

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050851

1. ACTION REQUESTED/PURPOSE:

Approval of a license agreement between the Lee County Board of County Commissioners and D.R. Horton to allow the latter to do work in a portion of the Six Mile Cypress Slough Preserve to offset wetland impacts that will occur in the development of The Orchard.

2. WHAT ACTION ACCOMPLISHES:

Allows D.R. Horton and it contractors to restore 122.6 acres of wetlands on Water Management District owned lands managed by the County and provides for long-term management funds for the continued maintenance of this portion of the Six Mile Cypress Slough Preserve.

3. MANAGEMENT RECOMMENDATION: Approve License Agreement.

4. Departmental Category:

CIID

5. Meeting Date: *06-28-2005*

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner _____
Department Parks & Recreation
Division _____
By: John Yarbrough

John Yarbrough

9. Background:

D.R. Horton, Inc., the developers of The Orchard have requested to mitigate for on-site wetland impacts in the Six-mile Cypress Slough. In addition to on site preservation they have asked to do exotic plant removal in a portion of the Six Mile Cypress Preserve owned by the South Florida Water Management District but managed by the County as part of the Preserve. All exotics will be removed from 122.6 acres and maintained exotic free for five years. After five years, \$124,000 will be given to the county, which will assume the continued maintenance of the site. This work is compatible with the Land Stewardship Plan for the Preserve and is consistent with the joint management agreement that the county has with the South Florida Water Management District. The initial work to be done by D.R. Horton and the contribution to long-term management represents a savings to the County of \$465,000.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>John</i>				<i>US</i>	<i>6/13/05</i>	<i>6/14/05</i>	<i>6/15/05</i>	<i>6/16/05</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN: *[Signature]*
 6-14-05
 9 am
 COUNTY ADMIN
 FORWARDED TO: *[Signature]*
 6/16/05
 3:45

Rec. by CoAtty
 Date: 6-30
 Time: 8:15
 Forwarded To:
 6/16/05 5:00 pm

License Agreement between Lee County and DR Horton, Inc. for Mitigation and Restoration of Six Mile Cypress Slough

THIS LICENSE AGREEMENT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA (hereafter referred to as "GRANTOR") and D.R. HORTON, INC., a Florida corporation (hereinafter referred to as "GRANTEE").

WITNESSETH:

WHEREAS, GRANTEE desires to enter upon and to restore lands owned by the South Florida Water Management District ("District") located in Lee County, Florida, in association with Environmental Resource Permit Application # 040610-18 with the District ("District Permit") and U.S. Army Corps of Engineers Permit Application # SAJ-2004-7053 (IP-JWS) ("Corps Permit"); and

WHEREAS, pursuant to an agreement (See Attached Exhibit "A") with the District (Lee County contract no. C880114) GRANTOR is charged with the management and maintenance of the District-owned lands, which are located in Six Mile Cypress Slough; and

WHEREAS, pursuant to the above-referenced agreement between GRANTOR and the District, GRANTOR may not allow access to or use of the District-owned lands without the authorization and prior written consent of the District, which has been given by the District; and

WHEREAS, GRANTOR is agreeable to the restoration of the District-owned lands to their natural condition by GRANTEE;

NOW, THEREFORE, in consideration of the faithful and timely performance of and compliance with the terms and conditions stated herein, GRANTOR does hereby grant to GRANTEE a license to use a portion of the District-owned lands identified below, to wit:

(See Attached Exhibit "B")

The above-described property shall be referred to throughout this Agreement as the "Property."

This Agreement is subject to the following terms and conditions:

1. COMMENCEMENT: This Agreement shall be effective on the date it is signed by all parties and GRANTEE has received all required federal, state, and local permits and approvals as are necessary to conduct the restoration activities. However, if all permits have not been issued by June 1, 2006, this Agreement shall be null and void.

2. PURPOSE OF AGREEMENT: GRANTOR and GRANTEE are entering into this Agreement to provide a mutual benefit to GRANTOR and GRANTEE. GRANTEE seeks to restore the Property to its natural condition as mitigation and/or public benefit to offset unavoidable environmental impacts on GRANTEE'S lands incurred in the construction of its residential development project as authorized by its State and federal permits. Currently, the Property is heavily infested with Brazilian pepper and other exotic plants, and portions of the Property have been altered such that the natural hydrology in this area has been modified. These changes have greatly modified the natural habitat of the Property. GRANTEE proposes, at its expense, to remove the exotic plant species from the Property and restore it to a state that replicates, to the greatest extent practicable, its natural condition. GRANTEE also proposes to provide funding to GRANTOR for maintenance of the Property in such condition in perpetuity. Restoration of the Property to its natural condition is a goal of GRANTOR and is in the public interest. Restoration will include removal of exotic species and hydrologic and habitat restoration. GRANTEE understands that the cost of restoration and five years of exotic maintenance is estimated to be \$341,000 and the cost of perpetual maintenance is estimated to be \$124,000. In consideration of these costs and the restoration of the Property, the parties agree

that GRANTEE shall be entitled to receive, if applicable criteria are met, credit toward its permit mitigation and/or public benefit component, as determined by the permitting agency(ies) regulation, to offset the impacts on GRANTEE'S adjacent property and satisfy the requirements of its permit(s). GRANTOR'S execution of this Agreement is in no way determinative of the sufficiency of said mitigation.

