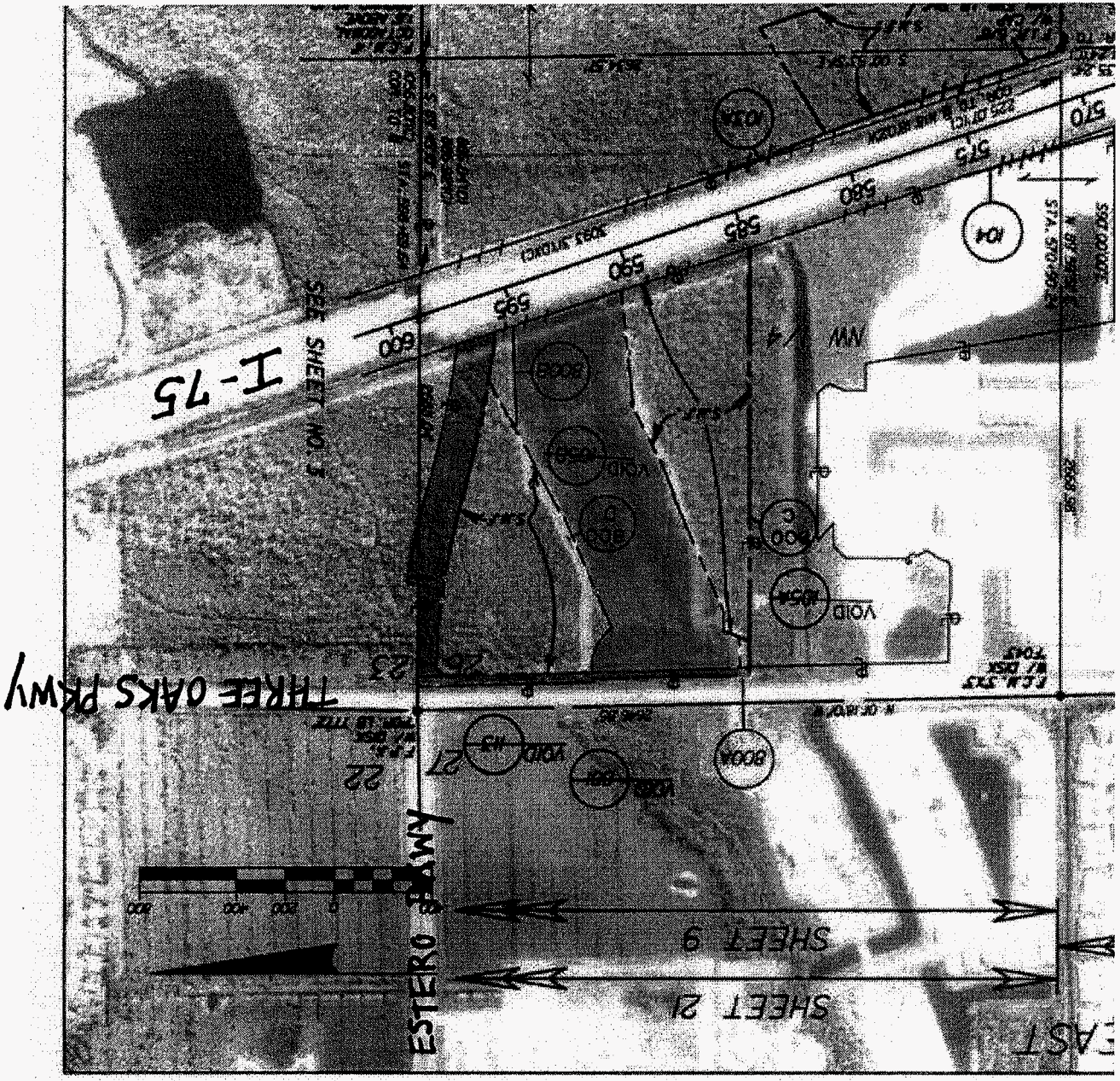




THREE OAKS / ESTERO  
PKWYS RIGHT-OF-WAY

MITIGATION AREA  
(CONSERVATION EASEMENT)

