



AUDITOR GENERAL

William O. Monroe, CPA



DEPARTMENT OF ENVIRONMENTAL PROTECTION
LESS-THAN-FEE ACQUISITIONS OF REAL PROPERTY RIGHTS
JULY 1, 1999, THROUGH APRIL 1, 2001

SUMMARY

The Department of Environmental Protection provides staff support to the Board of Trustees of the Internal Improvement Trust Fund for the acquisition of lands by the State. While most lands are acquired on a fee simple basis (acquisition of full unencumbered property rights), Florida law authorizes acquisitions on a less-than-fee basis, involving the purchase of partial real property rights, as in the case of a conservation easement.

The Department's procedures for less-than-fee acquisitions of real property rights could be improved to provide additional assurance that the acquisitions were made at the least possible cost to the State.

Finding No. 1 – The Department did not provide documented evidence of

the negotiation process to support its \$18,327,036 contribution to the purchase of the Cedar Swamp conservation easement.

Finding No. 2 – A lack of adequate consideration of the impact of the sale of the conservation easement on the seller's rights and uses of the Mills Ranch property may have resulted in the State not acquiring the easement at an appropriate price.

Finding No. 3 – Reviews of appraisal reports did not discuss errors, inconsistencies, and inappropriate methodologies evidencing less than adequate appraisal reviews and limiting the reliance that can be placed on the appraisals for the negotiation of the less-than-fee acquisitions of real property rights.

Finding No. 4 – In the two appraisal reports prepared for the Cedar

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Swamp acquisition, comparable sales information was identical; however, there was no indication in one of the reports that the comparable sales information had been verified.

Finding No. 5 – The reliability that could be placed on the Cedar Swamp appraisal reports was lessened due to the timing of the appraisals and the lack of appraiser affidavits regarding interest in the property.

BACKGROUND

Acquisition of lands by the State, other than for transportation purposes, are generally made by the Board of Trustees of the Internal Improvement Trust Fund utilizing staff of the Department of Environmental Protection. Section 259.041(11)(a), Florida Statutes, provides that the State must develop creative techniques to maximize the use of land acquisition and management funds, and encourages the use of alternatives to acquisitions of fee simple estates. A fee simple estate is defined as absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. Use of alternatives to fee simple estate acquisition is intended to achieve the public policy goals of:

- ♦ Allowing more lands to be brought under public protection for preservation, conservation, and recreational purposes with less expenditure of public funds;

- ♦ Retaining, on local government tax rolls, some portion of or interest in lands which are under public protection; and
- ♦ Reducing long term management costs by allowing private property owners to continue to act as stewards of their land, where appropriate.

Alternatives to fee simple estate acquisition (i.e., a less-than-fee acquisition of real property rights) include obtaining a conservation easement, which is a restriction that limits future use of a property to preservation, conservation, or wildlife habitat. The most common result of a conservation easement is the compensated sale, or removal, of all or some of the future development rights from the underlying fee simple estate, thus leaving the seller of the conservation easement with limited uses of the property.

During the audit period, the Board of Trustees (BOT) approved, and the Department completed four less-than-fee acquisitions of real property rights. The purchases included 61,915 acres and totaled \$80,140,885, including the State's share of \$70,467,921. We selected three acquisitions for our examination, all of which involved the purchase of perpetual conservation easements. The purchase price of the remaining acquisition was \$912,000. Details of these acquisitions are shown in the following tabulation:

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Property	Acquisition Partners	Date of BOT Approval	Closing Date	Acreage	Appraised Easement Values	Purchase Price	Price per Acre	State Share of Purchase Price
Mills Ranch	The Nature Conservancy	06/26/00	12/11/00	8,271	\$ 4,970,000 5,220,000	\$ 4,850,000	\$ 586	\$ 4,850,000
Fisheating Creek	The Nature Conservancy	10/12/99	12/02/99	51,475	47,100,000 47,750,000	46,378,885	901	46,378,885
Cedar Swamp	Trust for Public Land; St. Johns River Water Management District; City of Jacksonville	11/16/00	11/28/00	1,488	29,380,000 30,310,000	28,000,000	18,821	18,327,036

SCOPE AND METHODOLOGY

The objectives of the audit were: (1) to evaluate the Department of Environmental Protection's administration of its assigned responsibilities in accordance with requirements of applicable laws, administrative rules, and other guidelines; (2) to determine the extent to which management controls promoted and encouraged the achievement of management's objectives with regard to compliance with such requirements, economic and efficient operations, reliability of records and reports, and safeguarding of assets; and (3) to identify recommended statutory changes in substantive law and policy.

