

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

Blue Sheet No. 20061322

**1. ACTION REQUESTED/PURPOSE:** Authorize the Chairwoman to execute a Deed of Conservation Easement to the South Florida Water Management District (SFWMD) as required for construction of the transportation projects known as Three Oaks Parkway Widening and Estero Parkway Extension.

**2. WHAT ACTION ACCOMPLISHES:** Places an historic flow-way of the Estero River headwaters under a conservation easement to the SFWMD and complies with SFWMD permits issued for construction of the transportation projects known as Three Oaks Parkway Widening and Estero Parkway Extension.

**3. MANAGEMENT RECOMMENDATION:** Approve

**4. Departmental Category:** 09 **C9B** **5. Meeting Date:** OCT 24 2006

<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>		<b>8. Request Initiated:</b>
	<input type="checkbox"/> Statute	<input type="checkbox"/>	Commissioner _____
	<input type="checkbox"/> Ordinance	<input type="checkbox"/>	Department _____
	<input type="checkbox"/> Admin. Code	<input type="checkbox"/>	Division _____
	<input type="checkbox"/> Other	<input type="checkbox"/>	By: <u>Scott M Gilbertson</u>

**9. Background:** As part of the wetlands and wildlife mitigation for the Three Oaks Parkway Widening and Estero Parkway Extension projects, the County is required to place lands under County ownership and within an historic flow-way of the Estero River headwaters under a standard conservation easement to the SFWMD. Execution of the easement is required by the SFWMD permits issued for construction of the transportation projects.

Attached is a conservation easement and legal description of the lands to be conveyed under the easement.

**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>S. Gilbertson</i> S. Gilbertson Date <u>10/3/06</u>				<i>S</i> 10/9/06	<i>RK</i> 10/10	<i>ST</i> 10/11/06	<i>PE</i> 10/11/06	<i>AD</i> 10/11/06	<i>J. Lavender</i> J. Lavender Date <u>10.3.06</u>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

REC'D  
BY CO. ATTY.  
10/9/06  
11:43 AM  
CO. ATTY.  
FORWARDED TO:  
10/10/06  
9:00 AM

RECEIVED BY  
COUNTY ADMIN:  
10/10/06 9:30 AM  
COUNTY ADMIN  
FORWARDED TO:  
10/11/06  
9:30 AM

Return recorded document to:  
South Florida Water Management District  
3301 Gun Club Road, MSC 4230  
West Palm Beach, FL 33406

### **DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT is given this \_\_\_\_ day of \_\_\_\_, 2006, by Lee County, ("Grantor") whose mailing address is P.O. Box 398, Fort Myers, FL 33902, to the South Florida Water Management District ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

#### WITNESS

WHEREAS, the Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit "A" attached hereto and incorporated herein ("Property"); and

WHEREAS, the Grantor desires to construct Three Oaks Parkway From Corkscrew Road to Alico Road and Koreshan Boulevard Extension AKA Estero Parkway ("Project") at a site in Lee County, which is subject to the regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Permit No. 85-00149-S and 36-05710-P ("Permit") authorizes certain activities which affect surface waters in or of the State of Florida; and

WHEREAS, this Permit requires that the Grantor preserve, enhance, restore and/or mitigate wetlands and/or uplands under the District's jurisdiction; and

WHEREAS, the Grantor has developed and proposed as part of the Permit conditions a conservation tract and maintenance buffer involving preservation of certain wetland and/or upland systems on the Property; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes, over the Property.

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Grantor hereby grants, creates, and establishes a perpetual Conservation Easement for and in favor

of the Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. Recitals. The recitals hereinabove set forth are true and correct and are hereby incorporated into and made a part of this Conservation Easement.

2. Purpose. It is the purpose of this Conservation Easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland and/or upland areas included in the Conservation Easement which are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, or other activities described herein that are permitted or required by the Permit, the following activities are prohibited in or on the easement area:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic or nuisance vegetation in accordance with a District approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural or enhanced condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties having historical, archaeological, or cultural significance.

4. Passive Recreational Facilities. Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any District rule, criteria, the Permit and the intent and purposes of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this Conservation Easement may be permitted upon written approval by the District.

a. The Grantor may conduct limited land clearing for the purpose of constructing such pervious facilities as docks, boardwalks or mulched walking trails.

b. The construction and use of the approved passive recreational facilities shall be subject to the following conditions:

i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Conservation Easement Area and shall avoid materially diverting the direction of the natural surface water flow in such area;

ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices;

iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements;

iv. This Conservation Easement shall not constitute permit authorization for the construction and operation of the passive recreational facilities. Any such work shall be subject to all applicable federal, state, District or local permitting requirements.

