

Memorandum



Date: May 4, 2010

To: Honorable Chairman Dennis C. Moss and Members,
Board of County Commissioners

Agenda Item No. 8(D)(1)(E)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Acceptance of a Restrictive Covenant Running with the Land in Favor of Miami-Dade County to Preserve and Enhance a 0.918 Acre Conservation Easement Located in the Bird Drive Wetland Basin Between SW 18 Street and 20 Street and Between SW 157 Avenue and 158 Avenue, Miami-Dade County

Recommendation

It is recommended that the Board approve the attached resolution authorizing the acceptance of a restrictive covenant running with the land in favor of Miami-Dade County (Attachment A).

Scope

The subject property is located between SW 18 Street and 20 Street and between SW 157 Avenue and 158 Avenue, in County Commission District 11 (Commissioner Martinez).

Fiscal Impact/Funding Source

Not applicable.

Track Record/Monitor

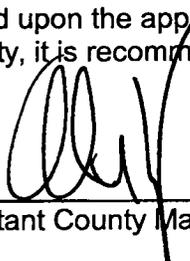
Not applicable.

Background

The Department of Environmental Resources Management (DERM) has received a Class IV Wetland Permit application by Florida Power & Light Company for the development of an electrical substation impacting 2.80 acres of wetlands in the Bird Drive Wetland Basin between SW 18 Street and 20 Street and between SW 157 Avenue and 158 Avenue.

Chapter 24-48.3(5)(b) of the Code of Miami-Dade County requires the preservation of all tree islands within the Bird Drive Wetland Basin. The subject restrictive covenant specifies that a 0.918 acre conservation easement will be enhanced and preserved as a tree preservation area. A diagram and legal description of the conservation easement is included (Attachment B). The conservation easement/tree preservation area is located outside the Urban Development Boundary adjacent to natural wetland areas, residential development and the proposed electrical substation. The conservation easement/tree preservation area is characterized as a native tree island impacted by Melaleuca, an invasive exotic tree species, and the conservation easement/tree preservation area will be enhanced by removing invasive exotic vegetation and solid waste. The draft Class IV Permit Conditions are enclosed as Attachment C.

Based upon the applicable evaluation factors set forth in Section 24-48.3 of the Code of Miami-Dade County, it is recommended that the Board approve the attached resolution.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 4, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(D)(1)(E)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)(E)

5-4-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A RESTRICTIVE COVENANT RUNNING WITH THE LAND IN FAVOR OF MIAMI-DADE COUNTY TO PRESERVE AND ENHANCE A 0.918 ACRE CONSERVATION EASEMENT LOCATED IN THE BIRD DRIVE WETLAND BASIN BETWEEN SW 18 STREET AND 20 STREET AND BETWEEN SW 157 AVENUE AND 158 AVENUE IN SECTION 08, TOWNSHIP 54 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the attached Restrictive Covenant Running With the Land in Favor of Miami-Dade County for the property described in Exhibit A of the attached restrictive covenant and located between SW 18 Street and 20 Street and between SW 157 Avenue and 158 Avenue, Miami-Dade County, Florida, has been submitted pursuant to Section 24-48.2(l)(B)(2)(b) of the Code of Miami-Dade County; and

WHEREAS, the attached restrictive covenant has been executed and is being proffered to this Board for approval, as indicated in the Manager's memorandum, a copy of which is attached hereto and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board having considered all the applicable factors contained within Section 24-48.3 of the Code of Miami-Dade County, hereby authorizes the acceptance of the attached Restrictive Covenant Running With the Land in Favor of Miami-Dade County by Florida Power & Light Company to preserve and enhance a 0.918 acre conservation easement; and pursuant to Resolution No. R-974-09, (a) directs the Mayor or Mayor's designee to

record the instrument of conveyance accepted herein in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of the instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of said instrument together with this resolution.

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:

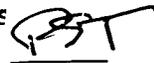
Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Barbara J. Jordan	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Bruno A. Barreiro
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of May, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as  to form and legal sufficiency.