We performed appropriate audit tests and procedures to evaluate the Department's process for less-than-fee acquisition of real property rights, with regard to the appraisal reports, the review of the appraisal reports, and the negotiation and closing processes. We tested for adequate documentation of these processes by the Department to indicate compliance with controlling laws, rules, and policies and procedures.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: The Department did not provide documented evidence of the negotiation process to support its \$18,327,036 contribution to the purchase of the Cedar Swamp conservation easement.

The Acquisition and Ownership Agreement executed on November 27, 2000, among the Department, the St. Johns River Water Management District, the City of Jacksonville, and the Trust for Public Land states that the St. Johns River Water Management District shall assure that negotiations with the owners will be conducted by the Trust for Public Land in a manner that will assure that the most favorable price and terms are obtained for the District, the City, and the Board of Trustees. The Agreement further stated that all negotiations shall comply with Section 373.139, Florida Statutes, Chapter 40C-9, Florida Administrative Code, and all District acquisition procedures, and that the District will maintain appropriate records for the acquisition.

In response to our request on October 1, 2001, for the negotiation files for the Cedar Swamp

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acquisition, the Department provided a memorandum dated October 3, 2001, from the Trust for Public Land (TPL), which stated that the TPL did not have a written negotiation strategy for the Cedar Swamp acquisition and provided a summary of the negotiations. No other documentation of the negotiations, such as evidence of offers and counter-offers, for the Cedar Swamp acquisition was provided.

The files provided for our review contained an internal Department memorandum that raised a concern about this purchase. The memorandum stated "We are paying 93% of full fee value for a conservation easement. This is our average purchase price for fee purchases of this size." The Department and the District responded with the following justifications: the remaining interest would be purchased for \$1 at the death of the seller; the sellers were unwilling to sell any other way; management costs would be saved; and the area is expanding rapidly. These factors could impact the decision to acquire the property on a less-than-fee basis, the amount to be paid, and the decision to acquire any property rights at all. The Department should have reviewed the Trust for Public Land's negotiation strategy, as well as any offers and counter offers, and assessed and documented the impact of these considerations on the Department's decisions.

In summary, the Department contributed over \$18.3 million toward this purchase without documented assurance that the purchase price, and the terms of the conservation easement, were negotiated as favorably as possible to the St. Johns River Water Management District, the City of Jacksonville, and the State.

We recommend that, in future less-than-fee acquisitions of real property rights involving multiple parties, the Department obtain, and retain, such documentation as necessary, from

any source, to provide assurance that interests in lands are purchased at the most favorable price and terms possible.

Department Response: When a third party is conducting negotiations on behalf of the Department of Environmental Protection, they will be required to provide the Division of State Lands (Division) with a negotiation strategy. The Division will review and approve the negotiation strategy prior to the third party engaging in negotiations with the seller. Once negotiations are complete, the third party will be required to supply the Division with a written summary of all negotiations with the seller, including copies of written offers and counteroffers. The Division will review the documents to ensure the negotiations were handled as stated in the approved negotiation strategy.

The Division will make these procedural changes to ensure that any interests in lands are acquired at the most favorable price and terms possible.

Finding No. 2: A lack of adequate consideration of the impact of the sale of the conservation easement on the seller's rights and uses of the Mills Ranch property may have resulted in the State not acquiring the easement at an appropriate price.

The most common result of a conservation easement is the removal of all or some of the future development rights from the fee ownership, leaving the fee owner with limited uses of the property. This is measured by, in an appraisal sense, the change in highest and best use between the use before the easement and the use after the easement restrictions are considered.

A comparison of the seller's rights and uses of the Mills Ranch property before and after the State's acquisition of the conservation easement follows:

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Rights	Before	After
Public Access	No	No
Sell or Lease	Yes	Yes
Cattle Operation	Yes	Yes
Silviculture	Yes	Yes
Farming	Yes	Yes
Hunting Lease	Yes	Yes
Subdivision	Yes	Yes(1,500 acre minimum)
New Residences	Yes	Yes (limited to 4)
Mining	Yes	Yes (for new roads only)
New Road	Yes	Yes (to new residences only)
Water Wells	Yes	Yes(for new residences only)

The subject property is located in a remote, rural area of the State. The area's residential potential is limited due to existing land use patterns, lack of public utilities, and distance from major employers, social and services centers. The subject property is located in areas which are outside the county's future development area boundary indicating that it is in an area which will remain rural in character into the foreseeable future. The review stated that given the abundance of vacant land in the area having similar characteristics, the subject property's continued use as a cattle operation, as well as a hunting preserve, would represent the property's most probable use into the foreseeable future.

