

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Agreement for Purchase and Sale of Conservation Easement

DEPARTMENT: Public Works **DIVISION:** Roads-Stormwater

AUTHORIZED BY: W. Gary Johnson, P.E. **CONTACT:** Mark Flomerfelt, P.E. **EXT.** 5569
W. Gary Johnson, P.E., Director Stormwater Programs Manager

Agenda Date 09/27/05 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

Authorize the Chairman to execute an Agreement for Purchase and Sale of Conservation Easement for Sweetwater Cove Tributary Surface Water Restoration Erosion Control Stormwater Treatment Project.

District 3 - Commissioner Van Der Weide (Michael K. Arnold, Division Manager)

BACKGROUND:

Sweetwater Cove Tributary Surface Water Restoration Erosion Control Stormwater Treatment Project is a hurricane relief project to remove erosion and install preventative measures to minimize future erosion on Sweetwater Creek. This project was one of ten (10) initiated through the Emergency Watershed Protection Program and funding from the Natural Resources Conservation Service (NRCS), Agreement #69-4209-5-1635 (as amended). The project impacts 7.8 acres of wetlands and required a permit (#SAJ-2005-2589 (IP-JSC)) from the Army Corps of Engineers in addition to a St. Johns River Water Management permit. The Corps of Engineers determined that compensatory mitigation is required of 8 acres from an approved mitigation site, the NTS Parcel (i.e., privately owned land between the Big and Little Wekiva Rivers) in conjunction with the Corps permitting for this project. The execution of this agreement by the Board of County Commissioners will authorize purchase of a conservation easement of 8 acres at a price of \$5,000 per acre, totaling \$40,000. A \$5,000 deposit is due and payable upon execution of this agreement. Upon receipt of the executed agreement and deposit, scheduling of the closing will proceed.

To provide funding for the purchase of this easement, available monies need to be transferred from another completed NRCS project. The necessary Budget Change Request is presented under the Fiscal Services/Budget portion of the 9/27/05 Consent Agenda. (Item No. 12)

Attachments: Agreement
Mitigation Site Location Map

Reviewed by:
Co Atty: SA
DFS: _____
Other: _____
DCM: MS
CM: FG
File No. CPWS01

AGREEMENT FOR SALE AND PURCHASE OF CONSERVATION EASEMENT(S)

This Agreement for Sale and Purchase of Conservation Easement(s) (“Agreement”) is made and entered into as of the Effective Date, as defined below, between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771, (“Buyer”) and **MITIGATION LAND BROKERAGE AND MANAGEMENT, INC.**, a Florida corporation, whose address is P.O. Box 499, Geneva, FL 32732-0499, c/o **Mr. Steven D. Rich** (“Seller”) (hereinafter sometimes collectively referred to as the “Parties”).

WHEREAS, Buyer proposes a development project (the “Development Project”); and

WHEREAS, there are certain environmentally sensitive wetland areas (the “Jurisdictional Wetlands”) which are, pursuant to applicable State and Federal laws and regulations, within the jurisdiction of and subject to regulation by certain State and Federal environmental agencies (collectively, the “Environmental Agencies”), including, without limitation, the Florida Department of Environmental Protection (the “FDEP”), the St. Johns River Water Management District (the “SJRWMD”), the United States Environmental Protection Agency (the “EPA”) and /or the United States Army Corps of Engineers (the “ACOE”); and

WHEREAS, it will be necessary that Buyer dredge and fill, and, in that process, alter and/or destroy all or certain parts of the Jurisdictional Wetlands; and

WHEREAS, current State and Federal environmental laws and/or regulations authorize and permit, in certain circumstances, damage to and/or destruction of Jurisdictional Wetlands in the course of the development of real property; provided, however, and on the condition that the resulting loss of Jurisdictional Wetlands occasioned thereby be mitigated and/or compensated for by the perpetual preservation, protection and/or enhancement of other environmentally sensitive wetland and/or upland areas located on property other than that on which such Jurisdictional Wetlands are to be damaged and/or destroyed (“Compensatory Mitigation”); and