Peter S. Tell

Attachment A - Restrictive Covenant

**RESTRICTIVE COVENANT RUNNING WITH THE LAND IN FAVOR OF
MIAMI-DADE COUNTY**

The undersigned, Florida Power & Light Company, being the present owner(s) of the following real property (hereinafter called "the Property"), lying, being and situated in Miami-Dade County, Florida, to wit:

See Exhibit A

pursuant to Section 24-48.2(I)(B)(2)(b) of the Code of Miami-Dade County, Florida hereby proffers this executed Restrictive Covenant Running With The Land in Favor of Miami-Dade County, Florida as part of Miami-Dade County Department of Environmental Resources Management Class IV Permit FW 08-014:

1. The owner, its heirs, successors, assigns and grantees, covenants to Miami-Dade County to comply with all conditions set forth in the Miami-Dade County Class IV Wetland Permit FW08-014 attached hereto as Exhibit B and incorporated herein by reference.
2. The owner, its heirs, successors, assigns and grantees, covenants to Miami-Dade County that neither native trees nor native understory shall be removed from the Property without the prior written consent of the Miami-Dade County Department of Environmental Resources.
3. The owner, its heirs, successors, assigns and grantees, shall notify Miami-Dade County in writing not later than thirty (30) days after any conveyance, sale, grant or transfer of the Property or any portion thereof, to any heirs, successors, assigns or grantees.
4. The owner, its heirs, successors, assigns and grantees, covenants to Miami-Dade County to prohibit and prevent public access to the wetlands, which include wetland habitat that will be restored, enhanced and created within the Property. In the event that the Property is being degraded (i.e., the area is being destroyed or damaged, plants removed or trampled upon or trash and debris are accumulating in the area), then Miami-Dade County may require the owner to install protective barriers around any area within the Property, which has been degraded.
5. This Restrictive Covenant shall run with the land and shall be recorded in the Public Records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned, and their heirs, successors, grantees and assigns until such time as the same is modified or released in writing by Miami-Dade County, Florida.

6. The undersigned agree(s) and covenant(s) that this Restrictive Covenant and the provisions contained herein may be enforced against any person permitting, allowing, letting, causing or suffering any violation of the terms of this Restrictive Covenant by the Department of Environmental Resources Management, or its successor, by temporary, permanent, prohibitory, and mandatory injunctive relief as well as otherwise provided by law or ordinance and also may include an action for and to recover civil penalties, damages, costs and expenses, and attorney's fees in favor of Miami-Dade County against said person(s) as authorized by law or ordinance. All of the remedies provided herein shall be deemed to be independent and cumulative and shall be deemed to be supplemental to any remedies provided by law or ordinance.

IN WITNESS WHEREOF, the undersigned have caused this Covenant to be executed this 30th day of September, 2009.

Witnesses:

sign Jack McNeal

print JACK MC NEAL

sign Raymond M Garcia

print RAYMOND M GARCIA

Property Owner

sign James A Keener

print James A. Keener

Title V.P. Transmission + Substation

Address 700 Universe Blvd.
Juno Beach, Florida 33408

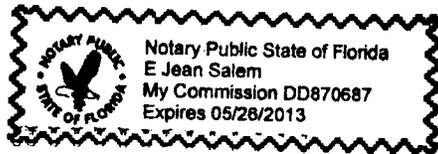
STATE OF FLORIDA, COUNTY OF DADE

The foregoing instrument was acknowledged before me this 30th day of September, 2009 by James A. Keener as Vice President, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

sign E. Jean Salem
print E. Jean SALEM

State of Florida at Large (Seal)
My Commission Expires:



