

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 1, 2013 ☒ Consent ☐ Regular
 ☐ Ordinance ☐ Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to accept: a Revocable Partial Assignment of an Undivided Interest of Rights Under Easement Deed ("Assignment") from the South Florida Water Management District, a government entity existing under Chapter 373, Florida Statutes ("District").

Summary: The District is the beneficiary of an easement for operation of the west leg of the C-18 Canal for water control, conservation, and other public purposes (hereinafter referred to as the "Easement") that was originally granted on July 26, 1954, and recorded in Deed Book 1097, at page 261, of the Public Records of Palm Beach County, Florida. Palm Beach County's Hungryland Slough Natural Area ("HSNA") adjoins the west leg of the C-18 Canal to the north and the County's Department of Environmental Resources Management (ERM) operates a surface water management system on that land. This system includes water control structures that provide water outfalls from the HSNA into the west leg of the C-18 Canal. In order to provide operational flexibility and more importantly, access to these structures for the County, the District desires to partially assign its rights under the Easement to the County. ERM also desires to obtain these Easement rights for securing direct access to its water control structures in addition to natural area management accessways and increased flexibility for ERM and its contractors for management of the HSNA. District 1 (HJF)

Background and Justification: The new owner of the land underlying the easement has questioned whether the County has legal access to maintain its water control structures which were permitted by the District. ERM and the District believe that question will be resolved with the assignment of rights under easement to the County.

Attachments:


1. Revocable Partial Assignment of an Undivided Interest of Rights Under Easement Deed
2. Easement Location Map

Recommended by:


Department Director

9-5-13
Date

Approved by:


County Administrator

9/10/13
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
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 _____ Department _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact

* There is no fiscal impact associated with this item.

JP

C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:


 OFMB ^{KU} _{9/6} ^{SN} _{9/6/13}


 Contract Administrator
 9-9-13 _{Rev. High}

B. Legal Sufficiency:


 Assistant County Attorney 9/10/13

C. Other Department Review: Property and Real Estate Management

 Department Director

Prepared By & Return to:
South Florida Water Management District
3301 Gun Club Road, P. O. Box 24680
West Palm Beach, FL 33416-4680
ATTN: Real Estate Section, MS#5210

Project: C-18
Tract No.: CN10E-001

**REVOCABLE PARTIAL ASSIGNMENT
OF
AN UNDIVIDED INTEREST OF RIGHTS UNDER EASEMENT DEED**

This REVOCABLE PARTIAL ASSIGNMENT OF AN UNDIVIDED INTEREST OF RIGHTS UNDER EASEMENT DEED (the "Assignment") is entered into as of _____, 2013, by and between the "Parties", the South Florida Water Management District, a government entity existing under Chapter 373, Florida Statutes (the District") and Palm Beach County, a political subdivision of the State of Florida (the "County").

WITNESSETH:

WHEREAS, Colorado Development Company, a Florida Corporation granted and conveyed to the Central and Southern Florida Flood Control District, now known as the South Florida Water Management District, that certain Easement Deed dated July 26, 1954, and recorded in Deed Book 1097, at page 261, of the Public Records of Palm Beach County, Florida (hereinafter referred to as the "Easement"); and

WHEREAS, the Easement encumbers the real property (hereinafter referred to as the "Premises") described as **The North 200 Feet of Section 6, Township 42 South, Range 41 East, together with The North 200 Feet of the West One-Half (W ½) of Section 5, Township 42 South, Range 41 East; and**

WHEREAS, the Easement conveyed unto the District the perpetual easement and right for and to the exclusive use and enjoyment of the Premises: "... for any and all purposes necessary, convenient, or incident to, or in connection with, the construction, maintenance and operation of any project in the interest of flood control, reclamation, conservation, water storage and allied purposes now or that may hereafter be conducted by the grantee herein, its successors or assigns ..."; and

WHEREAS, the Easement further provides that "[a]ny part of the whole of the easement and right herein granted may be assigned by the grantee for use for any public purposes"; and

WHEREAS, the County has requested that the District assign certain rights under the Easement, as hereinafter provided, in order to enable the County to access the Premises in order

to operate and maintain certain surface water management system components connected to or located within the Premises;

WHEREAS, the District is agreeable to the assignment requested, subject to the following terms, conditions, and provisions as hereinafter provided.