WHEREAS, Buyer desires to apply for and obtain all necessary governmental approvals, authorizations and permits required for the Development Project, including, without limitation, those permits required from the Environmental Agencies (the “Environmental Permits”) authorizing Compensatory Mitigation for the Jurisdictional Wetlands to be damaged and/or destroyed by the Development Project; and

WHEREAS, as a result of the Development Project the Environmental Agencies will require Compensatory Mitigation as a condition to the issuance of permit(s) (the “Easement Property”) authorizing the proposed damage and/or destruction of the Jurisdictional Wetlands; and

WHEREAS, in exchange for the contemplated damage and/or destruction of the Jurisdictional Wetlands, Buyer will likely be required by the Environmental Agencies to provide Compensatory Mitigation in the form of perpetual Conservation Easements (as hereinafter defined) on approximately that number of acres of wetlands and/or uplands hereinafter specified in Paragraph 5 of this Agreement; and

WHEREAS, Seller represents and warrants that it has in place existing agreements to purchase the conveyance of conservation easements in a form satisfactory to the Environmental Agencies over property that has been approved for use as Compensatory Mitigation by the Environmental Agencies (the "Mitigation Contracts"); and

WHEREAS, Seller is able to offer Buyer, through this Agreement, the benefits of such Mitigation Contracts by providing Buyer the opportunity to purchase from Seller, for the benefit of the Environmental Agencies, such Conservation Easements as may be necessary in order to satisfy the Compensatory Mitigation required by the Environmental Agencies for the Development Project and the resulting damaged and/or destruction of the Jurisdictional Wetlands; and

WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase from Seller the conveyance of such Conservation Easements in favor and for the benefit of the Environmental Agencies as may be reasonably required for Buyer to satisfy its obligation to provide Compensatory Mitigation for the Jurisdictional Wetlands contemplated to be damaged and/or destroyed by and in the course of the Development Project; and

WHEREAS, Seller is desirous of entering into this Agreement to have Seller satisfy Buyer's Compensatory Mitigation obligations through purchase of a Conservation Easement on off-site property or properties; and

WHEREAS, in consideration of Buyer receiving the benefits of the Compensatory Mitigation provided by the Seller as described herein, Buyer agrees to make payment as also described herein and evidences such obligation by Buyer's execution of this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises of this Agreement, the sum(s) of money to be paid by Buyer to Seller pursuant to this Agreement and for other good and valuable considerations enumerated in this Agreement, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller do hereby covenant, stipulate and agree as follows:

1. RECITALS. The foregoing recitals of fact are true and correct, constitute the premises of this Agreement and are incorporated into and made a part of this Agreement by this reference thereto.

2. SALE AND PURCHASE OF CONSERVATION EASEMENT(S). Subject always to the terms and provisions of Paragraph 3 below, Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller, for the benefit of the ACOE (and/or such other Environmental Agencies as may be required), the conveyance of one or more perpetual Conservation Easement(s) of the type described in and meeting the requirements of Section 704.06, Florida Statutes as Compensatory Mitigation for the Jurisdictional Wetlands to be damaged and/or destroyed by the Development Project, as aforesaid. The Conservation Easements to be sold and purchased hereunder shall encumber and burden real property located in Seminole County, Florida (the "Burdened Property") which is owned in fee simple by the Easement Grantors with whom the Seller has Mitigation Contracts for the purchase of such Conservation Easements. Neither Seller nor Buyer shall take title to the Conservation Easements on the Burdened Property. Buyer shall cause such Conservation Easements on the Burdened Property to be granted by the Easement Grantors directly to the Environmental Agencies pursuant to the terms of the Mitigation Contracts and Environmental Permits.