Attachment B - Sketch and Legal Description of Covenant Area

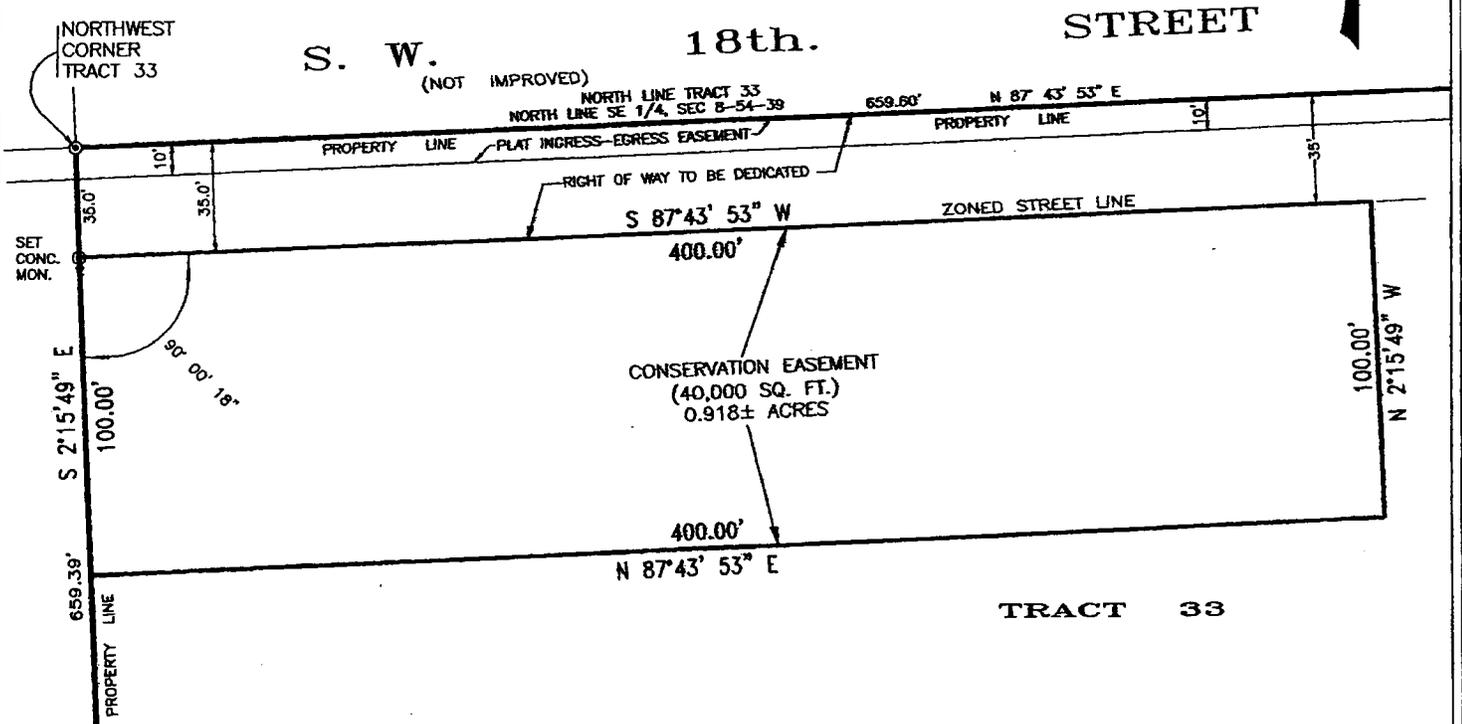
(Exhibit A to Restrictive Covenant)

SKETCH TO ACCOMPANY CONSERVATION EASEMENT
THIS IS NOT A SURVEY

LEGAL DESCRIPTION:

CONSERVATION EASEMENT:

A PORTION OF TRACT 33, IN THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 54 SOUTH, RANGE 39 EAST, SUBDIVISION OF MIAMI EVERGLADE LAND COMPANY LTD, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2 AT PAGE 3 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS THE SOUTH 100 FEET OF THE NORTH 135 FEET OF THE WEST 400 FEET OF SAID TRACT 33. CONTAINING 40,000 SQUARE FEET, 0.918 ACRES OF LAND, MORE OR LESS.



A. R. TOUSSAINT & ASSOCIATES, INC.
LAND SURVEYORS

620 N.E. 126 ST. NORTH MIAMI, FLORIDA 33161
FLORIDA CERTIFICATE OF AUTHORIZATION LB-273

ORDER No. 14442 SCALE: 1"=60'
DATE: JANUARY 05, 2008

A.R. TOUSSAINT & ASSOCIATES, INC.

BY: *Albert R. Toussaint* PRES.