3. EXTENT OF AGREEMENT: This Agreement covers the use of the Property for the purpose of restoring the property to, and maintaining the property in, its natural condition pursuant to the Scope of Work set forth in Exhibit "C", and no other use or activity by GRANTEE shall be allowed. This Agreement is a license to conduct activities on the Property. GRANTOR may revoke this Agreement for any deviation by GRANTEE from the requirements of the Agreement upon proper notice (see paragraph 13 below) to GRANTEE and reasonable opportunity for GRANTEE to cure said deviations. This Agreement may also be revoked by GRANTOR or GRANTEE by failure to obtain or revocation of the permit(s).

4. USE OF PROPERTY AND CONSIDERATION: GRANTEE shall have access to the Property for the purposes described in this Agreement. The nature and extent of the work to be conducted on the Property, and the location, and scheduling of such work are set forth in the Scope of Work, attached as Exhibit "C". GRANTOR, or its duly authorized agent, shall retain the right to enter the Property or engage in management activities not inconsistent with the use provided for herein and shall retain the right to allow compatible uses of the Property by third parties during the term of this Agreement. As set forth in paragraph 2 above, consideration for this license shall be the GRANTEE's cost of the environmental restoration and maintenance set forth in Exhibit B, estimated to be approximately \$465,000.

DRAFT

5. PROPERTY RIGHTS AND CLAIM OF TITLE: GRANTEE, in accepting this Agreement, does hereby agree that no claim of title or interest to said lands shall be made by reason of occupancy or use thereof.

6. INDEMNITY: GRANTEE hereby covenants and agrees to investigate all claims of every nature at its own expense and to indemnify, protect, defend, save, and hold harmless GRANTOR and its officers, agents, and employees from any and all damages, claims, demands, lawsuits, causes of action, or liability of any kind or nature arising out of the restoration activities authorized pursuant to this Agreement. GRANTOR shall not be liable for loss of or damage to structures, machinery, or equipment of GRANTEE used in construction on or maintenance of the Property. GRANTOR assumes no responsibility or liability whatsoever under any and all local, state, or federal permits or approvals obtained by GRANTEE to perform the work set forth in this Agreement or for GRANTEE'S project on adjacent lands. Further, GRANTOR will not be liable for any injuries to or losses of property, personal injury or death caused by the negligent or wrongful acts or omissions of Grantee or any employee, contractor, subcontractor or agent of Grantee engaged in any mitigation or restoration activities pursuant to this agreement.

7. ASSIGNMENT: This Agreement shall not be assigned, in whole or in part, without the prior written consent of GRANTOR. GRANTEE shall first provide notice of its intention to assign this Agreement to the state and federal agencies for which the mitigation and/or public benefit discussed in paragraph 2 above is a requirement. Any assignment made either in whole or in part without the prior written consent of GRANTOR shall be void and without legal effect.

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8. BINDING EFFECT: GRANTEE, by acceptance of this Agreement, binds itself, its successors, and assigns to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants for GRANTEE, its successors and assigns.

9. VENUE PRIVILEGES: GRANTOR and GRANTEE agree that GRANTOR has venue privilege as to any litigation arising from matters relating to this Agreement.

10. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: GRANTEE shall not do or permit anything to be done that purports to create a lien or encumbrance of any nature against the Property including, but not limited to, mortgages or construction liens against the real property covered by this Agreement or against any interest of GRANTOR therein.

11. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

12. NOTICE: All notices given under this Agreement shall be in writing and shall be served by certified mail to the last address of the party to whom notice is to be given, as designated by such party in writing. GRANTEE and GRANTOR hereby designate their address as follows:

GRANTOR: Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Fl 33902-0398

GRANTEE: D.R. Horton, Inc.
1192 East Newport Center Drive, Suite 150
Deerfield Beach, FL 33442

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13. GOVERNING LAW: This Agreement shall be governed by and interpreted according to the laws of the state of Florida.

14. TITLE DISCLAIMER: GRANTOR does not warrant or guarantee any title, right, or interest in or to the property described in Exhibit "A" attached hereto.

15. ENTIRE UNDERSTANDING: This Agreement sets forth the entire understanding between the parties and shall only be amended with the prior written consent of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

GRANTOR

GRANTEE

BY: _____

BY:  _____

TITLE: _____

ITS: Paul Romanowski
Vice President

DATE: _____

DATE: 6/9/05