FDOT EASEMENT AREA





## REVIEW APPRAISER'S REPORT

State of Florida Department of Transportation

PARCEL NO.	ITEM/SEGMENT	F.A.P. NO.	MANAGING DISTRICT	COUNTY
800	4062254	N/A	One	Lee

**Part A.**

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions, and conclusions. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- I have no present or prospective interest or bias in the property that is the subject of this report, and no personal interest or bias with respect to the parties involved.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use. My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I did personally inspect the subject property but did not inspect the comparable sales used in the appraisal report to which this RAR is attached. Field inspection of the subject property took place on April 25, and August 15, 2006. I was accompanied during the inspection by the following named person(s): Robin Clark, DDRWM, A, and Stephen Jones, Senior Appraiser.
- Value estimates of items compensable under state law have been clearly identified below, as appropriate.
- Each appraiser's value estimate and my recommended compensation are as stated.
- Unless stated, no one provided significant appraisal, appraisal review, or appraisal consulting assistance to the person signing this certification. (If other persons provided significant professional assistance, they must be identified in Part B (attached)).

	1 105/800	2 105/800	3 (105 voided) 800
<b>PURPOSE</b>	FDOT-Negotiation (y)	FDOT- Negotiation (y)	FDOT – Negotiation (y)
<b>APPRAISER</b>	Nicholas Truncone, MAI	Patricia A. Silverthorn, MAI, SRA	Patricia A. Silverthorn, MAI, SRA
<b>DATE OF REPORT</b>	March 10, 2006	May 3, 2006	August 30, 2006
<b>DATE OF VALUE</b>	February 28, 2006	May 3, 2006	August 15, 2006
<b>AREA OF TAKE</b>	24.622 AC / 38,338 SF	24.622 AC / 38,338 SF	24.396 Acres (800C&D only)
<b>LAND</b>	\$5,980,000 / \$136,000	\$6,291,000 / \$143,250	\$5,547,000
<b>IMPROVEMENTS</b>	-0- / -0-	-0- / -0-	-0-
<b>DAMAGES</b>	\$1,676,700 / -0-	\$1,764,600 / -0-	\$1,566,300
<b>APPRAISAL TOTAL</b>	\$7,656,700 / \$136,000	\$8,055,600 / \$143,250	\$7,113,300
<b>LAND USE</b>	Vacant Residential PUD	Vacant Residential PUD	Vacant Residential PUD
<b>REVIEWER</b>	D. K. Richardson, PhD, MAI, AICP	Patricia A. Silverthorn, MAI, SRA	Gregory C. Bowne

\*Purpose: Indicate whether FDOT or Owner's report and which purpose: Negotiation, Order of Taking, Date of Deposit, Surplus (i.e. FDOT Neg.)

\*\*Land Use: Identify the highest and best use as reported by the appraiser.

**RECOMMENDED COMPENSATION: Parcel 800 - \$7,128,000**

**ALLOCATION: Parcel 800 - LAND: \$5,547,000 IMPROVEMENTS: -0- DAMAGES: \$1,581,000 (s)**

<del>Value of Acquisition Including Uneconomic Remainder</del>		Reviewer Signature: <i>Patricia A. Silverthorn</i> Date: 1/22/07
Land Area:	Partial/Whole (PW)	Reviewer Name: Patricia A. Silverthorn, MAI, SRA State Certified General R.E. Appraiser #RZ396
Land:	\$	<input checked="" type="checkbox"/> Adm. Reviewer: <i>[Signature]</i> Date: 1/22/07
Improvements:	\$	Comments: Robin A. Clark, DDRWM, A
Damages and/or Cost to Cure:	\$	<b>RECEIVED</b> JAN 27 2007 1ST DIST. DOT
Total:	\$	

DDRWM-A Concurrence:

