Agenda Item #:

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:December 1, 2009		[]	Consent Workshop	[X] []	Regular Public Hearing
Department: Submitted By: Submitted For:			and Building Do and Building Do		ent ent, Planning Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Conservation Easement form to be used when lands owned by the South Florida Water Management District ("SFWMD") are used as preserves for an Agriculture Reserve – Planned Development District (AgR-PDD).

Summary: The Board of County Commissioners has previously approved several Conservation Easement forms for preserves associated with AgR- PDDs. These several forms address specific situations affecting preserves, such as preserves located along the Lyons Road Rural Parkway or preserves affecting Lake Worth Drainage District land or facilities, to name a few. The form in front of the Board today has been drafted specifically for preserves owned by the South Florida Water Management District, and contains terms agreed upon by the County and the District. This item will assist the development approval process by allowing the Easements to be accepted without having to be approved by the BCC each time, provided the Easements are in the same form as the one attached. Any material change to the form shall require further BCC approval. (District 3 & 5, HF)

Background and Justification: Article 3, Chapter E, section 2.F.3.h.2 of the Code and Future Land Use Element Policy 1.5.1-j of the Comp Plan requires a conservation easement when an AgR-PDD project is developed. The owner of the property to be designated as the Preservation Area grants the easement to the County (the grantee) thereby restricting the property to those agricultural, open space, and environmental preservation purposes allowed under the Code and Comp Plan. Conservation easements typically do not require the grantee's signature; however certain property owners, as grantors of the Conservation Easements, may request terms and conditions in these Easements that may impose obligations upon the County. In order to accept these terms and conditions, the County must approve them. By approving the attached Conservation Easement form, the County agrees to accept future Easements executed by property owners pursuant to the Code and Comp Plan that contain these terms and conditions.

Attachments:

1. SFWMD Conservation Easement Form

Recommended by:

Approved By:

eputy County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	20 <u>10</u>	20 <u>11</u>	20 <u>12</u>	20 <u>13</u>	20 <u>14</u>
Capital Expenditures Operating Costs External Revenues Program Income (County) In-Kind Match (County) NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included In Current Budget Account No.:	Budget? Fund	Yes N Department _	o <u>X</u> Unit	Object	

Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact: There is no direct fiscal impact on PZ&B through the approval of the conservation easement forms.

C. Departmental Fiscal Review:

fat Dagassing

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

OFMB Contract Dev. and Control 1) 18/09

B. Legal Sufficiency:

<u>11/19/</u>09 Assistant County Attorney

C. Other Department Review:

Department Director

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This Instrument was prepared by, Record and return to: **Recordation Stamp**

Name_____

Address_____

SFWMD CONSERVATION EASEMENT

This Conservation Easement ("Easement") is given this ______ day of ______, 20XX, by South Florida Water Management District, with a mailing address of 3301 Gun Club Road, Florida 33406 ("Grantor") to Palm Beach County, a political subdivision of the State of Florida, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401 ("Grantee"). The term "Grantor" shall include any successor or assign of Grantor and all subsequent owners of the Property, and the term "Grantee" shall include any successor or assign of Grantee.

WITNESSETH

WHEREAS, Grantor is the owner of that certain real property situated in Palm Beach County, Florida, being ______ acres more or less, and specifically described in attached Exhibit "A" (the "Property"); and

WHEREAS, Grantor has agreed to allow the Property to be designated a Preservation Area pursuant to Article 3, Chapter E, Section 2.F.3 of the Palm Beach County Unified Land Development Code (the "Code"); and

WHEREAS, such designation of the Property as a Preservation Area is in connection with and on behalf of development of the project known as XXXX (the "Project") and is required in order for the Project to meet the AGR PUD 60/40 Option criteria as stated in the Code, Future Land Use Element Objective 1.5 of the Palm Beach County Comprehensive Plan ("the Comp Plan"), and Resolution No. R-XXXX (the "Resolution") Condition of Approval XXXX.

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions stated herein, Grantor hereby grants, conveys, creates, and establishes a conservation easement under Article 3, Chapter E, Section 2.F.3.h.2 of the Code and Chapter 704, F.S. to, for, and in favor of Grantee upon the Property of the nature and character and to the extent hereinafter set forth, which shall run with the land and be binding on Grantor, and shall remain in full force and effect forever.

