

## **MEMORANDUM**

**TO:** Governing Board Members

**FROM:** Deena Reppen, Deputy Executive Director, Regulatory and Public Affairs

**DATE:** September 11, 2009

**SUBJECT:** **Authorize publication of the Notice of Rule Development in the Florida Administrative Weekly (FAW) to amend Rule 40E-1.659, F.A.C., to incorporate a conservation easement for local governments, and to amend Rule 40E-4.091, F.A.C. and the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District incorporated by reference therein, to amend section 4.3.8 to include reference to said conservation easement**

### **Recommendation**

Staff recommends authorization to publish a Notice of Rule Development to incorporate a conservation easement for local governments and to amend the section within the "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District" (BOR) which references conservation easements.

### **Background**

During the review of Environmental Resource Permits, local government agencies sometimes propose to impact wetlands through filling, dredging or other methods and often propose to preserve, enhance or restore other wetlands or uplands as mitigation for those impacts. In addition, local governments sometimes enter into agreements with third parties to conduct site specific mitigation on the local government agency's property. To provide reasonable assurance that certain areas will not be subject to future impacts and that the proposed mitigation areas will be legally protected, a conservation easement is normally placed over the mitigation or preservation area.

In January 2007, the District adopted rules to incorporate several types of standardized easement forms for use by private property owners. The use of the standardized forms reduces expenses for applicants and reduces review time by the District due to a standard form being utilized, which does not require individual legal review.

However, the currently approved forms cannot be used by local governments due to certain language in those forms that does not apply to government entities. Rule 40E-1.659, F.A.C., includes all forms and instructions incorporated by reference into the District's rules. District staff recommends that the rule be amended to incorporate a conservation easement for local governments and to amend the section within the BOR which references the conservation easements.

Applicants continue to have the option to propose language for site specific characteristics. The rule language will explicitly state that variations from the standard forms or language may be considered to address site specific conditions.

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Staff recommends authorization to publish a Notice of Rule Development to incorporate this conservation easement by reference and to amend the section within the BOR which references the conservation easements.

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