3. CONTINGENCIES. Notwithstanding anything to the contrary set forth in this Agreement, Buyer's foregoing covenant and agreement to purchase the aforesaid Conservation Easement(s) from Seller shall be contingent upon:

(a) the approval of the form of the Conservation Easement by all Environmental Agencies requiring Compensatory Mitigation for the Development Project; and

(b) the approval by all Environmental Agencies requiring Compensatory Mitigation for the Development Project of the Burdened Property for use as Compensatory Mitigation; and

(c) designation by the Environmental Agencies of the exact number of acres required for Compensatory Mitigation (not to exceed eight (8) acres); and

(d) approval of all aspects of the permit(s) required by all Environmental Agencies necessary for construction of the Development Project, other than as specified in subparagraphs (a), (b) and (c) above.

4. LEGAL DESCRIPTION. The Parties acknowledge and agree that after regulatory review and approval, a Sketch and Legal Description shall be prepared for the Compensatory Mitigation and shall be incorporated as Exhibit A to this Agreement.

5. PURCHASE PRICE. The purchase to be paid by Buyer to Seller for the Conservation Easements to be sold by Seller and purchased by Buyer pursuant to this Agreement (the "Purchase Price") shall be a sum equal to Five Thousand and 00/100 Dollars (\$5,000.00) per acre for each acre to be encumbered by the Conservation Easements(s) required by the Environmental Agencies pursuant to their respective Environmental Permits as Compensatory Mitigation for the Jurisdictional Wetlands which are to be damaged and/or destroyed as a result of the Development Project. The Purchase price shall be paid by Buyer to Seller, subject to credit for the Retainer Deposit (hereinafter described in Paragraph 6 of this Agreement), at the time of the closing and consummation of the sale and purchase transaction contemplated in this Agreement (the "Closing").

6. RETAINER DEPOSIT. Within fifteen (15) days after its execution of this Agreement, Buyer shall cause the sum of Five Thousand and 00/100 Dollars (\$5,000.00) (the "Retainer Deposit") to be delivered to and deposited into escrow with J.A. Jurgens, P.A., Attorneys at Law (the "Escrow Agent") to be credited in full against the Purchase Price at the time of Closing. Should this transaction fail to close for any reason other than Seller's refusal or failure to close, then Seller shall be paid the actual expenses incurred by Seller including, but not limited to, preparation of Sketch and Legal Descriptions, preparing for and attending site visits to the Burdened Property with representatives of the Environmental Agencies, providing the consultant for Buyer drawings, graphics, maps, management plans, ecological and environmental studies, and/or other documentation as to the Burdened Property and proposed Compensatory Mitigation as may be required by the consultant for Buyer as part of the approval process by the Environmental Agencies (the "Costs Incurred"), subject to a maximum amount of the Retainer Deposit. Any balance of the Retainer Deposit remaining after payment of the Costs Incurred shall be immediately refunded to Buyer. All Costs Incurred shall be reasonable and shall be supported by actual invoices, time sheets or other documentation, copies of which shall be provided to Buyer. Should Seller fail or refuse to close then the entire Retainer Deposit shall be returned to Buyer.

7. CONVEYANCE. At the Closing, Seller shall cause the Easement Grantor(s) to grant and convey the Conservation Easement(s) on the Burdened Property to and in favor of the ACOE (and/or other Environmental Agencies, if required) on behalf of the Buyer free of liens and encumbrances of record which are objectionable to the ACOE or any other applicable Environmental Agencies, acknowledging that the Buyer or Seller will not itself take fee simple title or otherwise acquire an easement or any other real property interest in the Burdened Property and/or Conservation Easements.

