

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	April 21, 2009	(X) Consent	() Regular
		() Ordinance	() Public Hearing
Department			
Submitted By:	<u>Environmental Resources Management</u>		
Submitted For:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) ratify the Chairman's signature on an Emergency Watershed Protection Program (EWPP) funding application and two associated eligibility forms that were submitted on April 6, 2009 to the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture for the Cypress Creek Floodplain Easement/Restoration Project;

B) authorize the County Administrator, or his designee, to sign any future certifications, standard forms, or other documents related to the application that may be required prior to the presentation to the Board of a contract for the sale of the floodplain easement; and

C) authorize the Director of the Department of Environmental Resources Management, or his designee, to serve as the Project Manager with NRCS for this project.

Summary: NRCS has up to \$30 million in federal economic stimulus funds available through the EWPP to purchase permanent easements on floodplain lands in Florida from willing sellers (private landowners, the State, and local governments). An easement will provide NRCS with the authority to restore and enhance the floodplain's functions and values through restoration of topographic diversity, restoration and creation of wetlands, planting of native vegetation, and other activities. The landowner will retain rights such as quiet enjoyment, control of public access, and recreational uses. The criteria for selection of the recipients and the amount of funding that can be provided to an individual recipient have not yet been determined. Department of Environmental Resources Management staff has prepared an application for EWPP funding for the Cypress Creek Floodplain Easement/ Restoration Project. The emergency authorization process was used because there was insufficient time to submit the item through the regular agenda process and meet the original submission deadline of March 27, 2009 or the revised submission deadline of April 10, 2009 that was advertised on March 26, 2009. If the application for funding is approved, a contract for the sale of the conservation easement to NRCS and a budget amendment will be presented to the Board for review and approval after the funding amount has been determined. **(Continued on page 3)**

Attachments:

1. Eligibility Forms
2. Application

Recommended by:	<u>Richard E. Wadley</u>	<u>3/31/09</u>
	Department Director	Date
Approved by:	<u>[Signature]</u>	<u>4/9/09</u>
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>*</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*The fiscal impact associated with EWPP funding from NRCS is unknown until the funds have been approved. The County would provide up to 50% of the costs of the project through the use of Loxahatchee River Preservation Initiative funds anticipated to be received in FY 2009 and in-kind staff support. A contract and a budget amendment will be provided for Board review and approval after the funding recipients have been selected and the amount of funding for each recipient has been determined.

C. Department Fiscal Review: JP

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

John Onk 4-7-09
 OFMB 5/1/09 CN 4/1/09

Dr. J. J. J. 4/17/09
 Contract Administrator

B. Legal Sufficiency:

Mann Top
 Assistant County Attorney

*If the funds are awarded,
 CDC will renew the
 Agreement at the time it is
 ready for submission to
 the Board.*

C. Other Department Review:

 Department Director

(Continued from page 1):

An application for EWPP funding typically requires a minimum 25% cost share by the applicant. However, under the American Recovery and Reinvestment Act (ARRA), NRCS can fund up to 100% of the project-related costs for an EWPP project. The County will have funds available for providing up to 50% of the costs of the project, and has included that information in the application to increase the chance that it will be successful. District 1 (SF)

Background and Justification: The ARRA of 2009 was signed into law by President Obama on February 17, 2009. It provides for the provision of funds through existing federal programs to quickly stimulate the economy. NRCS has received economic stimulus funds for distribution through several of its programs, including EWPP. Up to \$30 million is available for the purchase of permanent easements on floodplain lands in Florida. Due to the guidance to expend these funds as rapidly as possible, the details of the funding process, such as the criteria to be used to select the recipients, the criteria used to determine the amount of funding to be awarded to each recipient, the actions required by the recipient related to the sale of the floodplain easement, and the information to be included in the restoration plan, have not yet been determined. It is anticipated that a preliminary title search and a hazard assessment will be required prior to completion of the offer to purchase the easement, but there is no indication of which entity will do that work – NRCS or the recipient of the funding. However, these costs will most likely be covered by NRCS.