The Department's *Supplemental Appraisal Standards for Board of Trustees Land Acquisitions* states that highest and best use shall be considered to apply to the immediate future, which shall mean a period of time not to exceed five years. The review appraiser, and the appraisers, concluded that the property's highest and best use before the easement was agricultural, and the use after the easement was restricted agricultural and/or recreation pursuits. These

factors lessen the economic impact of any loss of intense development potential in the foreseeable future.

In summary, the **Mills Ranch** conservation easement document gave the fee owner retention and complete use of the property as an operating cattle ranch with ancillary agricultural and recreational uses. The future development potential for the property appeared, according to the appraisal reports, to be very limited. While there may be other factors that may be taken into consideration in negotiating the sales price, the limited impact of the sale of the conservation easement on the anticipated use of the property indicates that the interest in the land may not have been obtained at the lowest possible price.

We recommend that the Department timely and carefully analyze and document the terms and restrictions contained in conservation easement transactions to ensure the lowest possible costs for less-than-fee acquisition of real property rights.

Department Response: The Mills Ranch is indeed located in an area where intense development will probably not occur in the immediate future. The conservation easement, however, limits residential units to eleven (7 existing and 4 additional), while 1,514 units are currently legally permitted by zoning/future land use restrictions in the two counties. Thus, the right to develop 1,500 future units will be permanently stripped from the property.

In regard to silviculture, the cattle operation, farming and hunting, these allowed uses are all restricted by the conservation easement. Silviculture is only allowed in areas converted from pasture to pine plantation – thus over \$1.5 Million (\$182 +/- per acre) in existing timber stumpage value cannot be harvested.

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The ability to produce unlimited sod in the "Before" situation, especially within easy delivery distance to urban areas (within a 1 to 2± hour drive) is significant as compared to only 15% of the area in the "After". Also, timber could be harvested from any portion of the subject in the "Before", but only in areas converted from improved pasture in the "After". Moreover, the inability to construct roads in the "After" would limit any subdivision of the parent tract into smaller tracts. Additionally, the inability to construct new ditches and canals in the "After" reduces the agricultural uses and capacity even though agricultural uses are allowed in the "Before" and "After" situations. Also, in the "After" situation, cattle grazing is restricted to BMPs and hunting rights are restricted as to the number of hunters and vehicles permitted on site.

The cumulative impact of these restrictions clearly diminishes the value of the property. The Division believes that both appraisers and the reviewer have adequately recognized these conditions and provided adequate support in their value opinions. The Division believes that the purchase price negotiated was an appropriate price.

The Division does agree with your recommendation that terms and restrictions contained in conservation easement documents should be carefully analyzed. As more remainder rights sales take place, the quantification of the market impact for specific rights taken and rights reserved will be clearer and staff will give these transactions careful consideration as details become available.

The Secretary, in his written response to this finding, identified several restrictions on the use of the property as a result of the acquisition of the conservation easement and stated that the cumulative impact of the restrictions clearly diminishes the value of the

property. We recognize that the cited restrictions may have some impact on the value of the property; however, the point of our finding was that the appraisal reports did not analyze these restrictions and assess their impact on the estimated value. Furthermore, the potential for future development in the area in which the property is situated does not suggest any potential for development within the foreseeable future. Both appraisers concluded that the properties highest and best use, both before and after the acquisition of the easement, was agricultural.

Finding No. 3: Reviews of appraisal reports did not discuss errors, inconsistencies, and inappropriate methodologies evidencing less than adequate appraisal reviews and limiting the reliance that can be placed on the appraisals for the negotiation of the less-than-fee acquisitions of real property rights.

The Department's administrative review function is intended to be cursory in nature and not a critique of the appraisal reports or appraisal review reports. To the contrary, an appraisal review is defined as the act or process of critically studying a report prepared by another. An appraisal review should include a check of the accuracy of calculations, the reasonableness of the data, and the appropriateness of methodology. This includes checks for compliance with client guidelines, regulatory requirements, and professional standards. An appraisal review should also include an inspection of the subject property, confirmation of market data, and research for additional data. A thorough, critical review of appraisal review reports could provide valuable information for use in the negotiation process.