8. SKETCH AND DESCRIPTION. Seller shall, at its cost, obtain a current Sketch and Legal Description of the Compensatory Mitigation ("the Sketch") prepared and sealed by a registered surveyor, licensed in the State of Florida (the "Surveyor") and shall deliver the Sketch and Legal Description to Buyer and the Environmental Agencies within the time frames required by the Environmental Agencies for the Development Project and/or the pending applications for same. In the event the Environmental Agencies require a formal, sealed survey as opposed to the Sketch of the Burdened Property on which the Conservation Easement(s) are to be granted, Buyer shall be responsible for obtaining same at Buyer's expense.

9. BUYER AND SELLER AUTHORITY/OBLIGATIONS. Buyer and Seller warrant that each has the authority to sign this Agreement and bind itself to the terms herein. The benefits and obligations of the covenants herein shall inure to the benefit of and bind the respective successors and assigns of the Parties hereto.

10. ENVIRONMENTAL REPRESENTATIONS AND INSPECTIONS. Seller hereby represents and warrants to Buyer to the best of its knowledge (the

“Representations”) as follows: (1) the Burdened Property and all uses of the same as and for Compensatory Mitigation have been, and presently are, in compliance with all federal, state, and local environmental laws except as herein disclosed by Seller to Buyer; (2) no hazardous substances have been generated, stored, treated, or transferred on the Burdened Property, except as herein specifically disclosed by Seller to Buyer; (3) Seller has no knowledge of any spill or environmental law violation on any property contiguous to or in the vicinity of the Burdened Property except as herein disclosed by Seller to Buyer; and (4) Seller has not received or otherwise obtained knowledge of any spill or contamination on the Burdened Property, any existing or threatened environmental lien against the Burdened Property, or any lawsuit, proceeding, or investigation regarding the handling of hazardous substances on the Burdened Property except as herein disclosed by Seller to Buyer.

11. **INSPECTION PERIOD.** Buyer and the Environmental Agencies shall have thirty (30) days from the Effective Date (“Inspection Period”) to determine that the Burdened Property and Compensatory Mitigation to be provided thereon are suitable and satisfactory for Buyer’s intended use as Compensatory Mitigation for the Development Project. During the Inspection Period only, Buyer may terminate the Agreement and shall be released of any further obligations to the Seller.

12. **ACCESS TO BURDENED PROPERTY.** Buyer and its consultant(s) and the Environmental Agencies shall at all times before Closing have the privilege and right of entering the Burdened Property with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which Buyer, and/or the Environmental Agencies, in their discretion, deem necessary or desirable in order to determine the suitability of the Burdened Property and the contemplated Conservation Easements thereon as Compensatory Mitigation for Buyer’s Development Project. Said privilege shall include, without limitation, the right to make surveys, soils tests, borings, percolation tests, compaction tests, hazardous waste tests, environmental determinations and other tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Burdened Property and its suitability as Compensatory Mitigation. Without limiting the generality of the foregoing, Buyer may request that representatives of the FDEP, the ACOE, the SJRWMD, the EPA and any agency of the city or county in which the Development Project is located (the “Local Municipality”) visit the Burdened Property to determine the suitability of the same as Compensatory Mitigation for the Development Project. The Seller shall be given notice of any site inspections to be made on the Burdened Property by any of the foregoing agencies, surveyors, engineers, environmental consultants or other professional consultants requisite to determining the suitability of the Burdened Property as Compensatory Mitigation. Buyer agrees to notify Seller of any site visit at least forty-eight (48) hours prior to the visit so that Seller may be present during such visit, if Seller so elects.

13. **DEVELOPMENT APPROVALS.** Seller acknowledges that Buyer is acquiring the Conservation Easements contemplated herein as Compensatory Mitigation in order to

satisfy the requirements of Environmental Agencies for the Development Project assigned ACOE Permit No. SAJ-2005-2589 (IP-JSC) ("ACOE Permit").