NOW THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

1. The recitations set forth above are true and correct and are hereby incorporated herein by reference.
2. The District hereby makes a revocable partial assignment of an undivided interest of certain rights under the Easement in order to enable the County to access the Premises in order to operate and maintain certain surface water management system components connected to or located within the Premises.
3. The County's use of the certain rights of the Easement assigned hereunder, shall be subject and subordinate to the rights, activities and operations of the District, now existing or hereafter occurring. The County shall repair any damage to the Premises which may arise directly, indirectly, or proximately as a result of the County's utilization of the Premises.
4. The County must obtain a right of way occupancy permit in accordance with Chapter 40E-6, Florida Administrative Code in connection with the County's activities with respect to the Premises, and comply with the terms, conditions and provisions thereof. In addition, the County must comply with all other District permitting requirements with respect to the Premises set forth in Chapter 373, Florida Statutes and Section 40E, Florida Administrative Code.
5. The District, in its sole and absolute discretion, reserves the right to revoke and terminate this Assignment at any time, and for any reason, upon: (a) delivery of thirty (30) day prior written notice delivered to the County, by personal delivery, any form of overnight mail, or registered U.S. mail return receipt requested, at:

Robert Robbins, Director
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411; and

(b) recording of a notice of revocation in the Public Records of Palm Beach County, Florida. Delivery of the notice referenced in (a) above shall be deemed delivered on the date delivered if by personal delivery; on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed by registered mail return receipt requested; or one day after mailing by any form of overnight mail service. The recording of such notice of revocation shall establish prima facie evidence, and may be relied upon by third parties, that the notice referenced in (a) above has been given.

6. The County shall not make any further assignment of the rights assigned hereunder, in whole or in part, without the prior written consent of the District, which consent may be withheld in the District's sole and absolute discretion. Any assignment without the prior written consent of the District shall be void and have no force or effect.

7. Each party acknowledges liability for torts to the extent provided and allowed under Section 768.28, Florida Statutes. Nothing contained herein shall be construed to alter either Party's waiver of sovereign immunity nor extend either Party's liability beyond the limits established in Section 768.28, Florida Statutes nor as consent by either Party to be sued by third parties in any matter arising out of this Assignment.

8. The District makes this Assignment without representation, warranty or recourse, and the County accepts this Assignment and the Premises, "AS-IS", "WHERE-IS", and "WITH ALL FAULTS," and assumes all risk in connection with the County's use of the easement rights herein assigned.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this **ASSIGNMENT** as of the date first written above.

ATTEST:

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT, by its
Governing Board

[SEAL]

By: _____
Daniel O'Keefe
Its: Chair

Jacki McGorty
Secretary/District Clerk

ATTEST:

SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY, Florida, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Department Director

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Daniel O'Keefe and Jacki McGorty as Chair and Secretary/District Clerk respectively of the South Florida Water Management District, a public corporation of the State of Florida, a government entity existing under Chapter 373, Florida Statutes, on behalf of the South Florida Water Management District, who are personally known to me.

(NOTARY PUBLIC SEAL)

Notary Public
(Print, Type or Stamp Name of Notary Public)
My Commission Expires:_____