A landowner whose application is approved would receive the lowest of three values as the easement purchase payment: a value based on a market analysis, a geographic rate established by the NRCS State Conservationist, or the landowner's offer. Based on the preliminary schedule provided by NRCS, an offer to purchase is anticipated to be made to each funding recipient in April or early May, after a preliminary title search and a hazard assessment have been completed for the recipient's project. Work on all of the restoration projects funded is anticipated to begin in May 2009, with final closure on all of the properties by the end of 2009 and completion of all of the projects by the end of 2010.

The County's share of the funding for the project would be provided with funds from a Loxahatchee River Preservation Initiative (LRPI) grant for the Cypress Creek East Restoration Project, which is anticipated to be received in FY 2009, and with in-kind staff support during the permitting, construction, and maintenance/monitoring phases of the project. The County's application for LRPI funds for the Cypress Creek East project has been ranked number one on the FY 2009 Legislative Funding Request Listing & Prioritization, but the funds have not yet been awarded. Four previous LRPI grants for restoration of this natural area have been awarded to the County.

Attachment #1

PAGE 02/04

AD-1026 (Page 2) (04-20-06)

U.S. DEPARTMENT OF AGRICULTURE

Form Approved - OMB No. 0560-0185

**HIGHLY ERODIBLE LAND CONSERVATION (HELC) AND WETLAND
CONSERVATION (WC) CERTIFICATION**

(See Page 3 for Nondiscrimination, Public Burden and Privacy Act Statements).

1. Name of Producer Palm Beach County Dept of Environmental Resource Management		2. I.D. Number (Last 4 digits only) 0785	3. Crop Year 2009
4. Do you have any interest in land that produces or could produce an agricultural commodity? If "YES", or, if you are a Farm Loan Applicant continue with Item 5. If "NO", and you are not a farm loan applicant, go to Item 12 and sign and date.			YES NO
5. For farm loan applicants only: Will you conduct any activities for fish production, trees, vineyards, shrubs, building construction, or other non-agricultural purposes on lands for which a wetland determination has not been completed by NRCS?			YES NO
6. Are you a landlord or tenant on any farm that will not be in compliance with HELC and WC provisions? If "YES", enter the farm number or contact your County FSA Office before completing this form. Farm Number: (Contact your county FSA office if you are unsure of the HEL or wetland determinations applicable to your farming interests.)			YES NO
7. Do any of your landlords refuse to comply with HELC requirements on any farms? If "YES", enter the farm number or contact your County FSA Office before completing this form. Farm Number:			YES NO
8. List affiliated persons with farming interests. See Page 3 for an explanation. Enter "NONE", if applicable. None			YES NO
9. During the crop year entered in item 3 above, or the term of a requested USDA loan, did you or will you plant and produce an agricultural commodity on land for which a highly erodible determination has not been made?			YES NO
10. Since December 23, 1985, or during the current crop year, or during the term of a requested USDA loan, has anyone performed, or will anyone perform any activities to: A. Create new drainage systems, or conduct land leveling, filling, dredging, land clearing, excavation, or stump removal, that has NOT been evaluated by NRCS? If "YES", indicate year(s): B. Improve or modify an existing drainage system that has NOT been evaluated by NRCS? If "YES", indicate year(s): C. Maintain an existing drainage system that has NOT been evaluated by NRCS? If "YES", indicate the year(s): Note: Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs.			YES NO
11. If "YES" to Items 5, 10A and/or 10B or 10C enter the following for the land the answer applies to: A. Farm and/or tract/field number: B. Activity: C. Current land use (specify crops): D. County:			

A "YES" answer in Items 5, 9 or 10 authorizes FSA to refer this AD-1026 to NRCS. If you check "YES" to item 10C, NRCS does not have to conduct a certified wetland determination. (Contact your County FSA Office if you are unsure about the answers to Items 5, 9 and 10.)

Continuous AD-1026 Certification:

I have read the AD-1026 Appendix and understand and agree that my eligibility for certain USDA program benefits is contingent upon this certification of compliance with highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended, and if a determination is made that results in a violation and ineligibility, I agree to refund all applicable payments.