**REVIEW APPRAISER'S REPORT**

Item/Segment Number: 4062254

Parcel No.: 800

RWMS DATA ENTRY		
Type of Appraisal*	SC	Indicate the amount between this recommended compensation and the previous, if any: Divergence: \$14,700. Brief reason for divergence: Size of total easements incorrect on draft maps for RAR completed on August 30, 2006. Inclusion of permanent easements for 800 A & B resulted in increased damage to the remainder. Relate to Real Estate Interests: Review Appraiser to check applicable statement(s): <input checked="" type="checkbox"/> Appraised amounts include <b>all</b> interests (including the fee owner's, easement holder's, and any tenant owned improvements for this parcel.) <input type="checkbox"/> Appraised amounts <b>exclude certain tenant owned improvements</b> or other real estate interests for this parcel. Excluded interests are: _____ <input type="checkbox"/> This appraisal is <b>not</b> recommended for compensation. Leave appraisal review amounts blank in the RWMS system. Leave compensation determined date blank in RWMS system. <input type="checkbox"/> This appraisal is approved for <b>payment only</b> .
Size (Ac./sq. ft) of Uneconomic Remnant(s), if any.	N/A	
Value of Uneconomic Remnant(s), if any.	N/A	
Complexity (Optional)** Scale	3	

Note: Enter the size and value of the uneconomic remnant itself, if any. (This is not a summation of the acquisition and the remnant.) Just the remnant area and value should be shown in the RWMS data entry box. The sum of the acquisition and the remnant(s), if any should be shown on the previous page.

\* Summary Complete (SC), Summary Limited (SL), Self-Contained Complete (SCC), Self-Contained Limited (SCL), Restricted-Complete (RC), Restricted Limited (RL).

\*\* See RWMS User's Manual for complexity scale & descriptions.

	4 (105 voided) 800A,B,C&D	5	6
PURPOSE*	FDOT - NEGOTIATION (Y)		
APPRAISER:	Patricia A. Silverthorn, MAI, SRA		
DATE OF REPORT	January 22, 2007		
DATE OF VALUE	August 15, 2006		
AREA OF TAKE	25.207 Acres (includes 800A & B)		
LAND	\$5,547,000		
IMPROVEMENTS	-0-		
DAMAGES	\$1,581,000		
APPRAISAL TOTAL	\$7,128,000		
LAND USE**	Vacant Residential - PUD		
REVIEWER	Robin A. Clark, DDRWM,A		

\*Purpose: Indicate whether FDOT or Owner's report and which of the following purposes: Negotiation, Order of Taking, Date of Deposit, Surplus (i.e. FDOT Neg.)

\*\*Land Use: Identify the highest and best use as vacant as reported by the appraiser.

## REVIEW APPRAISER'S REPORT

Item/Segment Number: 4062254

Parcel No.: 800

### Part B. Review Appraiser's Report of reasoning in conformance with current R/W Procedures:

#### I. INTRODUCTION:

The client for this Review Appraiser's Report (RAR) is the Florida Department of Transportation. The intended users are various Department employees who will use the RAR for valuation purposes in the process of acquiring necessary rights of way. Parcel s105A and B were voided, and the taking for the two Storm Water Retention areas, 800C and 800D, are to be permanent easements, in favor of FDOT. When the draft R/W maps were presented to this appraiser, the calculations for 800A and B were not included in the total size of 24.396 acres. **The area to be acquired has been corrected from 24.396 to 25.207 acres.** The 0.811 acre increase consists of the combined taking areas of 800A and 800B, which will be used for underground piping and access to the FDOT ponds. Although the compensation for the takings of 800A and B were included in the value of the part taken, the damage to the remainders of these two areas was missed, as they were not added into the calculation of the total parent tract, and hence the remainder valuation and subsequent damage, was less than it should have been. The RAR is prepared for correction purposes.

The original negotiation purpose appraisal report was prepared by Nicholas Truncone, MAI, with a date of value of February 28, 2006. It was approved for the Department's use by Robin A Clark, Appraisal Project Reviewer. This RAR is attached to the approved appraisal report by Mr. Truncone; the Review Appraiser's Statement (RAS) prepared by Dan K. Richardson, PhD, MAI, AICP, Review Consultant, dated April 15, 2006; the Project Reviewer's statement of Recommended Compensation dated April 26, 2006; the RAR used to update the values for changing market conditions, on May 3, 2006; and the RAR prepared on August 30, 2006 due to the change in fee taking to permanent easements.