The contracted reviews of the appraisal reports appear to repeat data contained in the appraisal reports without addressing the correctness, validity, and appropriate analysis of that data.

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Errors, inconsistencies and inappropriate valuation methodologies in appraisal reports, that were not detected or discussed in appraisal review reports, may have lessened the reliability of the value estimates used to establish acquisition purchase prices as follows:

- ♦ The methodology used in one of the appraisal reports prepared for the **Mills Ranch** acquisition appeared to violate the Department's *Supplemental Appraisal Standards for Less-Than-Fee Acquisitions* in both the application of technique and in the use of certain comparable sales. The before and after approach for valuing easements involves estimates of value of the land both before and after removal of the property rights described in the easement. The appraiser correctly used the direct sales comparison analysis in valuing the property in the before situation by using similar private sector market transactions. However, in the after valuation analysis, the appraiser did not use either direct comparison with other properties sold subject to similar easements, or direct comparison with other conservation easement purchases. Instead, the appraiser only used percentage discounts derived from previous water management district sales to estimate the value of the easement. This method does not directly address the after value of the property as specified in the standards. There was no discussion or analysis of whether the percentage discounts derived from these purchases were truly applicable to the subject property with consideration given to similarities of their underlying before land value and development potential.

The sales data, upon which the appraiser based the percentage discounts, originated from a water management district that has

been proactive in acquiring conservation easements in the last few years. However, the Appraisal Institute's publication, *Appraising Partial Interests*, discourages the use of sales to government agencies as such sales often are not based on market value.

The second appraisal obtained for the **Mills Ranch** acquisition used the proper before and after methodology and used private sector sales for each. This appraisal stated that water management district purchases of conservation easements were examined, and are included in the report, but were not utilized in direct comparison because they are government related transactions.

- ♦ A mathematical error in an adjustment to a comparable sale used in one of the appraisal reports prepared for the **Mills Ranch** acquisition resulted in an understatement of \$50 per acre in the net adjusted value of the comparable sale. Although this adjustment may not have significantly impacted the value estimation of the conservation easement, the appraisal review should have detected and disposed of the error.
- ♦ Appraisal reports prepared for the **Cedar Swamp** property contained both governmental entity and private sector comparable sales that were combined and analyzed together rather than analyzed separately as the Standards require.
- ♦ The **Cedar Swamp** property is directly in the path of residential and commercial development. Both appraisal reports concluded that the highest and best use of the property was for a Planned Unit Development consisting of mostly residential development with some commercial parcels. However, there were significant governmental restrictions on the subject

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property including zoning and concurrency. Neither of the appraisal reports gave adequate consideration to the lack of concurrency and zoning and the costs associated with curing these problems. There was no consideration in the comparable sales analysis of the time and financial costs of curing concurrency problems and obtaining development approvals.

- Under the terms of the **Cedar Swamp** acquisition conservation easement, the owner retained, in fee, a 14.65 acre home-site on the interior of the subject 1,487.69 acre easement area. The owners also reserved the rights to ingress, egress, utilities and drainage sufficient for development in accordance with then-prevailing development standards. Both appraisal reports used the 1,487.69 acres in the conservation easement as the parent tract and gave no consideration as to any possible enhancement in value to the 14.65 acre home-site. The appropriate approach would have been to include the home-site as a part of the parent tract. Any enhancement to the retained home-site should have been given consideration in developing a value of the land in the after situation, which could have adversely impacted appraised value of the conservation easement.
- ♦ The methodology used in one of the appraisal reports prepared for the **Fisheating Creek** acquisition was not in accord with applicable standards. Uniform Standards of Professional Appraisal Practice, Standards Rule 1-4(e), states that an appraiser must analyze the effect on value, if any, of the assemblage of the various estates, or component parts of a property, and refrain from valuing the whole solely by adding together the individual values of the estates, or component parts. One of the appraisal

reports did not consider this requirement. The report simply added the value of the campground to the value of the rest of the land without an analysis of whether or not there was some effect on the overall value of the property.