1. <u>Purpose</u>. The purpose of this Easement is to support, preserve and perpetuate bona fide agricultural and open space uses of the Property, and to preserve any environmentally significant wetland habitats located on the Property, and to permit projects and uses contemplated under Section 2 below. Grantor in no way guarantees that any specific use of the Property will continue in perpetuity; just that the Property will be utilized in accordance with the provisions of this Easement.

- 2. Permitted Uses. Grantor may use the Property for:
 - a. As a Water Preserve Area if designated by the South Florida Water Management District, or to serve uses for water resource, water management, wetland preservation, water storage, water supply, water recharge, aquifer recharge, water quality, environmental protection, or environmental restoration, including but not limited to projects of the South Florida Water Management District authorized under Chapter 373, F.S. and facilities and works related thereto including but not limited to:
 - 1. The Everglades Construction Project pursuant to section 373.4592, F.S. as it may be amended;
 - 2. A project to be undertaken under the Comprehensive Everglades Restoration Plan as generally described in the Central and South Florida Project Comprehensive Review Study-Final Integrated Feasibility report and Programmatic Environmental Impact Statement, dated April 1999;
 - 3. An everglades watershed restoration project to be undertaken unrelated to the Comprehensive Everglades Restoration Plan;
 - b. Crop production, pasture, equestrian activities, wholesale or retail nursery operation or fallow land;
 - c. Construction and maintenance of structures essential to the uses listed in subsection 2b., above, such as barns, stables, pumps, and pump houses, but specifically excluding agricultural support structures such as processing facilities and packing plants, which are prohibited;
 - d. Maintenance and occupation of security, caretaker, farm worker or grooms quarters, or other residential structure provided that the quarters or structure is used solely for one of the purposes listed under Table 3.E.1 B-10 of the Code, any applicable special permit is obtained for such use, and requisite density exists on the Property for such use;

- e. A Water Preserve Area if designated by the South Florida Water Management District ("SFWMD"), or for regional water management purposes as certified by either Lake Worth Drainage District or SFWMD, or for water management purposes not directly related to the Project if approved by the Palm Beach County Department of Environmental Resources Management ("ERM") and managed for environmental resource values;
- f. Wetland restoration and maintenance, or bona fide agriculture as defined by the Code; and
- g. Those other activities authorized within a Preservation Area under Table 3.E.1. B-10 of the Code and consistent with applicable provisions of the Comp Plan.

3. <u>Prohibited Uses</u>. Any use of or on the Property that is not specifically listed or included in Section 2, above, and that is inconsistent with agricultural, environmentally sensitive_wetlands, or open space preservation is prohibited by this Easement.

4. <u>Rights of Grantee</u>. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

a. To enter upon the Property at reasonable times, at Grantee's sole risk, in order to monitor Grantor's compliance with, and otherwise enforce the terms of this Easement provided that such entry shall be upon reasonable notice to Grantor and shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor; and

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

c. Grantee hereby releases Grantor from and against injury to persons or property, and shall indemnify, to the extent provided by law without waiver of sovereign immunity under section 786.28, F.S., Grantor from and against injury to Grantee's employees or agents resulting from such entry.

5. <u>No Recourse to Development Area</u>. Grantor acknowledges and agrees that the Property constitutes the Preservation Area for the Project approved under the Resolution. Grantee acknowledges and agrees that, notwithstanding anything to the contrary, in the event of any violation or threatened violation of any of the terms of this Easement, Grantee shall have no recourse or remedy against the development area of the AGR-PUD approved under the Resolution (the "Development Area"), and Grantee's sole remedy or recourse for any such violation or threatened violation of this Easement shall be against Grantor and the Property and not the Development Area.

6. <u>No Recourse to Preservation Area</u>. Grantee acknowledges and agrees that the Property constitutes the Preservation Area for the Project approved under the Resolution. Grantee acknowledges and agrees that, notwithstanding anything to the contrary, in the event that the Development Area becomes in violation, or there is a threatened violation, of any applicable approvals for the Project, the Grantor shall have no liability whatsoever, and Grantee's sole remedy or recourse for any such violation or threatened violation shall be against the owner of the Development Area and not against the Grantor in the capacity as Grantor of this easement for the Preserve Property.