5. No Dedication. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

6. Grantee's Liability. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Acts Beyond Grantor's Control. Nothing contained in this instrument shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in any portion of the Property other than Conservation Areas specified in Permit No. 85-00149-S and 36-0571-P, that result from natural causes beyond Grantor's control, and not initiated by the Grantor, including but not limited to fire, flood, storm and earth movement. Should any Conservation Area be injured or changed from natural causes, including but not limited to fire, flood, storm and earth movement, the Grantor shall be provided notice and a reasonable opportunity to restore the affected Conservation Area to a condition that satisfies the permit requirements prior to the Grantee bringing any action for noncompliance with the Permit.

8. Property Taxes. Grantor shall keep the payment of taxes and assessments on the Easement Parcel current and shall not allow any lien on the Easement Parcel superior to this Easement. In the event Grantor fails to extinguish or obtain a subordination of such lien, in addition to any other remedy, the Grantee may, but shall not be obligated to, elect to pay the lien on behalf of the Grantor and Grantor shall reimburse Grantee for the amount paid by Grantee, together with Grantee's reasonable attorney's fees and costs, with interest at the maximum rate allowed by law, no later than thirty days after such payment. In the event Grantor does not so reimburse the Grantee, the debt owed to Grantee shall constitute a lien against the Easement Parcel which shall automatically relate back to the recording date of this Easement. Grantee may foreclose this lien on the Easement Parcel in the manner provided for mortgages on real property.

9. Enforcement. Enforcement of the terms, provisions and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

10. Assignment. Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.

11. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

12. Written Notice. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

13. Modifications. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; and all mortgages and liens have been subordinated to this Conservation Easement; and that Grantor has good right and lawful authority to convey this Conservation Easement; and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Lee County (Grantor) has hereunto set its authorized hand this \_\_\_\_ day of \_\_\_\_\_, 2006.

Lee County, Florida  
a Florida corporation

By: \_\_\_\_\_

Print Name: Tammara Hall  
Chairwoman, Lee County Board of

Title: County Commissioners

Signed, sealed and delivered  
in our presence as witnesses:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF FLORIDA

) ss:

COUNTY OF Lee

On this \_\_\_\_ day of \_\_\_\_, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_, the person who subscribed to the foregoing instrument, as the Chairwoman (Title) of the Lee County Board of County Commissioners (Corporation), a Florida corporation, and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized to do so. He/She is personally known to me or has produced a \_\_\_\_ (state) driver's license as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_