- ♦ In the two appraisal reports prepared for the **Fisheating Creek** property, neither report contained quantitative adjustments to comparable sales. Comparable sales were compared to the subject property using qualitative analysis whereby each element of comparison was estimated to be inferior, similar, or superior to the subject property. Final value estimates were made based on these overall observations. Many of the comparisons made between the sale properties and the subject property were vague and did not adequately describe the degree of difference in value indication between the sale and the subject property. This was particularly evident in the size adjustment process. The subject property is six to twelve times larger than the comparable sales, but the appraisal analysis did not appear to place adequate emphasis on the size differences. This may have resulted in less than credible conclusions of value based on largely subjective analysis.
- ♦ Both appraisal reports prepared for the **Fisheating Creek** property failed to address all value-influencing elements of comparison. One appraisal report did not contain analysis of financing terms, property rights acquired, or conditions of sale in the comparable sales discussions. The other appraisal report did not contain property rights acquired for each comparable sale. In the after analysis in the first appraisal report, the sales data sheets and verification information were omitted completely, and the second appraisal report

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omitted sales data for some comparable sales listed as support sales.

The omission of these important value-influencing elements, and supporting data, may have resulted in less than credible value conclusions for the property. These omissions are inconsistent with provisions of *Uniform Standards of Professional Appraisal Practice, Standards* Rules 1-1(b) and (c), 1-4(a), 2-1(a) and (b), and *Supplemental Appraisal Standards for Board of Trustees Land Acquisitions*, Sections A-9.02, A-9.03, A-9.04, and A-9.05.

To assure the credibility and reliability of the appraisals, we recommend that the Department ensure that appraisal reports and reviews are conducted to assure compliance with *Uniform Standards of Professional Appraisal Practice, Supplemental Appraisal Standards for Board of Trustees Land Acquisitions, and Supplemental Appraisal Standards for Less-Than-Fee Acquisitions.*

Department Response: Errors, inconsistencies, and inappropriate methodologies are not likely to be reported in the review memorandum as a result of the review process. The reviewer requests that the appraiser correct any shortcomings if they are found and provide corrections to be inserted into the appraisal reports before they are approved for utilization by negotiators. If after any revisions/corrections to appraisal reports the reviewer feels one appraisal is more reliable than the other, he/she is encouraged to report so in the review conclusions. If an appraiser will not or cannot make ample corrections, the reviewer has the option to not approve the appraisal report. The reviewer is asked to keep in touch with the appraisers during the process of their preparing their reports in an

effort to minimize any errors, inconsistencies or inappropriate methodology.

The Division agrees that appraisal reports and reviews should be conducted to assure compliance with *Uniform Standards of Professional Appraisal Practice, Supplemental Appraisal Standards for Board of Trustees Land Acquisitions, and Supplemental Appraisal Standards for Less-Than-Fee Acquisitions.*

The Secretary, in his written response to this finding, stated that errors, inconsistencies, and inappropriate methodologies are not likely to be reported in the review memorandum as a result of the review process, as the reviewer requests that the appraiser correct any shortcomings in the appraisal reports. We concur with the Department's position that appraisal reports should be corrected for any errors, inconsistencies, and inappropriate methodologies and that such corrections should be considered in a review report. However, the errors, inconsistencies, and inappropriate methodologies indicated in this finding were neither corrected in the appraisal reports nor discussed in the review reports.

Finding No. 4: In the two appraisal reports prepared for the Cedar Swamp acquisition, comparable sales information was identical; however, there was no indication in one of the reports that the comparable sales information had been verified by the appraiser.

The Department's *Supplemental Appraisal Standards for Board of Trustees Land Acquisitions* states that an appraiser may consult or cooperate with another appraiser. The material contribution by such person shall be acknowledged in the report. Cooperation is especially encouraged and may include the sharing of analyses, reasoning and conclusions. However, the final value estimate is the responsibility of the individual appraiser.

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The appraised values for the fee simple interest for the **Cedar Swamp** acquisition were \$30,420,000 and \$30,600,000, and differed by only 0.59 percent. We noted that all six comparable sales used in the valuation of the fee interest for the Cedar Swamp acquisition were, with the exception of a transposition error relating to one comparable sale, identical with respect to data contained in the sales analysis narratives of the two reports. Apparently, the sales data was copied, verbatim, from one report to the other report. The photographs of the comparable sales also appeared to be identical. One comparable sale listed in both reports was never discussed in the valuation analysis in one of the reports. There was no indication in one of the reports that the comparable sales information had been verified by the appraiser. Cooperation appears to have occurred, but was not acknowledged in either report.