ALBERT R. TOUSSAINT
REGISTERED ENGINEER NO. 8939
REGISTERED SURVEYOR AND MAPPER NO. 907
STATE OF FLORIDA
FLORIDA CERTIFICATE OF AUTHORIZATION LB-273

Attachment C – Class IV Permit Conditions (Exhibit B to Restrictive Covenant)

SPECIAL CONDITIONS

1. The maximum area of jurisdictional wetlands on the property that that may be impacted under this Permit is 2.80 acres of filling for the development of an electrical substation. **NO ADDITIONAL FILL OR EXCAVATION BEYOND THE LIMITS OF THIS AREA IS AUTHORIZED UNDER THIS PERMIT.**
2. The Permittee is mitigating for the ecological impacts related to the loss of wetland habitat through off-site mitigation by purchasing 1.36 credits in the Everglades Mitigation Bank (EMB). The wetland restoration project carried out by the Florida Power & Light Company (FPL), has enhanced property in the South Dade Wetland Basin by removing exotic vegetation, replanting with native species, restoring filled areas to natural grade, and the implementation of a fire management program. The Permittee shall purchase 1.36 credits prior to the issuance of the Class IV Permit.
3. Within sixty (60) days of permit issuance, the Permittee shall submit to DERM documentation that 1.36 freshwater herbaceous credits have been deducted from the ledger for FPL Everglades Mitigation Bank.
4. In accordance with Chapter 24-48.3(5)(b) of the Code of Miami-Dade County, the Permittee is preserving an existing, on-site 0.918 acre Tree Island and buffer area. Upon approval of the Miami-Dade Board of County Commissioners, the Permittee shall record with the Clerk of the Court a covenant running with the land in favor of Miami-Dade County for the protection and management of the Tree Island and surrounding buffer area in their natural, enhanced state and free from any inconsistent use.
5. Within sixty (60) days of permit issuance, the Permittee shall submit to DERM an approvable monitoring and maintenance plan for the Tree Island, buffer area and remainder of wetlands on the subject property. Said plan should include, at a minimum, the maintenance activities and schedule including a proposition for access control, monitoring criteria to include an 80% success rate of native wetland vegetation following each maintenance event and annual reporting of the program activities. Annual reporting shall include all assessment data, as well as any non-compliance items and actions proposed or undertaken to correct these problems.
6. The Permittee is required to preserve a 2.224 acre Stormwater Management System on the western edge of the property in order to satisfy the Cut & Fill requirement for the Bird Drive Basin. The Permittee shall maintain this system as per the "Stormwater Area Maintenance Plan" dated June 9, 2009 labeled as Exhibit C. The Plan is to be initiated after construction of the substation is completed.
7. Sec. 24-49.9 refers to the list of exotic pest plant species as listed in Policy 8I of the Conservation Element of the Comprehensive Development Master Plan. Melaleuca is listed as one of the plants that may not be sold, propagated or planted anywhere in Miami-Dade County. This section of the code also states that, if present, Melaleuca must be removed from the remaining 7.2 acres of the property prior to development.
8. This Permit is good for a period of two (2) years. As provided by Section 24-48.9(2)(b) of the Code of Miami-Dade County, Florida, the permit holder shall submit a written request for an extension of time from the Miami-Dade County Department of Environmental Resource Management (DERM) at least thirty (30) days prior to the expiration date of this permit. Applications for extensions of time must be filed in accordance with Section 24-48.9(2)(b) of the Code or they will be returned to the Permittee.
9. Any deviation from the approved plans for this project shall be submitted in writing to, and approved by, DERM prior to the commencement of this project. The contractor and the Permittee shall take whatever remedial action is necessary to bring the project into compliance with the Permit Conditions and approved plans upon determination by DERM that the project is not in compliance with such.