- I agree to the terms and conditions stated on AD-1026 Appendix on all land on which I have or will have an interest and understand that I am responsible for any non-compliance with these provisions.
- I agree that I will file a revised AD-1026 if there are any changes in my operation or activities that may affect compliance with these provisions.
- I understand that affiliated persons are also subject to compliance with these provisions and their failure to comply or file AD-1026 will result in loss of eligibility to persons or enterprises with whom they are affiliated. (See Page 3 of this form for affiliated persons.)

12. Signature of Producer By <u>John F. Koon</u> Producer's Signature	13A. Signature of FSA Representative <u>4-7-09</u> Date (MM-DD-YYYY)	13B. Date (MM-DD-YYYY)
13. Referral to NRCS (Completed by FSA) Sign and date if a NRCS determination is needed for any reason including a "YES" answer in Items 5, 9, 10A, 10B, or 10C.		

ORIGINAL - FSA COPY ☐

NRCS COPY ☐

PRODUCER'S COPY ☐

3

This form is available electronically.

CCC-026 (11-20-08)		U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation	
AVERAGE ADJUSTED GROSS INCOME (AGI) STATEMENT		1. County FSA Office or Service Center Address (Include Zip Code) Palm Beach-Broward FSA Office 750 S Military Trail Ste K West Palm Beach, FL 33415	
NOTE: The primary authority for requesting and safeguarding the information described on this form is the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). Additionally, the authority for requesting this information is 7 CFR Part 1400 and 7 CFR Part 1410. The information requested is necessary for CCC to assist in determining eligibility for program benefits. Information about the average Adjusted Gross Income limitations can be found in the regulations at 7 CFR Part 1400. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA. The information collected as a result of this form may be released to USDA employees, USDA contractors, or authorized USDA cooperators who are bound to safeguard the information under Section 1619 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, Title I, Subtitle F - Administration). The provisions of criminal and civil fraud statutes may be applicable to the information provided. RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.			
2. Name and Address of Person or Legal Entity (Include Zip Code) Palm Beach County Dept of Environmental Resources Management 2300 N Jog Road, 4th Floor West Palm Beach, FL 33411		3. Identification Number (Last 4 digits of SSN or Tax ID No.) 0785	
NOTE: Please read and complete all items. Definitions of terms such as "nonfarm income" and "farm income" are contained on Page 2.			
CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME			
4. Select the program year for which program benefits are requested (Check only one).			
A. <input checked="" type="checkbox"/> 2009	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2007, 2008 and 2006.	C. <input type="checkbox"/> 2011	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2009, 2008 and 2007.
B. <input type="checkbox"/> 2010	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2008, 2007, and 2006.	D. <input type="checkbox"/> 2012	The applicable 3-year period for calculation of the average AGI will be the taxable years of 2010, 2009 and 2008.
5. Was the average adjusted gross <u>nonfarm income</u> \$500,000 or less for the applicable 3-year period for the program year selected in Item 4? A. <input checked="" type="checkbox"/> YES. B. <input type="checkbox"/> NO			
6. Was the average adjusted gross <u>farm income</u> \$750,000 or less for the applicable 3-year period for the program year selected in Item 4? A. <input checked="" type="checkbox"/> YES. B. <input type="checkbox"/> NO			
7. Was the average adjusted gross <u>nonfarm income</u> \$1,000,000 or less for the applicable 3-year period for the program year selected in Item 4? A. <input checked="" type="checkbox"/> YES. B. <input type="checkbox"/> NO			
8. Was the average adjusted gross farm income for the applicable 3-year period selected in Item 4 at least 68.66 percent of the average adjusted gross income (that is, both farm and nonfarm income)? A. <input type="checkbox"/> YES. B. <input checked="" type="checkbox"/> NO			
If "Yes" is checked, and if income includes the sale of farm equipment or production inputs and services to farmers, ranchers, foresters, and farm operations, see definition of Farm Income on Page 2.			
By signing this form:			
<ul style="list-style-type: none"> I acknowledge that I have read and reviewed all definitions and requirements on Page 2 of this form; I certify that all information contained within this certification is true and correct; I take responsibility to timely notify FSA in writing of any changes to the farming, ranching, or forestry operation, or a change in financial status that may affect this certification; I certify that my income certification are consistent with the tax returns filed with the Internal Revenue Service (IRS) and with the definitions specified on Page 2 of this form; I agree that at least every three years beginning no later than for the 2011 program year, or the year this person or legal entity ceases operation if that occurs first, I will submit evidence such as tax records, business documents (for review only, not for retention), or a signed third-party verification deemed acceptable by CCC to verify the average adjusted gross income, average adjusted gross farm income, and average adjusted gross nonfarm income, and that I will take the necessary actions to provide such documents or certification; If requested, I agree to authorize CCC to obtain tax data from the IRS for AGI compliance verification purposes and I will take all necessary actions required by the terms and conditions of the IRS disclosure laws so that CCC can obtain such data. 			
9. Signature (By)	10. Title/Relationship (Individual Signing in the representative capacity)	11. Date (MM-DD-YYYY)	
	CHAIR BCC PBC	4-7-09	