*This RAR is a "Limited Appraisal Assignment", as requested by the client, and intended for use solely by the client. As such, it is NOT a stand alone document, and may only be relied upon by those thoroughly familiar with the Summary Complete Appraisal Report, RAS, and RARs to which it is attached.*

#### II. VALUATION ANALYSIS:

The original appraisal report, subsequent updates, and RAR were based on a parent tract size of 47.709 acres, of which 16.415 acres was designated as upland area. The property was purchased by Lee County, via two separate transactions: 44.02 acres in December 2004 for \$5,340,000; and 3.67 acres in September 2005 for \$2,411,000. Total purchase price was \$7,751,000 or \$162,529 per acre or \$61,515 each, for 126 approved residential units. The two purchases indicate a parent tract size of 47.690 acres, which is slightly less than indicated on the original R/W maps of 47.709 acres.

According to the County's records, 1.327 acres, located along the west property line, were dedicated for use by the proposed "Three Oaks Parkway", and should not have been included as part of the parent tract. The R/W maps were revised on July 14, 2006, to reflect the change in the size of the parent tract and the size of the takings for the Department's Storm Water Management Facilities (SMF), Parcels 105A and B. The dedicated area was composed entirely of upland, therefore, the upland size was decreased by 1.327 acres, or to 15.088 acres, and the total indicated parent tract contains 46.355 acres according to the latest R/W maps.

**REVIEW APPRAISER'S REPORT**

Item/Segment Number: 4062254

Parcel No.: 800

The Department and the County have agreed to a "joint use" of the proposed northern most FDOT pond, Parcel 105B, and to change the fee takings to permanent easements for both of the SMF ponds. Hence, Parcels 105A and B were voided, and Parcel 800 now consist of four takings: 800A for access to pond 800C; 800B for an under ground pipe, drainage structure and access to pond 800D; 800C for the SMF pond located along the south property line; and 800D for the "joint-use" pond, located in the northern section of the parent tract. Parcel 800D will be parallel with the proposed Estero Parkway, running east to west, and abutting the extension of Three Oaks Parkway, on the west property line.

The subject property was part of a large, approved DRI known as Corlco Villages. The original subject site, containing 47.682 acres, was approved for 126 residential units, or 2.64 units per acre. There was a density transfer from the wetland on the property, approximate to 1 unit per wetland acre. The subsequent dedication of 1.327 acres, results in a decrease from 126 to 122 units (1.327 acres X 2.64 units/acre = 3.5 or 4 buildable units). Using the most current R/W maps, the indicated parent tract presently contains 46.355 acres. The previous value per unit of \$61,515 was updated in August to \$68,380 per unit.

**Before Value**

Land: 122 units at \$68,380/Unit = \$8,342,360	Say \$8,343,000
Improvements, none, vacant land	<u>-0-</u>
Total Indicated Value before the Taking	<b>\$8,343,000</b>
(46.355 Acres or \$179,980/Acre or \$4.13/Square Foot)	

**Value of Part Acquired**

The proposed takings are all permanent easements and as such will prevent construction of any residential or other permanent buildings or site improvements on the part acquired. Parcels 800A and 800B are very small takings in areas primarily designated as wetlands. Parcels 800C and 800D are takings primarily from the upland areas, which could have been developed. It was concluded in the original report by appraiser Truncone, based on a parent tract of 47.682 acres, that 92 residential units would be eliminated by these two takings for Parcels 105A and B, now known as Parcels 800C and D. According to Lee County officials, 1.327 acres of the upland located in the area to be acquired, were dedicated for the extension of Three Oaks Parkway. This results in the loss of uplands and approximately 4 buildable units. Therefore, the takings of Parcels 800C and D, containing 12.894 acres and 11.502 acres, will eliminate 88 buildable units. **It should be noted that the sizes of the take and number of units acquired was correctly calculated in the August 30, 2006, RAR. Therefore, the value of the part acquired has not changed.**

Parcels:			
800A	5,706 square feet X \$4.13/SF X .90 =	\$ 21,209	
800B	29,628 square feet X \$4.13/SF X .90 =	110,127	
800C & D	88 residential units X \$68,380/unit X .90 =	<u>5,415,696</u>	
		\$ 5,547,032	Say \$5,547,000
Total Indicated Value of Land Acquired			<b>\$5,547,000</b>

**REVIEW APPRAISER'S REPORT**

Item/Segment Number: 4062254

Parcel No.: 800

**Value of the Remainder as Part of the Whole**

Before Value	\$8,343,000
Less Part Acquired for Parcels 800A,B,C & D	<u>5,547,000</u>
Remainder as Part of the Whole	\$2,796,000