GENERAL CONDITIONS

1. The fill material shall consist of clean fill (soil, rock, sand, marl, clay, stone and concrete rubble). No trash, garbage, wood, asphalt, roofing materials, tires, metals, cleared vegetation, building debris, or similar materials are allowed to be used as fill. Evidence that improper fill material has been used shall result in the initiation of enforcement action by DERM against the Permittee. Failure of the Permittee to cease and desist the improper fill violation after receiving written Notice by DERM or to fully correct the violation within the time frames specified by DERM's written Notice may result in the revocation of this permit.
2. This permit is good for a period of two (2) years. As provided by Section 24-48.9(2)(b) of the Code of Miami-Dade County, Florida (Code), the permit holder shall submit a written request for an extension of time from the Miami-Dade County Department of Environmental Resources Management (DERM) at least thirty (30) days prior to the expiration date of this permit. Applications for extensions of time must be filed in accordance with Section 24-48.9(2)(b) of the Code or they will be returned to the Permittee.
3. The Permittee must comply with the terms and conditions of this permit. The Permittee is not relieved of this requirement if the permitted activity is abandoned. However, the Permittee may make a good-faith transfer in compliance with General Condition 6 below.
4. The Permittee shall comply with the provisions of Chapter 16A of the Code to preserve known and potential archeological resources in the area that are subject to this permit.
5. It is a violation of the Code to perform any work authorized pursuant to this Permit if the Permittee(s) sell or otherwise transfer ownership of the property unless DERM has approved an Application for Transfer. An Application for Transfer may be filed with DERM at any time prior to the transfer of property ownership and, for a limited time, after the transfer of property ownership and must be signed by both the proposed transferee and transferor. Applications for Transfer shall be filed in the form prescribed by DERM and shall not be processed if the filed Application for Transfer is not fully complete in all respects pursuant to Section 24-48.18 of the Code within 120 days of the date of transfer of property ownership. In addition to the aforementioned requirements, an Application for Transfer of this Permit shall be filed with DERM not later than 90 days prior to the expiration date of this Permit, and the project shall be in compliance with all the restrictions, limitations, and conditions of this Permit and any related covenants at the time of submittal of the Application for Transfer and continuously throughout the time period during which the application is being processed.
6. The Permittee must allow DERM representatives to inspect the authorized activity during normal business hours to ensure that the work authorized through this permit is being, or has been, accomplished in accordance with the terms and conditions of this permit.
7. All of the plans and documents referenced on page 1 of this permit are a part of the conditions of this permit. In case of conflict between any of these approved plans, between these plans and any condition of this permit, a determination as to which plan or condition will be followed will be made by DERM. However, this condition shall not be used to limit the Department's ability to enforce the provisions of Chapter 24 of the Code.
8. This permit only authorizes the work described in page 1 under PROPOSED WORK. Any additional work in, on, over or upon wetlands at, near or in the vicinity of the subject property shall require additional Class IV Wetland Permit approval.
9. Any deviation from the approved plans for this project shall be submitted in writing to, and approved by DERM prior to the commencement of this project. The Permittee shall take whatever remedial action is necessary to bring the project into compliance with the permit and approved plans upon determination by DERM that the project is not in compliance with such.
10. DERM shall be notified no later than forty-eight (48) hours and no earlier than five (5) days prior to the commencement of the work authorized by this permit, unless otherwise noted herein. The Permittee

and/or contractor may notify DERM by calling (305) 372-6585 or by submitting the attached Notice of Commencement of Construction via hand delivery, U.S. Mail, or facsimile at (305) 372-6479.

11. No soil, vehicles or heavy equipment, fill, building materials, construction debris, dead vegetation, waste or any other materials shall be placed, stored, or deposited in any undisturbed, un-permitted wetland areas on or adjacent to the subject property permitted by this Class IV Wetland Permit. All construction personnel shall be shown the location(s) of all wetland areas outside of the permitted work area to prevent encroachment from heavy equipment into these areas.
12. All contractors performing work authorized by this permit shall hold an applicable certificate of competency and shall be licensed in Miami-Dade County and/or the State of Florida.
13. The subject property is located in an area subject to frequent and regular flooding. The Permittee is advised that, at this time, Miami-Dade County has no plans to provide additional flood protection or drainage in this area. The issuance of this Class IV Wetland Permit authorizes the Permittee to undertake work in, on or upon wetlands on the project site, but it does not constitute an acknowledgment that the project will comply with the regulatory requirements for flood protection established by Miami-Dade County through the issuance of a Class II Permit or by the South Florida Water Management District through the issuance of a Management and Storage of Surface Water Construction Permit.
14. Turbidity controls (such as, but not limited to, turbidity curtains) shall be implemented whenever visible plumes are present to ensure compliance with the water quality standards stipulated in Section 24-42 (3), of the Code of Miami-Dade County. Turbidity controls shall be employed and maintained in the most effective manner possible to prevent turbidity from extending beyond the control mechanism in place.
15. Turbidity may not exceed twenty-nine (29) Nephelometric Turbidity Units (NTU's) above background within adjacent wetlands or surrounding surface waters. If the turbidity levels exceed the above standard, all construction shall stop and additional turbidity controls shall be implemented. Work shall not resume until the contractor has implemented adequate turbidity control methods and has received authorization from DERM to recommence work. At DERM's discretion, turbidity samples may be required and shall be collected in accordance with Section 24-44.2(3), of the Code of Miami-Dade County, or as specified by DERM, and the results sent directly to the DERM Project Manager on a weekly basis.
16. The Permittee shall not plant any of the following listed exotic species or any of the species found within the Florida Exotic Pest Plant Council's (FLEPPC) Category 1 and Category 2 list of invasive exotic plants in or on the permitted area. If any of the following listed exotic species currently exist on the permitted area, the Permittee shall remove them prior to development or within sixty (60) days of the issuance of this Permit, whichever is less, in accordance with methods approved by DERM. In addition, their sale, propagation, planting, importation or transportation is prohibited.