14. MECHANICS LIENS. Seller shall furnish to Buyer and/or the title insurer and/or the Environmental Agencies with an affidavit from the Easement Grantors and Seller that there are no parties in possession of the Burdened Property other than the Easement Grantors and that there have been no improvements made to or on the Burdened Property for the period of ninety (90) days immediately preceding the date of Closing, and no mortgages, financing statements, claims of lien or potential lienors known to the Easement Grantors or Seller, if required by the Environmental Agencies and/or title insurer. If the Burdened Property has been improved within that time, the Easement Grantors and Seller shall deliver releases or waivers of all mechanics liens as executed by general contractors, subcontractors, suppliers, and materialmen, in addition to the Seller's lien affidavit, setting forth the names of all general contractors, subcontractors, suppliers, and materialmen and reciting that all bills for work on the Burdened Property which could serve as the basis for mechanics liens have been paid or will be paid at closing. All mortgages or other liens and encumbrances on the Burdened Property shall be released of record at the time of Closing except that in the event that the title search evidences a mortgage as to the Burdened Property, a joinder of mortgage acceptable to the Environmental Agencies may be used to subordinate any mortgage on the Burdened Property to the Conservation Easements to be imposed thereon in lieu of a release of such mortgage.

15. TIME AND PLACE OF CLOSING. Closing shall be held at the office of the Seller's attorney in Seminole County, Florida. The closing shall be held no later than October 30, 2005.

16. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement.

17. DOCUMENTS FOR CLOSING. Seller's attorney shall prepare a draft of the Conservation Easement(s) and submit copies of same to Buyer's attorney and Environmental Agencies, as required by the ACOE Permit.

18. EXPENSES.

(a). PAYABLE BY BUYER. In addition to the Purchase Price, Buyer shall be responsible for the payment of the following costs and expenses incurred by Buyer, including but not limiting to, the following:

1. A formal signed and sealed survey as specified in Paragraph 8 above;
2. Expenses solely incurred on behalf of Buyer through its environmental consultants, engineers and other professionals for the Development Project;
3. Permit application fee(s) and permit modification application fee(s) as may be applicable and required for the Development Project and/or Compensatory Mitigation;

4. Legal expenses, fees and costs incurred by Buyer for the Development Project not related to Paragraph 23;

(b). PAYABLE BY SELLER. In consideration of the Purchase Price to be paid by Buyer to Seller, Seller shall be responsible for and pay the following costs and expenses to be incurred by Seller:

1. Drawings and graphics of the Burdened Property on which the Conservation Easements and Compensatory Mitigation are to be provided pursuant to this Agreement;
2. Management Plan for the Compensatory Mitigation on the Burdened Property;
3. Ecological and environmental studies for the Burdened Property on which the Compensatory Mitigation is to be provided;
4. Sketch and Legal Description of the Burdened Property;
5. Seller's consultant fees for Compensatory Mitigation;
6. Legal expenses, fees and costs incurred by Seller for the Burdened Property not related to Paragraph 23; and
7. Documentary stamps and recording fees associated with the recording of the Conservation Easement(s).

19. MANAGEMENT OF THE BURDENED PROPERTY. A long-term management trust fund acceptable to the Environmental Agencies for the purposes of managing the Burdened Property shall be established by the Easement Grantors at no expense to the Buyer. The Seller shall pay any and all such fees from the per acre purchase price set forth in Paragraph 5. above and shall indemnify and hold Buyer harmless from any and all such management fees, expenses, regulatory compliance costs and any other expense associated with the ongoing viability of the Burdened Property as Compensatory Mitigation.

20. MAINTENANCE. Between the Effective Date of this Agreement and the date of Closing, the Burdened Property shall be maintained by the Easement Grantors and Seller in the condition as it existed as of the Effective Date of this Agreement.

21. SELLER'S OBLIGATIONS. It shall be the obligation of Seller (in addition to any other obligations contained in this Agreement) to manage the Burdened Property required for the Compensatory Mitigation contemplated and to be provided by Seller pursuant to this Agreement in accordance with the requirements and conditions of the permit(s) issued by the Environmental Agencies related to the Compensatory Mitigation for the Development Project.