**Value of the Remainder as Severed**

The unencumbered remainder will consist of 21.148 acres, which are primarily wetlands and per County Officials, proposed to be used as a "Flow-Way Easement," given in favor of the South Florida Water Management District, for mitigation of lands used for Three Oaks Parkway. This area is to be planted with exotics and various flowers and shrubbery, and available for use by the public as a nature trail. The only structures allowed on the site will be "board walks". This proposed Flow-Way easement is considered similar to a "conservation" easement and as such, has inherent value to the public for its use. Numerous articles have been published over the years such as "The New Non-Economics: Public Interest Value, Market Value, and Economic Use" by Bill Mundy, MAI, PhD and William N. Kinnard, Jr., MAI, PhD, and contained in The Appraisal Journal, in April 1998. Per the article, "whether real estate is put to an economic use has absolutely nothing to do with its utility, scarcity, exchange price, most productive use, or market value...Non-economic uses must be considered a potential highest and best use for truly unusual natural lands...The fact that such properties are extremely rare makes them valuable and limits the scope of the market". "Valuing Scenic Land Conservation Easements" by James H. Boykin, MAI, SRA, PhD, published in The Appraisal Journal in October, 2000 states "As a percentage of unencumbered fee value, the broad opinion is that a conservation easement can range from 25%-85%..(T)he majority of easements are acquired at 40%-60% of fee".

The highest and best use for the subject unencumbered remaining 21.148 acres, is its proposed use, as a "Flow-Way Easement", preserved for use by the public. Based on the data available and this analysis, I have concluded the market value of this remainder area, is 20% of the fee value. This is consistent with other FDOT takings of conversation-easement, encumbered areas along the I-75 corridor for this and adjoining projects.

The encumbered remainder, containing 25.207 acres, will be used for water retention ponds, drainage structures and access. The County intends to build a pond for the drainage of Three Oaks Parkway, in the northwest corner of the site, which is also the area to be acquired for Parcel 800D. This will be a joint-use, water retention facility. The County will construct its pond, and the Department will enlarge the pond for its use when needed for I-75. Parcel 800C will also be used for the Department's SMF facility. Parcels 800A and B will be used for access and drainage structures. The encumbered areas are not intended to be available for use by the public. The estimated value of the taking is 90% of the unencumbered fee value, therefore, the value of the remaining encumbered 25.207 acres is 10% of the fee.

21.148 Encumbered Flow-Way acres X \$179,980/acre X .20 =	\$761,243
25.207 FDOT Encumbered acres X \$179,980/acre X .10 =	<u>453,676</u>
<b>46.355 total acres</b>	<b>\$1,214,919, Say \$1,215,000</b>

Indicated Value of the Remainder as Severed **\$1,215,000**



**REVIEW APPRAISER'S REPORT**

Item/Segment Number: 4062254

Parcel No.: 800

**Damages to the Remainder**

Value of the Remainder as Part of the Whole	\$2,796,000
Value of the Remainder as Severed	<u>1,215,000</u>
Indicated Damage to the Remainder	<b>\$1,581,000</b>

**Note: the damage to the remainder has increased over that of the previous RAR prepared on August 30, 2006, because the draft R/W maps used at that time stated a smaller area encumbered by the FDOT easements of 24.396 acres, instead of 25.207 acres. This RAR is a correction of that error, and based on 25.207 encumbered acres; hence the damage has increased from \$1,566,300 to \$1,581,000.**

**III. CONCLUSION:**

**Summary of Compensation**

Land Taken	\$5,547,000
Damage	<u>1,581,000</u>
	<b>\$7,128,000</b>

**IV. DIVERGENCY:**

The divergence between this latest RAR and the previous RAR dated August 30, 2006 is due to the inclusion of the acreage damaged for permanent easements 800A and 800B, hence the increase in damage to the remainders of \$14,700.