Print Name: \_\_\_\_\_

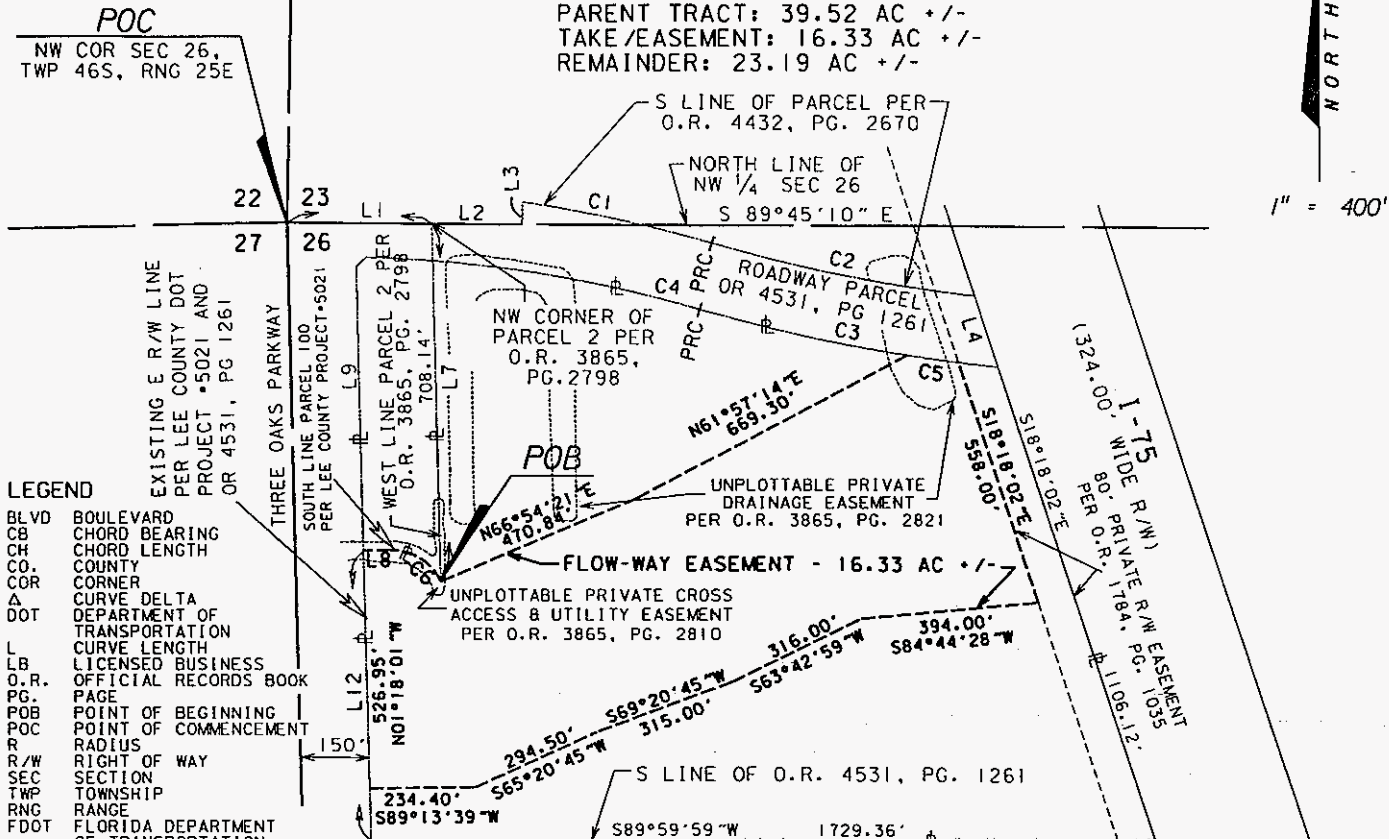
My Commission Expires: \_\_\_\_\_

SECTIONS 23 & 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA

This sketch is NOT a survey.

PROPERTY OWNER: LEE COUNTY, FLORIDA  
REFERENCE: OFFICIAL RECORDS BOOK 4531, PAGE 1261  
STRAP NUMBER: 26-46-25-00-00001.2010  
PARENT TRACT: 39.52 AC +/-  
TAKE/EASEMENT: 16.33 AC +/-  
REMAINDER: 23.19 AC +/-

SEE SHEET 2 FOR  
LEGAL DESCRIPTION



LEGEND

- BLVD BOULEVARD
- CB CHORD BEARING
- CH CHORD LENGTH
- CO. COUNTY
- COR CORNER
- Δ CURVE DELTA
- DOT DEPARTMENT OF TRANSPORTATION
- L CURVE LENGTH
- LB LICENSED BUSINESS
- O.R. OFFICIAL RECORDS BOOK
- PG. PAGE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- R RADIUS
- R/W RIGHT OF WAY
- SEC SECTION
- TWP TOWNSHIP
- RNG RANGE
- FDOT FLORIDA DEPARTMENT OF TRANSPORTATION
- PRC POINT OF REVERSE CURVATURE

LINE TABLE

L1	S 89°45'10" E	320.12'	C1	Δ -08°17'12" RT	Δ -10°02'09" LT	C3	Δ -10°54'03" RT
L2	S 89°45'10" E	199.94'	R	-2939.31'	R -3356.50'	R	-3506.50'
L3	N 00°52'48" E	48.97'	L	-425.11'	L -587.93'	L	-667.14'
L4	S 18°18'02" E	165.03'	CH	-424.74'	CH -587.18'	CH	-666.13'
L5	S 01°18'01" E	456.68'	CB	S 77°41'08" E	CB-S 78°33'43" E	CB	N 78°59'40" W
L6	S 88°41'59" W	438.19'	C4	Δ -12°16'54" RT	Δ -01°52'40" LT	C6	Δ -66°02'28" RT
L7	N 01°18'01" W	789.72'	R	-2790.00'	R -3506.50'	R	-120.00'
L8	N 88°41'59" E	60.34'	L	-598.06'	L -114.92'	L	-138.32'
L9	S 01°18'01" E	724.39'	CH	-596.91'	CH -114.92'	CH	-130.79'
L12	S 01°18'01" E	643.84'	CB	S 79°41'06" E	CB-S 82°04'07" E	CB	S 58°16'47" E

SURVEY NOTES

1. Reproductions of this sketch are not valid unless sealed with an embossed Surveyor's Seal.
2. The sketch shown hereon is for graphic representation only and does not represent a boundary survey.
3. Corner monuments were not set in conjunction with the preparation of this drawing.
4. Legal description prepared by PBS&J.
5. Bearings shown hereon are based on the North line of the NW 1/4 of Sec 26, Twp 46S, Rng 25E, being S 89°45'10" E.