We recommend that the Department re-examine its permissive instruction, contained in the Supplemental Appraisal Standards, regarding the sharing of data among contracted fee appraisers.

Department Response: The agreements that permit water management districts to acquire land on behalf of the Department allow districts to use their own appraisal procedures. There is no requirement for a district to use or adhere to Division of State Lands Supplemental Appraisal Standards. The Division of State Lands instruction regarding the sharing of data is intended to provide a conduit for the sharing of knowledge, and facilitate the resolution of inconsistent or erroneous information. With this instruction in hand, appraisers may discuss any number of data related issues so as to consider differing points of view. However, the instruction makes it clear that the final value estimate shall be the responsibility of the contracted appraiser.

The Secretary, in his written response to this finding, indicated that water management districts are not required to adhere to the Division's appraisal standards and that the sharing of data is intended to provide a conduit for the sharing of knowledge, and facilitate the resolution of inconsistent or erroneous information. We concur that there may be some benefit in the sharing of data among appraisers; however, the purpose of obtaining two appraisals is to obtain two independent opinions as to the estimated value of the appraised property. While the two appraisals will be based to a large extent on the same data, the analysis of the data and the conclusions drawn therefrom should be developed independently. This does not appear to be the case in the appraisals described in the finding.

Finding No. 5: The reliability that could be placed on the Cedar Swamp appraisal reports was lessened due to the timing of the appraisals and the lack of appraiser affidavits regarding interest in the property.

Our review of the Cedar Swamp acquisitions disclosed that the Department's procedures may not have provided adequate assurance that the appraisals presented reliable evidence that the property rights were acquired at the lowest possible price. Specifically,

- ♦ The fee appraiser contracts related to the Cedar Swamp acquisition were executed on July 27, 2000, and the date of value in both appraisal reports was August 25, 2000. The option agreement between the Trust for Public Land and the owners was negotiated and executed on August 4, 2000, prior to completion of the appraisal reports. Both appraisal reports reference knowledge of the option agreement indicating a \$28,000,000 purchase price for the easement. The St. Johns River Water Management District resolution to purchase the easement was dated September 27, 2000.

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The existence of an option agreement executed before an appraiser formally renders an opinion of value could influence the appraiser's estimation of value.

We understand that situations may arise that require that an acquisition be completed as expeditiously as possible; however, such circumstances should not result in reduced diligence in the application of appropriate acquisition controls. To the extent possible, appraisal reports should be obtained prior to negotiating the acquisition.

- Section 259.041(7)(c), Florida Statutes, and St. Johns River Water Management District Florida Administrative Rule 40C-0.061(2) require appraisers to submit affidavits attesting that they have no vested or fiduciary interest in the property under appraisal. For the Cedar Swamp acquisition, the Trust for Public Land contracted for the appraisals. On two occasions we requested from the Department, but were not provided with, such affidavits.

We are not aware of any inappropriate influence on the appraisers or vested or fiduciary interest in the properties under appraisal. However, to assure that the negotiations for less-than-fee acquisitions of real property rights are based on reliable estimations of value, **the Department should require that appraisals be obtained prior to negotiation of a purchase or option contract. Acquisition partners, whether joint or multi-party participants, should be required to obtain, and provide to the Department, evidence of appraiser affidavits regarding vested or fiduciary interest in the property under appraisal.**

Department Response: Acquisition/Ownership Agreements and Multi-Party Acquisition Agreements contain language requiring

appraisers to submit a sworn affidavit certifying that the appraiser has no vested individual or fiduciary interest in the property being appraised. The Division does not believe the lack of an affidavit lessened the reliability of the appraisal reports since both appraisers certified in their reports that they had no present or prospective interest in the property. With regards to the timing of the appraisals, the Division does support and to the extent possible, believe appraisal reports should be obtained prior to the commencement of negotiations.

However, in those instances where negotiations must commence prior to the completion of an appraisal, the Division will consider the absence of the appraisal information during the development and approval of the negotiation strategy in order to provide assurance that interests in lands are purchased at the most favorable price and terms possible.

The Secretary, in his written response to this finding, stated that the Division believes that the lack of the required affidavits, certifying that the appraisers have no vested individual or fiduciary interest in the property being appraised, did not lessen the reliability of the appraised reports, since both appraisers certified in their reports that they had no prospective interest in the property. The Secretary did not address the reasons why the sworn affidavits were not filed. The inclusion in the contracts of the requirement for a sworn certification implies a desire for a higher level of assurance than that provided by a statement in the appraisal report.