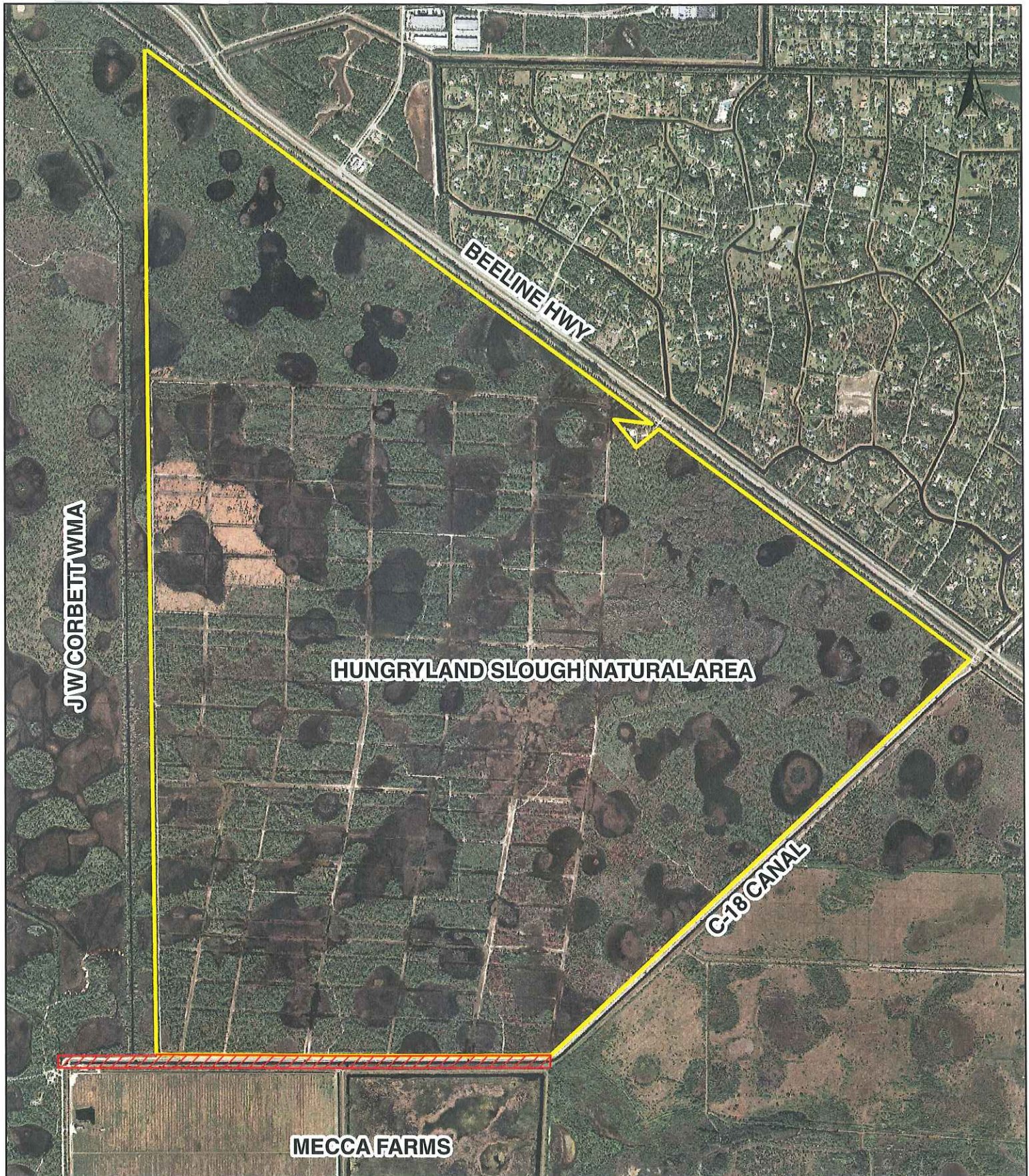
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Steven L. Abrams, as Mayor of the Board of County Commissioners of Palm Beach County, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me.



(NOTARY PUBLIC SEAL)

Notary Public
(Print, Type or Stamp Name of Notary Public)
My Commission Expires:_____

EASEMENT LOCATION MAP



Legend

-  EASEMENT
-  NATURAL AREA BOUNDARY

0 500 1,000 2,000 3,000 4,000 5,000 Feet

Palm Beach County
Department of Environmental
Resources Management
September 2013