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2140 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

CCC-926 (11-20-08)

Page 2 of 2

GENERAL INFORMATION ON AVERAGE ADJUSTED GROSS INCOME

Limitations related to income levels are a statutory payment eligibility provision for a number of commodity and conservation programs administered by CCC. This certification is needed to assist in program administration. Except as may be provided in applicable program regulations, any person or legal entity requesting certain program payments, either directly or indirectly, shall be subject to this provision. Any person or legal entity that is determined to have an average adjusted gross income that exceeds specified limits shall be ineligible for the program payment subject to that limit for the applicable crop, fiscal, or program year. Further, any covered benefit issued to a legal entity, general partnership, or joint venture shall be reduced by an amount that is commensurate with the direct or indirect ownership interest in the legal entity, general partnership, or joint venture of each person or legal entity whose relevant average adjusted gross income for the relevant period exceeds the average adjusted gross income limit. These determinations will be made pursuant to, and subject to, regulations issued on behalf of the Secretary. As of the time this form was created, the applicable limits were as follows:

For commodity, price support benefits, disaster assistance programs, and for the Milk Income Loss Compensation Program, if the person or legal entity has:

- average adjusted gross nonfarm income greater than \$500,000, the person or legal entity is not eligible for payments and benefits from these programs.
- average adjusted gross farm income greater than \$750,000, the person or legal entity is not eligible for direct payments under the Direct and Counter-cyclical Program.

For new contracts or participation in conservation programs after October 1, 2001, if the person or legal entity has:

- average adjusted gross nonfarm income greater than \$1 million, the person or legal entity is not eligible, unless 66.66 percent or more of the average adjusted gross income is attributable to activities related to farming defined as "farm income" below.

Please note as indicated above that payments are further limited if persons and legal entities with an interest, either directly or indirectly, in a legal entity or partnership exceeds these same levels. Those persons and legal entities must also submit this form.

DEFINITIONS

Adjusted Gross Income is the individual's or legal entity's IRS-reported adjusted gross income. A three year average of that income will be computed for the three years of the relevant base period. Base periods vary by program year as indicated on the first page of this form.

Adjusted Gross Farm Income is for a year that part of the adjusted gross income that is farm income as defined below. The amount will be computed for each year separately and then averaged.

Adjusted Gross Nonfarm Income is the difference for the year between the filer's adjusted gross income and the filer's adjusted gross farm income. The difference shall be computed for each year of the base period, and then averaged.

Farm Income means income related to the following: production of crops, livestock, fish and aquaculture for food; the feeding and rearing of livestock; products produced or derived from livestock; production of specialty crops and unfinished raw forestry products; processing, packing, storing and transporting farm, ranch and forestry commodities including renewable energy; production of farm-based renewable energy; the sale of land used for agriculture; sale of land or sale of easements and development rights to agricultural land, water and hunting rights, and environmental benefits; rental or lease of land or equipment used in farming, ranching, forestry operations; payments and benefits from risk management practices, crop insurance indemnities, catastrophic risk protection plans, conservation programs and government farm program payments. Proceeds from the sale of farm equipment and from production inputs to farmers and ranchers are generally considered nonfarm income. However, if for a year not less than 66.66 percent of the average adjusted gross income of the person or legal entity is derived from farming, ranching, or forestry operations, the person's or legal entity's farm income shall also include the sale of equipment to conduct farm, ranch, or forestry operations, and the production inputs and services to farmers, ranchers, foresters, and farm operations.