- | | |
|--|---|
| A. Melaleuca quinquenervia (Punk Tree) | R. Ficus microcarpa (laurel fig) |
| B. Casuarina spp. (Australian Pines) | S. Flacourtia indica (governor's plum) |
| C. Schinus terebinthifolius (Brazilian Pepper) | T. Hibiscus tiliaceus (mahoe) |
| D. Bischofia javanica (Bishopwood) | U. Dalbergia sisoo (sissoo) |
| E. Ricinus communis (Castor Bean) | V. Colubrina asiatica (lather leaf) |
| F. Ardisia elliptica (humilis) (Shoebuttan Ardisia) | W. Leucaena leucocephala (lead tree) |
| G. Cestrum diurnum (Day Jasmine) | X. Mimosa pigra (catclaw mimosa) |
| H. Cupaniopsis anacardioides (Carrotwood) | Y. Merremia tuberosa (wood rose) |
| I. Acacia auriculiformis (earleaf acacia) | Z. Neyraudia reynaudiana (cane grass) |
| J. Adenanthera pavonia (red sandlewood) | AA. Schefflera actinophylla (schefflera) |
| K. Albizia lebeck (woman's tongue) | BB. Solanum viarum (tropical soda apple) |
| L. Jasminum fluminense (jasmine) | CC. Thespesia populnea (seaside mahoe) |
| M. Jasminum dichotomum (gold coast jasmine) | |
| N. Ficus altissima (banyan tree) | |

- O. Ficus bengalensis
- P. Ficus benjamina (weeping fig)
- Q. Ficus elastica (Indian rubber tree)

17. This Permit does not authorize residential use of the property or the placement of a trailer on the property. Separate approval from the Miami-Dade County Department of Planning and Zoning, (305) 375-2500, is required for these uses.
18. This permit does not authorize any person to construct, operate or maintain an on-site domestic well system and other water supply wells.
19. No structure requiring the installation of a septic tank shall be placed on the subject property unless authorized in writing by the Environmental Quality Control Board and the State of Florida Department of Health at (305) 623-3574.
20. Should any other regulatory agency require modifications to the permitted area, the Permittee shall notify DERM in writing of the changes prior to implementation so that a determination can be made as to whether a permit modification is required.
21. The Permittee shall immediately notify DERM in writing of any previously submitted information that is later discovered to be inaccurate.
22. This Class IV Permit does not authorize any dewatering activities on the subject property. A separate Class V Permit from the Miami-Dade County DERM Water Control Section, (305)372-6681, is required for this activity.
23. Failure to comply with the General or Special Conditions contained in this Class IV Wetland Permit may result in revocation of the Permit.