**A SUMMARY, COMPLETE APPRAISAL**

**FINANCIAL MANAGEMENT NO.:** 4062254  
**SECTION/JOB NO.:** 12075-000  
**PARCEL NO.:** 105/800  
**STATE ROAD:** 93 [INTERSTATE 75]  
**COUNTY:** LEE

**LOCATED ALONG**

**THE WEST LIMITED-ACCESS R/W OF I-75 AND  
ALONG THE EAST SIDE OF THREE OAKS PARKWAY  
OPPOSITE ESTERO PARKWAY  
±5,000 FT NORTH OF CORKSCREW ROAD  
UNINCORPORATED SOUTH FORT MYERS AREA OF  
LEE COUNTY, FLORIDA**

**OWNED BY:**

**LEE COUNTY  
PO BOX 398  
FORT MYERS, FLORIDA 33902**

**AS OF:  
FEBRUARY 28, 2006**

**FILE NUMBER: 05922600**

**PREPARED FOR**

**MR. GREG BOWNE, DEPUTY DISTRICT RIGHT OF WAY MANAGER  
FLORIDA DEPT. OF TRANSPORTATION, DISTRICT 1  
PO BOX 1249  
BARTOW, FLORIDA 33831-1249**

**PREPARED BY**

**NICHOLAS TRUNCONE, MAI  
STATE-CERT.GEN.APPR. #RZ1269  
FLORIDA PROPERTY CONSULTANTS GROUP  
2931 KERRY FOREST PKWY, SUITE 201  
TALLAHASSEE, FLORIDA 32309**

**120 SUMMARY OF SALIENT FACTS AND CONCLUSIONS**

**Owner of Record:** Lee County  
**Address:** PO Box 398, Fort Myers, FL 33902  
Tel. No.: (239) 332-2737

**Property Type:** Primarily vacant parcel with Residential Planned Development [RPD] and Commercial Planned Development [CPD] zoning

**Property Address/Location:** West side of I-75 [SR-93]: in the NW quadrant of west-bound off-ramp and I-75 with Corkscrew Rd, and along the east side of Three Oaks Pkwy, ±5,000 ft north of Corkscrew Road, opposite Estero Parkway, unincorporated South Fort Myers area, Lee County, Florida

**Property Inspection(s):** February 15, 2006 by Nicholas Truncone and Ashley O'Brien, Florida Property Consultants Group [FPCG]  
February 28, 2006 by Nicholas Truncone

**Accompanied by\*:** 2/15/06 – Randy Toth [Engineer], Robin Clark[FDOT] and Dr. Dan Richardson [Reviewer]  
2/28/06- Unaccompanied

**Extent of Inspection:** Full\*\* [as far as possible, the site is +47 acres and fairly heavily wooded in most areas, along with a broad flow-way and additional low/wet areas evident]

**Size<sup>4</sup>:**

Parent Tract:	47.709 acres	[2,078,204 SF]
Acquisition:		
Parcel 105A	13.213 ac	[ 575,558 SF]
Parcel 105B	<u>11.398 ac</u>	[ 496,497 SF]
Total	24.611 ac	[1,072,055 SF]
Parcel 800A	7,480 SF	[Permanent Easement]
Parcel 800B	<u>30,858 SF</u>	
Total	38,338 SF	[0.880 ac]
Remainder:	23.098 acres	[1,006,149 SF]

**Building Area:** None.

\* Property owner was notified of proposed date of inspection and elected not to accompany the appraiser.

\*\* Full Inspection – The appraiser has fully inspected the areas of the take and PE any associated site improvements involved therein.

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<sup>4</sup> Per FDOT R/W map, Pg 23, with final date of 09/14/05. All dimensions reported in Section 230 are per the R/W map relying primarily upon the calculated dimensions {C} shown there and checked against the legal of the take, provided by the District.

**RECONCILIATION** As the cost and income approaches are not applicable in this section, reconciliation per USPAP Std. Rule 1-5[c] is moot. Allocation of the above for FF&E is not warranted as the site is vacant land. Thus the value of the subject remainder uncured is indicated to be:

**\$397,300**

**815U COST APPROACH FOR THE REMAINDER UNCURED** N/A

**835U SALES COMPARISON APPROACH FOR THE REMAINDER UNCURED** N/A

**835U THE INCOME APPROACH FOR THE REMAINDER UNCURED** N/A

**890U RECONCILIATION OF REMAINDER VALUE INDICATIONS AND FINAL VALUE ESTIMATE OF THE REMAINDER UNCURED**

Cost Approach:	N/A
Sales Comparison Approach	\$397,300 [land only]
Income Approach:	N/A

As only the direct sales comparison approach has been applicable in valuing the remainder, reconciliation is academic.