22. PERMIT APPLICATIONS. Buyer shall provide notice to Seller within five (5) days of applying for all necessary permits or permit modifications, by providing Seller a copy of the permit or permit modification application(s) and accompanying documents, if any, submitted with regard to such application(s) for those portions of such

application(s) related to the Burdened Property. In the event Buyer has applied for all necessary permits prior to execution of this Agreement, such permit applications and accompanying documents submitted with regard to such application(s), if any, shall be attached as an Exhibit(s) to this Agreement at the time of execution. In the event Buyer has already received permit approval and/or permit modification approval, Buyer shall provide copies of any and all documents pertaining to such approval(s) to Seller, by attaching such documents as an Exhibit(s) to this Agreement at the time of execution.

23. ATTORNEYS' FEES AND COSTS. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, at trial and at all appellate levels and for collection.

24. AGREEMENT NOT RECORDABLE/ASSIGNABLE. Neither this Agreement nor any notice, memorandum nor notation thereof shall be recorded by any party hereto in the Public Records of Seminole County, Florida or of any other county in the State of Florida. This Agreement may be recorded in the public records maintained by the Clerk of the Board of County Commissioners. Neither party may assign the benefits of or transfer the responsibility for performing this Agreement to any other party without the express written approval of the other party, provided, however, Seller or the Easement Grantor may, without Buyer's approval, transfer the management responsibility for the Burdened Property to the SJRWMD.

25. EFFECTIVE DATE. This Agreement is effective on the date on which the last of the Parties executes this Agreement.

26. CALCULATION OF TIME. Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period ending on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.

27. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

28. CONSERVATION EASEMENT. The Parties acknowledge and agree that the Compensatory Mitigation will be subject to a management plan as required by the Environmental Agencies and included as a permit condition for the Project. Implementation of the management plan and responsibility for maintaining implementation of the same shall be the responsibility of the Seller as recognized by the Management Fee set forth in Paragraph 19 above. In the event that Seller is unable or unwilling to maintain the Burdened Property in accordance with the management plan and permit conditions, then this Agreement shall serve as an assignment to Buyer of Seller's rights in and to the Burdened Property, Seller's rights pursuant to the Mitigation Contracts and Seller's rights against the Easement Grantors. This assignment shall operate against the successors, assigns (if approved in writing as stated in Paragraph 24 above), devisees, vendees and

any other successor in interest to Seller or the Easement Grantors. The intent of this provision is to allow Buyer to undertake whatever activity that might be necessary in order to prevent the revocation of or enforcement action regarding the permit(s) or interference with the continued operation and viability of the Development Project in the event Seller fails to maintain the Burdened Property in accordance with the management plan. Seller's exercise of any rights hereunder shall be without prejudice to whatever legal rights Seller may have against Buyer.

29. TYPEWRITTEN OR HANDWRITTEN PROVISIONS. Typewritten or handwritten provisions inserted in this Agreement shall control all printed provisions in conflict therewith so long as the same have been initialed by both Parties hereto.

30. OTHER AGREEMENTS. This Agreement represents the entire Agreement of the Parties with respect to the subject matter hereof. No agreements or representations, unless incorporated in this Agreement, shall be binding upon any of the Parties. This Agreement shall supersede all previous communications, discussions, representations, advertisements, proposals or agreements either verbal or written, between the Parties hereto and not contained herein. No deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

31. AMENDMENTS AND WAIVERS. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or conditions of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or conditions. Any party hereto, by notice, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants or any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

32. NOTICE. All notices, consents, approvals, waivers and elections which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficiently made or given only when delivered in person, sent by facsimile with the original simultaneously sent by U.S. First Class Mail, or delivered via overnight courier service with receipt of delivery to:

(a) Buyer
SEMINOLE COUNTY
County Manager
1101 East First Street
Sanford, Florida 32771

(b) Seller

c/o Mr. Steven D. Rich
Mitigation Land Brokerage & Management, Inc.
P.O. Box 499
Geneva, Florida 32732-0499

(c) Escrow Agent
J.A. Jurgens, Esquire
J.A. Jurgens, P.A.
505 Wekiva Springs Road
Suite 500
Longwood, Florida 32779

or to such other address as any party hereto shall designate by like notice give to the other Parties hereto, including Escrow Agent.