Location Map

Section 543908

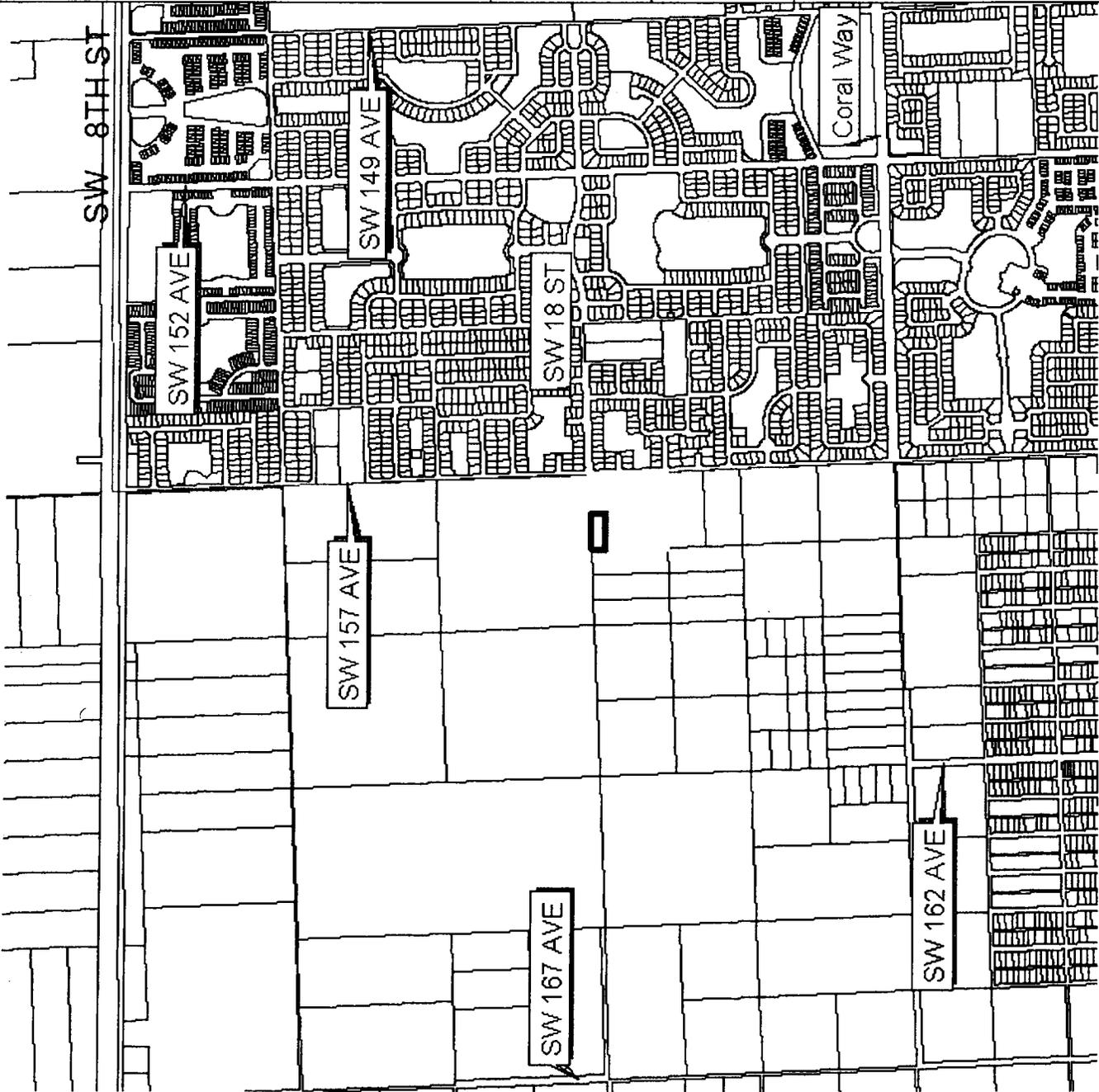
- Conservation Easement for a Tree Island Preservation Area

- Folio 30-4908-001-0010
Located between SW 157 AVE & 158 AVE and between SW 18 ST & 20 ST



- 2005 Urban Development Boundary
 - Text Major Street Annotation
 - Highways
 - Major Streets
 - Parcels
 - Canvas
- 33
57

SCALE: 1 inch = 1395.47 Feet



2009 Aerial - Conservation Easement in Folio 30-4908-001-0010

Section 543908

 - Conservation Easement for a Tree Preservation Area

- Folio 30-4908-001-0010
Located between SW 157 AVE & 158 AVE and between SW 18 ST & 20 ST



SCALE: 1 inch = 130.24 Feet

