

RESOLUTION NO. 07-114

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED DEED OF CONSERVATION EASEMENT BETWEEN THE CITY OF KEY WEST AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AT THE JOSE MARTI RETENTION POND; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Deed of Conservation Easement is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3 day of April, 2007.

Authenticated by the presiding officer and Clerk of the Commission on April 4, 2007.

Filed with the Clerk April 4, 2007.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO:** Julio Avel, City Manager  
**FROM:** E. David Fernandez, General Services Director  
**DATE:** March 20, 2007

**SUBJECT:** Approval of a Conservation Easement with the South Florida Water Management District at the Jose Marti Retention Pond

## **Action statement:**

Approving a conservation easement at the Jose Marti Retention Pond with the South Florida Water Management District (SFWMD) consistent with the terms of the Impact Assessment and Mitigation Plan agreement between the City and SFWMD associated with the maintenance of our stormwater system.

## **Strategic Plan/Business Plan:**

Stormwater improvements play a critical role in both the City's Strategic Plan and Business Plan under the Environmental Management category.

## **Background:**

During the months of March through August 2006, the City of Key West cleared and trimmed 14,873.00 square feet of mangroves in the area of Jose Marti as emergency measures to maintain the function of the City's stormwater system.

The South Florida Water Management District and the US Army Corps of Engineers have informed the City that the work required permits under their State and federal regulatory jurisdiction. To address the enforcement action taken by these agencies, the City has prepared an impact assessment and mitigation plan agreement with the SFWMD. This conservation easement is required as per this agreement.

## **Purpose & Justification:**

As part of this plan, the City agrees that the remaining mangroves at the site will be protected in the future as part of this conservation agreement. The remainder of the pond will be maintained free of vegetation to provide stormwater conveyance. This will help ensure that the stormwater retention pond can best function in its role to help lessen the flooding concerns of the surrounding neighborhood.

**Options:**

1. Approving the conservation easement with the South Florida Water Management District. This assures the preservation of the remaining mangroves while providing for the free flow of stormwater through the rest of the pond.
2. The City could choose not to approve the easement. However, not approving the easement would result in legal proceedings that will result in significant monetary or additional mitigation penalties for the City.

**Financial Impact:**

This easement is part of an agreement that will augment the City's short and long-term capital improvement plan for our Stormwater Utility. Projects within the mitigation plan will be financed and planned within the Utility's existing and future annual budgets.

**Recommendation:**

The staff recommends option #1, the approval of the conservation easement agreement with the South Florida Water Management District.

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

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT is given this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Key West ("Grantor") whose mailing address is \_\_\_\_\_ 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.

**WITNESSETH**

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

WHEREAS, the Grantor desires to provide mitigation to address certain unauthorized activities at sites in Monroe County, which are subject to the regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Consent Order No. \_\_\_\_\_ ("Consent Order") authorizes this mitigation; and

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

WHEREAS, the Grantor, in consideration of resolution of the enforcement case against Grantor as addressed in the Consent Order, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes, over the area described on Exhibit "B" ("Conservation Easement").

NOW, THEREFORE, Grantor hereby grants, creates, and establishes a perpetual Conservation Easement for and in favor of the Grantee upon the property described on Exhibit "B" 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.

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 Conservation Easement 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 Consent Agreement, the following activities are prohibited in or on the Conservation Easement:

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 Consent Agreement 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. Grantor's Reserved Rights. 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 which are not inconsistent with any District rule, criteria, permit and the intent and purposes of this Conservation Easement.

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

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

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 the 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 the 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. Terms and Restrictions. Grantor shall insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Conservation Easement. The Grantor shall comply with all the provisions of the Quitclaim Deed conveyed from United States Department of Interior and the Department of Defense (Exhibit C) and be subject to all applicable provisions of the Clean Water Act of 1977, Executive Order 11990 for Protection of Wetlands, Executive Order 11988 for Floodplain Management and Title 14, Code of Federal Regulations (CFR) Part 77, entitled "Objects Affecting Navigable Airspace".

13. 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.

14. 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 Monroe 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 Conservation Easement is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; and all mortgages and liens on the Conservation Easement area, if any, 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, \_\_\_\_\_ (Grantor) has hereunto set  
its authorized hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ a Florida corporation

By: *[Signature]*

Print Name: JOHN JONES

Title: ACTING CITY MANAGER

Signed, sealed and delivered  
in our presence as witnesses:

By: *[Signature]*

Print Name: Cheryl Smith

By: *[Signature]*

Print Name: Susan P. Harrison

STATE OF FLORIDA

) ss:

COUNTY OF MONROE

On this 5 day of April, 2007 before me, the undersigned notary public,  
personally appeared John Jones, the person who subscribed to the foregoing  
instrument, as the Acting City Manager (title), of City of Key West (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 know 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

*[Signature]*  
Print Name: PAMELA S. DEMALA

My Commission Expires: September 7, 2010



## Proposed Jose Marti Conservation Easement



### Legend

- Conservation Easement GPS Points
- Jose Marti Easement Area

0 60 120 240 Feet



### EXHIBIT A

Figure for visualization purposes only.  
See GPS coordinates for locations.

Source: 2005 NOAA Post-Wilma Aerials,  
Adapted by Chris Boland, SWC 3/2007.



### Jose Marti Proposed Conservation Easement GPS Points

Point #	Latitude	Longitude
1	24.55731468560	-81.78733374490
2	24.55735963140	-81.78733611050
3	24.55740457720	-81.78737395960
4	24.55742823290	-81.78738815300
5	24.55757016700	-81.78743309880
6	24.55780672390	-81.78751352810
7	24.55775468140	-81.78749460360
8	24.55770500440	-81.78748277580
9	24.55766242420	-81.78746621680
10	24.55761984400	-81.78745202340
11	24.55785166970	-81.78752535600
12	24.55789661550	-81.78752535600
13	24.55796048590	-81.78753481830
14	24.55816392480	-81.78735266950
15	24.55808586100	-81.78743546440
16	24.55822542950	-81.78729826140
17	24.55828456880	-81.78726277790
18	24.55829876220	-81.78732901380
19	24.55822542950	-81.78745438890
20	24.55814500020	-81.78751352810
21	24.55810478550	-81.78754901170
22	24.55802908730	-81.78754901170
23	24.55794865800	-81.78759159190
24	24.55789424990	-81.78759159190
25	24.55783274510	-81.78758686080
26	24.55777833710	-81.78757739850
27	24.55774995020	-81.78755137720
28	24.55770973560	-81.78753008710
29	24.55760328500	-81.78749460360
30	24.55750866220	-81.78750406590
31	24.55739748050	-81.78744019550
32	24.55732651340	-81.78738578740

### EXHIBIT B