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AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

William O. Monroe

William O. Monroe, CPA
Auditor General

AUDITEE RESPONSE

The Secretary of the Florida Department of Environmental Protection, in a letter dated February 15, 2002, provided his response to our audit findings and recommendations. Excerpts from the Secretary's response are included under the applicable findings and recommendations above. The Executive Director's response, in its entirety, may be viewed on the Auditor General's Web site.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable audit standards contained in ***Government Auditing Standards*** issued by the Comptroller General of the United States. This audit was conducted by David Miller and supervised by Dick Heller. Please address inquiries regarding this report to Jim Dwyer, CPA, Audit Manager, via e-mail at jimdwyer@aud.state.fl.us or by telephone at (850) 487-9031.

This report and audit reports prepared by the Auditor General can be obtained on our Web site at <http://www.state.fl.us/audgen> by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.



Jeb Bush
Governor

Department of Environmental Protection

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David B. Struhs
Secretary

February 15, 2002

Mr. William O. Monroe, CPA
Auditor General
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111 West Madison Street
Tallahassee, Florida 32302-1450

Dear Mr. Monroe:

Thank you for the opportunity to comment on the preliminary and tentative findings for the audit entitled, Less-Than-Fee Acquisitions of Real Property Rights for the Period of July 1, 1999 – April 1, 2001. We appreciate the work of your staff and will diligently pursue appropriate resolution of findings. If you have questions or need additional information in this regard, please feel free to call Joseph Aita, Director of Auditing at 488-2287.

Sincerely,

David B. Struhs
Secretary

DBS/ja/aw

cc: Eva Armstrong, Division of State Lands
Pinky G. Hall, CIG, Inspector General

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FINDING NUMBER: 1

The Department did not provide documented evidence of the negotiation process to support its \$18,327,036 contribution to the purchase of the Cedar Swamp conservation easement.

RECOMMENDATION:

We recommend that, in future less-than-fee acquisitions of real property rights involving multiple parties, the Department obtain, and retain, such documentation as necessary, from any source, to provide assurance that interests in lands are purchased at the most favorable price and terms possible.

RESPONSE:

When a third party is conducting negotiations on behalf of the Department of Environmental Protection, they will be required to provide the Division of State Lands (Division) with a negotiation strategy. The Division will review and approve the negotiation strategy prior to the third party engaging in negotiations with the seller. Once negotiations are complete, the third party will be required to supply the Division with a written summary of all negotiations with the seller, including copies of written offers and counteroffers. The Division will review the documents to ensure the negotiations were handled as stated in the approved negotiation strategy.

The Division will make these procedural changes to ensure that any interests in lands are acquired at the most favorable price and terms possible.

FINDING NUMBER: 2

A lack of adequate consideration of the impact of the sale of the conservation easement on the seller's rights and uses of the Mills Ranch property may have resulted in the State not acquiring the easement at an appropriate price.

RECOMMENDATION:

We recommend that the Department timely and carefully analyze and document the terms and restrictions contained in conservation easement transactions to ensure the lowest possible costs for less-than-fee acquisition of real property rights.

RESPONSE:

The Mills Ranch is indeed located in an area where intense development will probably not occur in the immediate future. The conservation easement, however, limits residential units to eleven (7 existing and 4 additional), while 1,514 units are currently legally permitted by zoning/ future land use restrictions in the two counties. Thus, the right to develop 1,500 future units will be permanently stripped from the property.

In regard to silviculture, the cattle operation, farming and hunting, these allowed uses are all restricted by the conservation easement. Silviculture is only allowed in areas converted from pasture to pine plantation - thus over \$1.5 Million (\$182 +/- per acre) in existing timber stumpage value cannot be harvested.

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The ability to produce unlimited sod in the "Before" situation, especially within easy delivery distance to urban areas (within a 1 to 2± hour drive) is significant as compared to only 15% of the area in the "After". Also, timber could be harvested from any portion of the subject in the "Before", but only in areas converted from improved pasture in the "After". Moreover, the inability to construct roads in the "After" would limit any subdivision of the parent tract into smaller tracts. Additionally, the inability to construct new ditches and canals in the "After" reduces the agricultural uses and capacity even though agricultural uses are allowed in the "Before" and "After" situations. Also, in the "After" situation, cattle grazing is restricted to BMPs and hunting rights are restricted as to the number of hunters and vehicles permitted on site.