**FINAL CONCLUSION OF MARKET VALUE OF THE REMAINDER PROPERTY UNCURED**

As of February 28, 2006, the remainder uncured, land only, has a market value of the fee simple title, under the Qualifying and Limiting Conditions of this appraisal of:

**\$397,300**

**895U ALLOCATION OF LAND, BUILDINGS, STRUCTURES, AND OTHER IMPROVEMENTS FOR THE REMAINDER UNCURED**

Land	\$397,300
Site Improvements	\$ 0
Building[s]	\$ 0
Fixtures & Equipment	\$ 0
Total	\$397,300

Contributory Value as though not leased	N/A
Salvage Value [Value for Removal]	N/A
ODA Sign[s]	None

**900U SUPPORT FOR DAMAGES/NO DAMAGES TO THE REMAINDER UNCURED**

**Marketability of Remainder:** The marketability of the site was significantly affected by the taking and the encumbrance by the PE. The damages accruing to the remainder cured due to the taking are typically quantified as below.

<b>Value of the Remainder as Part of the Whole</b>	<b>\$2,074,000</b>
<b>Value of the Remainder Severed, Uncured</b>	<b><u>\$ 397,300</u></b>
<b>Indicated Damages</b>	<b>\$1,676,700</b>

With no cure available to mitigate the impacts of the taking upon the parent tract for Parcels 105/800, the above is the measure of the incurable damages accruing due to the take and the PE. These damages accrue to the remainder uncured due to effectively one cause – the extraordinarily reduced usable size and inherent changes in shape/utility, as previously discussed in section 680U. These impacts accrue primarily due to the taking of Parcel 105. Thus, the entire unmitigated damage amount is allocated to Parcel 105.

**910C COST TO CURE DAMAGES**

No cure is available for the remainder for Parcels 105 and 800.

**920 SPECIAL BENEFITS**

Special benefits may only offset damages to the subject remainder and must result from the construction or improvement made or contemplated. No special benefits accrue to the subject remainder as a result of the taking of Parcel 105 or encumbrance by Parcel 800.

**995 SUMMARY OF VALUES**  
**PARTIAL ACQUISITION:**

1.	Before Property		\$8,190,000
2.	Part Acquired		
	Pcl 105		
	Land	\$5,980,000	
	Impvts	\$ 0	
	Pcl 800		
	Land	\$ 136,000	
	Impvts	\$ 0	\$ 6,116,000
3.	Remainder [As Part of Whole]	[1]-[2]	\$ 2,074,000
4.	Remainder [Appraised, Uncured]		\$ 397,300
5.	Damages [Total Uncured] [3]-[4]		\$ 1,676,700
6.	Special Benefits		\$ 0
7.	Damages [5]-[6]		\$ 1,676,700

**FEASIBILITY OF COST TO CURE DAMAGE** [if cost to cure is MINOR\*]

\* Go to SUMMARY OF COMPENSATION

8.	Remainder [Appraised as Cured] {or [3], whichever is less}	N/A
9.	Remainder [Appraised, Uncured] (4)	\$ 397,300
10.	Damages, Curable [8]-[9] <sup>35</sup>	\$ 0
11.	Damages, Incurable [7]-[10]	\$ 1,676,700
12.	Cost to Cure [or Reestablish]	\$ 0
13.	Improvements Cured but Paid For in [2]	\$ 0
14.	Net Cost to Cure [12] - [13] <sup>36</sup>	\$ 0

{if [14] is greater than [10], cure is not feasible; use [7] in Summary}}

**SUMMARY OF COMPENSATION**

Part Taken [2]	
Land: Pcl 105	\$5,980,000
Land: Pcl 800	\$ 136,000
	\$ 6,116,000
Damages, Incurable [11]	\$ 1,676,700
Cost to Cure, Net [14], or Minor	\$ 0
<b>TOTAL COMPENSATION</b>	<b>\$ 7,792,700</b>

<sup>35</sup> Feasible if more than [12]

<sup>36</sup> If [14] is equal to or greater than [10], cure is not feasible – use [7] in Summary