Legal Entity is a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable trust, or as a participant in a similar entity, including joint ventures and general partnerships as determined by the Secretary.

Program year means the relevant program year as determined by CCC, for which a specific benefit is made available under a program authorized by legislation such as the Direct and Counter-cyclical Program, Milk Income Loss Contract Program, Conservation Reserve Program, Noninsured Crop Disaster Assistance Program, Supplemental Revenue Assistance Program. FSA may require additional information as necessary to make the relevant program payments.

Third-party verification means a signed statement from a certified public accountant (CPA) or an attorney that the person or legal entity meets the applicable AGI provisions for payment eligibility.

HOW TO DETERMINE ADJUSTED GROSS INCOME

Person. For persons that file the IRS Form 1040, specific lines on that form represent the adjusted gross income and the income from farming, ranching or forestry operations.

Trust or Estate. For a trust or estate, the adjusted gross income is the total income and charitable contributions reported to IRS.

Corporation. For a corporation, the adjusted gross income is the total of the final taxable income and any charitable contributions reported to IRS.

Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity. For an LP, LLC or LLP, the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS.

Tax-exempt Organization. For a tax-exempt organization, the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS.

5

ATTACHMENT #2



April 6, 2009

Department of Environmental
Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743
(561) 233-2400
FAX: (561) 233-2414
www.co.palm-beach.fl.us/erm

Palm Beach County
Board of County
Commissioners

Jeff Koons, Chairman

Burt Aaronson, Vice Chairman

Karen T. Marcus

Shelley Vana

Steven L. Abrams

Jess R. Santamaria

Addie L. Greene

County Administrator
Robert Weisman

Mr. Carlos Suarez
State Conservationist
Natural Resources Conservation Service
2614 NW 43rd Street
Gainesville, Florida 32606

Dear Mr. Suarez:

SUBJECT: APPLICATION FOR FLOODPLAIN EASEMENT AND
RESTORATION FUNDING UNDER THE AMERICAN
RECOVERY AND REINVESTMENT ACT OF 2009;
PALM BEACH COUNTY, FLORIDA – CYPRESS CREEK
FLOODPLAIN EASEMENT/RESTORATION PROJECT

Palm Beach County (the County) respectfully requests Federal assistance under the provisions of Section 216, Public Law 516, and the American Recovery and Reinvestment Act of 2009 to restore flood-related damages sustained in Palm Beach County by significant rainfall events in August-September 1999 and August 2008 (Tropical Storm Fay). This work is needed to safeguard lives and property from an imminent hazard of flooding.

The County is pleased to submit the enclosed Emergency Watershed Protection (EWP) Floodplain Application. This application details adverse impacts to the Cypress Creek Floodplain Easement/Restoration Project Area, the downstream natural portions of Cypress Creek and to the Wild and Scenic Northwest Fork of the Loxahatchee River as a result of flooding events. The application also details the benefits of the proposed floodplain easement/restoration project.

The County understands, as a sponsor of an EWP project that its responsibilities will include acquiring land rights and any permits needed to construct, and if required, to operate and maintain the proposed measures.

The County does not have sufficient funds to provide adequate relief from the potential flooding hazards. The County understands that as the sponsor of this project it may be required to provide a minimum of 25% of the total installation cost as cash or through in-kind construction services.

"An Equal Opportunity
Affirmative Action Employer"

6

Mr. Carlos Suarez
Page 2
April 6, 2009

The names, addresses, and telephone numbers of the administrative and technical contact persons for the Cypress Creek Floodplain Easement/Restoration Project are as follows:

Richard E. Walesky, Director
Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743
Phone: (561) 233-2400
Fax: (561) 233-2414

Robert Robbins, Deputy Director
Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743
Phone: (561) 233-2400
Fax: (561) 233-2414

Please contact Richard E. Walesky for any additional information that you might need in assessing our request.

Sincerely,



John F. Koons, Chairman
Palm Beach County Board of County Commissioners

JFK:REW:slm

Enclosure

cc: Robert Weisman, County Administrator (without enclosure)