Notices, consents, approvals, waivers and elections given or made as aforesaid shall be deemed to have been dated, given and received on the date of actual receipt.

34. TAXES OR ASSESSMENTS. It is contemplated by the Parties hereto that this Agreement and the service to be provided hereunder are not subject to State of Florida or local governmental sales taxes, documentary stamp taxes, intangible taxes or any other tax or assessment. In the event it is determined that any such tax does apply to this transaction, then it is understood and agreed that such tax is the obligation of and shall be paid by Seller as and when the same shall be due and payable.

35. RULES OF CONSTRUCTION. The use of any gender shall include all other genders. Words in the singular include the plural, and the plural include the singular. The word "or" is not exclusive, and the use of the word "and" may be conjunctive or disjunctive. The word "person" shall mean any individual, corporation, partnership, joint venture, association, trust, unincorporated organization, institution, government or any agency or political subdivision thereof, or any other party or form of entity. The captions of Articles, Sections and Subsections are for convenient reference only, and shall not affect the construction or interpretation of any of the terms or provisions of this Agreement. Should any provision of this Agreement require judicial interpretation, the Parties hereto agree that the court interpreting or construing the same shall not construe this Agreement against one party more strictly by reason of any rule of interpretation which relates to the source of preparation of a document, it being agreed that the agents of all Parties hereto have participated in the preparation of this Agreement and that legal counsel was consulted by each party prior to the execution hereof.

36. EXECUTION OF DOCUMENTS. Each party hereto covenants and agrees that it will at any time and from time to time do such acts and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such documents as may reasonably may be required in order to carry out fully and effectuate the transaction herein

contemplated.

38. CHOICE OF LAWS; VENUE. This Agreement shall be governed by the laws of the State of Florida, and in the event of litigation between or among the Parties, venue for any such litigation shall be in Seminole County, Florida.

39. PARTIAL INVALIDITY AND SEVERABILITY. Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such a determination shall not render void, invalid or unenforceable any other section or any part of any other section of this Agreement, provided, however, that the Parties receive the full consideration bargained for hereunder.

40. NON-MERGER. The obligations of Seller under Paragraphs 10, 14, 19, 21 and 28 above shall survive the closing and shall not merge into the Conservation Easement or any other conveyance.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency

As authorized for execution by
The Board of County
Commissioners at their regular
meeting of _____, 2005.



County Attorney

SPL

08/25/05

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Date Executed by Seller 8/27/05

WITNESSES:

MITIGATION LAND BROKERAGE AND
MANAGEMENT, INC.

Barbara E. Rich
SIGNATURE

By: Steven D. Rich

BARBARA E. Rich
PRINT NAME

Steven D. Rich
As Its: Vice President

Bonnie K. Rich
SIGNATURE

Bonnie K. Rich
PRINT NAME

WITNESSES:

ESCROW AGENT

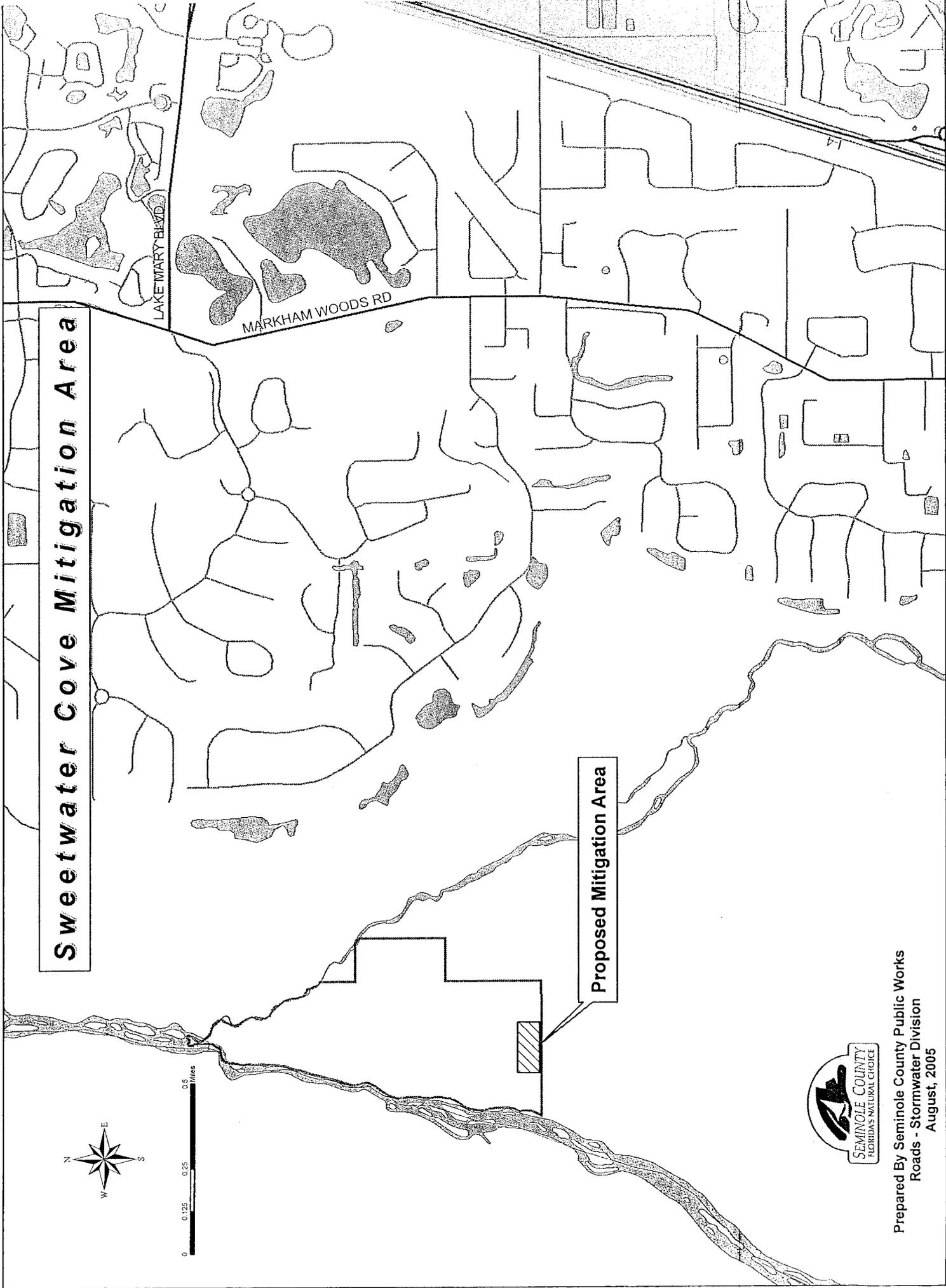
[Signature]
SIGNATURE

By: [Signature]
J. A. Jurgens, Esquire
J.A. JURGENS, P.A.

GARY SIMMONS
PRINT NAME

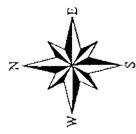
Michelle Quirk
SIGNATURE

Michelle Quirk
PRINT NAME



Sweetwater Cove Mitigation Area

Proposed Mitigation Area



Prepared By Seminole County Public Works
Roads - Stormwater Division
August, 2005