7. <u>Wetlands</u> (if applicable). Grantor shall have the right to impact jurisdictional wetlands in connection with activities conducted on the Property by Grantor identified under subparagraph 2.a. above. Subject to the right of Grantor to impact wetlands as provided in the previous sentence, Grantor shall otherwise use reasonable efforts to preserve and maintain the wetlands.

8. Access. No right of access by the general public is conveyed or restricted by this Easement.

9. <u>Operation and Upkeep</u>. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

10. <u>Enforcement</u>. Enforcement of the terms, conditions, and restrictions of this Easement shall be at the reasonable discretion of Grantee and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder. No third party shall have the right to enforce this Easement.

11. <u>Cost and Liabilities</u>. Grantor's liability for torts hereunder shall be subject to the limitations set forth in section 768.28 F.S., the Constitution of the State of Florida and any other applicable laws, and nothing contained in this Easement shall be construed as a waiver by Grantor of sovereign immunity under section 768.28,F.S.

12. <u>Construction</u>. The parties expressly acknowledge and agree that this Easement is the result of mutual armslength negotiations, and that this Easement shall not be construed more strongly against either party regardless of who was responsible for preparing, drafting or transcribing the Easement. 13. <u>Lake Worth Drainage District</u>. Nothing contained herein shall affect the rights, title, interests, easements and rights-of-way of the Lake Worth Drainage District existing as of the date of recordation of this Conservation Easement provided such rights, title, interest, easements and right-of-way are utilized in accordance with the statutory authority granted to the Lake Worth Drainage District pursuant to Chapter 298, Florida Statutes and Chapter 2009-258, Laws of Florida. As required, pursuant to Section 298.301, F.S., Lake Worth Drainage District's action must be consistent with the Palm Beach County Comprehensive Plan.

14. <u>Recordation</u>. This instrument shall be recorded in the Official Records of Palm Beach County, Florida in a timely fashion, as required by the Unified Land Development Code (ULDC).

15. <u>Severability</u>. If any provision of this Easement or the application thereof is found to be invalid, the remaining provisions of the Easement shall not be affected as long as the purpose of the Easement is protected.

16. <u>Amendment</u>. This Easement may be amended, modified, altered, released, or revoked only by written agreement between the parties, their successors or assigns, which shall be recorded in the Official Records of Palm Beach County, Florida.

17. <u>Entire Agreement</u>. This Easement, (including the Exhibits hereto and any written amendments thereto, executed by all parties), constitutes the entire Easement, and supersedes all prior Easements and understanding, oral and written, between the parties with respect to the subject matter hereof. This Easement is in favor of and solely enforceable by the Grantee. There shall be no third party enforcement rights.

18. <u>Notices</u>. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or Federal Express, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or Federal Express, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

to Grantee:

Robert Weisman, County Administrator Palm Beach County 301 North Olive Avenue West Palm Beach, FL 33401

with a copy to:

Lorenzo Aghemo Planning Director Planning, Zoning and Building 2300 North Jog Road West Palm Beach, FL 33411

to Grantor:

South Florida Water Management District Attn: Department Director, Land Management & Operations 3301 Gun Club Road West Palm Beach, FL 33406 TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms conditions restrictions and purpose imposed by this Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement this _____ day of ______

GRANTOR:

SOUTH FLORIDA WATER MANAGEMENR DISTRICT, BY ITS GOVERNING BOARD

[SEAL]

ATTEST:

By: _____, Chairman Secretary/District Clerk

Legal Form Approved By:

Assistant County Attorney

Date

STATE OF FLORIDA COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by ______ and ______ as Chairman of the Governing Board and Secretary/District Clerk respectively, of the South Florida Water Management District, a Public Corporation of the State of Florida, on behalf of the South Florida Water Management District. They are personally known to me or have produced ______ as identification.

(Print, Type, or Stamp Commissioned Name of Notary Public)

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EXHIBIT "A"

(insert preserve name)

1. Insert legal description.

- Insert overall location map as to where the preserve is located in the Ag. Reserve.
 Insert a map of the preserve area with boundaries of conservation easement.

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