The cumulative impact of these restrictions clearly diminishes the value of the property. The Division believes that both appraisers and the reviewer have adequately recognized these conditions and provided adequate support in their value opinions. The Division believes that the purchase price negotiated was an appropriate price.

The Division does agree with your recommendation that terms and restrictions contained in conservation easement documents should be carefully analyzed. As more remainder rights sales take place, the quantification of the market impact for specific rights taken and rights reserved will be clearer and staff will give these transactions careful consideration as details become available.

FINDING NUMBER: 3

Reviews of appraisal reports did not discuss errors, inconsistencies, and inappropriate methodologies evidencing less than adequate appraisal reviews and limiting the reliance that can be placed on the appraisals for the negotiation of the less-than-fee acquisitions of real property rights.

RECOMMENDATION:

To assure the credibility and reliability of the appraisals, we recommend that the Department ensure that appraisal reports and reviews are conducted to assure compliance with Uniform Standards of Professional Appraisal Practice, Supplemental Appraisal Standards for Board of Trustees Land Acquisitions, and Supplemental Appraisal Standards for Less-Than-Fee Acquisitions.

RESPONSE:

Errors, inconsistencies, and inappropriate methodologies are not likely to be reported in the review memorandum as a result of the review process. The reviewer requests that the appraiser correct any shortcomings if they are found and provide corrections to be inserted into the appraisal reports before they are approved for utilization by negotiators. If after any revisions/corrections to appraisal reports the reviewer feels one appraisal is more reliable than the other, he/she is encouraged to report so in the review conclusions. If an appraiser will not or cannot make ample corrections, the reviewer has the option to not approve the appraisal report. The reviewer is asked to keep in touch with the appraisers during the process of their preparing their reports in an effort to minimize any errors, inconsistencies or inappropriate methodology.

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The Division agrees that appraisal reports and reviews should be conducted to assure compliance with Uniform Standards of Professional Appraisal Practice, Supplemental Appraisal Standards for Board of Trustees Land Acquisitions, and Supplemental Appraisal Standards for Less-Than-Fee Acquisitions.

FINDING NUMBER: 4

In the two appraisal reports prepared for the Cedar Swamp acquisition, comparable sales information was identical; however, there was no indication in one of the reports that the comparable sales information had been verified.

RECOMMENDATION:

We recommend that the Department re-examine its permissive instruction, contained in the Supplemental Appraisal Standards, regarding the sharing of data among contracted fee appraisers.

RESPONSE:

The agreements that permit water management districts to acquire land on behalf of the Department allow districts to use their own appraisal procedures. There is no requirement for a district to use or adhere to Division of State Lands Supplemental Appraisal Standards. The Division of State Lands instruction regarding the sharing of data is intended to provide a conduit for the sharing of knowledge, and facilitate the resolution of inconsistent or erroneous information. With this instruction in hand, appraisers may discuss any number of data related issues so as to consider differing points of view. However, the instruction makes it clear that the final value estimate shall be the responsibility of the contracted appraiser.

FINDING NUMBER: 5

The reliability that could be placed on the Cedar Swamp appraisal reports was lessened due to the timing of the appraisals and the lack of appraiser affidavits regarding interest in the property.

RECOMMENDATION:

We are not aware of any inappropriate influence on the appraisers or vested or fiduciary interest in the properties under appraisal. However, to assure that the negotiations for less-than-fee acquisitions of real property rights are based on reliable estimations of value, the Department should require that appraisals be obtained prior to negotiation of a purchase or option contract. Acquisition partners, whether joint or multi-party participants, should be required to obtain, and provide to the Department, evidence of appraiser affidavits regarding vested or fiduciary interest in the property under appraisal.

RESPONSE:

Acquisition/Ownership Agreements and Multi-Party Acquisition Agreements contain language requiring appraisers to submit a sworn affidavit certifying that the appraiser has no vested individual or fiduciary interest in the property being appraised. The Division does not believe the lack of an affidavit lessened the reliability of the appraisal reports since both appraisers certified in their reports that they had no present or prospective interest in the property. With

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regards to the timing of the appraisals, the Division does support and to the extent possible, believe appraisal reports should be obtained prior to the commencement of negotiations.

However, in those instances where negotiations must commence prior to the completion of an appraisal, the Division will consider the absence of the appraisal information during the development and approval of the negotiation strategy in order to provide assurance that interests in lands are purchased at the most favorable price and terms possible.