SKETCH AND LEGAL DESCRIPTION  
ESTERO PARKWAY LEE CO. PROJECT \* 5021  
FLOW-WAY EASEMENT

JOB NO. 100806.08 0300	DATE 01-30-06
FIELD BOOK	REV.
SCALE: 1" = 400'	REV.
DRAWN BY: DMC	CHECKED BY: JAB

We hereby certify that the attached "Sketch and Legal Description" is true and correct to the best of our knowledge and belief as recently prepared under our direction and that this sketch meets the Intent of the minimum technical standards for surveying pursuant to Section 472.027, Florida Statutes and Chapter 61G17-6, Florida Administrative Code.

PBS&J, LB 24

CHECKED BY: JAB  
DRAWN BY: DMC  
JAMES E. GODFREY  
PROFESSIONAL LAND SURVEYOR \*4541

PBS&J ENGINEERS, PLANNERS & SURVEYORS  
5300 WEST CYPRESS STREET, SUITE 300  
TAMPA, FLORIDA 33607  
(813)-282-7275

SHEET 11 OF 2

(813)-282-7275

STATE OF FLORIDA OF 2



PROPERTY OWNER: LEE COUNTY, FLORIDA  
REFERENCE: OFFICIAL RECORDS BOOK 4531, PAGE 1261  
STRAP NUMBER: 26-46-25-00-00001.2010  
PARENT TRACT: 39.52 AC +/-  
TAKE/EASEMENT: 16.33 AC +/-  
REMAINDER: 23.19 AC +/-

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE NORTHWEST  $\frac{1}{4}$  OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, AND A PARCEL OF LAND DESCRIBED AS A PORTION OF PARCEL 2 IN OFFICIAL RECORDS BOOK 3865, PAGE 2798, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE S89°45'10" E, ALONG THE NORTH LINE OF THE NORTHWEST  $\frac{1}{4}$  OF SAID SECTION 26, A DISTANCE OF 320.12 FEET TO A POINT OF INTERSECTION WITH THE NORTHWEST CORNER OF THAT CERTAIN PARCEL DESCRIBED AS PARCEL 2 PER OFFICIAL RECORDS BOOK 3865, PAGE 2798, THENCE S01°18'01"E, ALONG THE WEST LINE OF SAID PARCEL 2, A DISTANCE OF 789.72 FEET TO THE POINT OF BEGINNING; THENCE N66°54'21"E, 470.84 FEET; THENCE N61°57'14"E, 669.30 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ESTERO PARKWAY, SAME ALSO BEING A CURVE CONCAVE NORTHEASTERLY HAVING A CENTRAL ANGLE OF 01°52'40", A RADIUS OF 3506.50 FEET, A CHORD BEARING AND DISTANCE OF S82°04'07"E, 114.92 FEET; THENCE ALONG THE ARC OF SAID CURVE AND SAID SOUTHERLY RIGHT OF WAY LINE, 114.92 FEET TO THE WESTERLY LINE OF A PRIVATE RIGHT OF WAY EASEMENT PER OFFICIAL RECORDS BOOK 1784, PAGE 1035, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S18°18'02"E, ALONG SAID WESTERLY LINE, 558.00 FEET; THENCE S84°44'28"W, 394.00 FEET; THENCE S63°42'59"W, 316.00 FEET; THENCE S69°20'45"W, 315.00 FEET; THENCE S65°20'45"W, 294.50 FEET; THENCE S89°13'39"W, 234.40 TO A POINT ON THE EAST RIGHT OF WAY LINE OF THREE OAKS PARKWAY PER LEE COUNTY PROJECT \*5021 AND OFFICIAL RECORDS BOOK 4531, PAGE 1261, SAME ALSO BEING 150.00 FEET EAST OF THE WEST LINE OF SAID NORTHWEST  $\frac{1}{4}$  OF SECTION 26; THENCE N01°18'01"W, PARALLEL WITH SAID WEST LINE AND ALONG SAID EAST RIGHT OF WAY LINE, 526.95 FEET TO THE SOUTH LINE OF PARCEL 100 PER ESTERO PARKWAY LEE COUNTY PROJECT NO. 5021; THENCE N88°41'59"E, ALONG SAID SOUTH LINE, 60.34 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A CENTRAL ANGLE OF 66°02'28", A RADIUS OF 120.00 FEET, A CHORD BEARING AND DISTANCE OF S58°16'47"E, 130.79 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE 138.32 FEET TO THE SAID POINT OF BEGINNING.

CONTAINING 16.33 ACRES, MORE OR LESS.

DRAWN BY: DMC

CHECKED BY: JAB



ENGINEERS, PLANNERS & SURVEYORS  
5300 WEST CYPRESS STREET, SUITE 300  
TAMPA, FLORIDA 33607  
(813)-282-7275

LB 24

SHEET 2 OF 2

SEE SHEET 1 FOR SKETCH