

**AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JANUARY 27, 2004**

Item 1 Minutes

Submittal of the Minutes of the October 12, 2003 and October 28, 2003 Cabinet Meetings.

RECOMMEND APPROVAL

**Item 2 Cypress Gardens Perpetual Conservation Easement/Monitor Designation/
Management Policy Statement Confirmation**

REQUEST: Consideration of (1) an option agreement to acquire a perpetual conservation easement over up to 149.8 acres within the Cypress Gardens Florida Forever project from the Trust For Public Land; (2) designation of the Department of Environmental Protection, Division of State Lands as the monitor; and (3) confirmation of the management policy statement.

COUNTY: Polk

LOCATION: Sections 02 and 03, Township 29 South, Range 26 East; and Section 35, Township 28 South, Range 26

CONSIDERATION: \$11,000,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>OPTION DATE</u>
		<u>Pallardy (7/25/03)</u>	<u>Roper (7/10/03)</u>			
Trust for Public Land	149.8	\$11,320,000	\$9,525,000	\$11,320,000	\$11,000,000* (97%)	90 days after BOT approval

* Purchase price of the conservation easement is 74% of the fee simple value of \$14,880,000. (Fee simple value of \$14,880,000 is adjusted from the original value due to a slight reduction in acreage.)

STAFF REMARKS: The Cypress Gardens Project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 26, 2003. The project contains 149.8 acres, of which these are the first to be protected by an easement. After the Board of Trustees approves this agreement, the project will be complete.

Cypress Gardens, Florida's first theme park, contains over 8,000 plants from over 90 different countries in its historic gardens. Included are Banyan trees, flowering exotic plant species, bamboo and the gardens are landscaped in grasses and topiaries from various exotic shrubs. The lakefront is lined with cypress, except where cleared for development of the ski area. The developed area outside of the main garden is oak shaded central Florida hammock interspersed among structures and walkways. This historic site closed in April 2003. The Trust for Public Land (TPL) has secured an option to purchase 145.6 acres of the property and has agreed to use diligent effort to obtain an option on the remaining 4.2 acres. The state will purchase a conservation easement over up to 149.8 acres from TPL to protect the property from typical lakefront development and provide long term-protection of this attraction.

The easement describes the entire site as two distinct easement areas in order to more precisely delineate the rights reserved to the fee owner and the prohibited uses. The most restrictive terms of the easement apply to the approximately 30-acre Historic Gardens and undeveloped waterfront site referred to as the Protected Parcel. The remaining 119.8 acres are referred to in the easement as the Remainder Parcel and will be restricted to development as a theme park to promote the Historic Gardens. The combined parcels are referred to as the Easement Parcels. The purpose of this historical and cultural preservation easement is to assure that the Protected Parcel will be retained forever in its scenic, cultural and historical condition through management guided by the following principles:

Item 2, cont.

- Protection of traditional recreational uses, including nature trails, outdoor education and historic interpretation;
- Conservation of urban open spaces suitable for outdoor recreation that is compatible with the conservation purposes stated herein;
- Preservation of the riparian lands to preclude additional pollutant loading from potentially more intensive future land uses;
- Maintenance and protection of the undeveloped and scenic waterfront recreation area;
- Maintenance and protection of the scenic and historically significant Historic Gardens, including vistas within the Historic Gardens;
- Maintenance of the value of the resource in avoiding land fragmentation;
- Maintenance of the cultural and historic character of the Historic Gardens and the canals within the Historic Gardens, including those character-defining features that individually or collectively contribute to the landscape's physical appearance as it has evolved over time, including, but not limited to, water features, circulation features such as paths, walls, buildings and furnishings such as benches, lights and sculptures;
- Maintenance and preservation of the Historic Gardens as a physical record of its time, place and use;
- Maintenance and preservation of the historic integrity of the Historic Gardens and its ability to convey the historic character and character defining features of the past; and
- Prevention of deterioration or loss of the Historic Gardens existing character.

The rights granted to the easement holder are as follows but not limited to:

Protected Parcel

- All present and future residential, commercial, industrial and incidental development rights except those rights specifically retained by the fee owner in the conservation easement;
- The right to have the Historic Gardens kept in a state of good repair; and
- The first right of refusal to purchase the Protected Parcel or any interest therein, or portion thereof.

Remainder Parcel

- The right to enforce the rights reserved on the Remainder Parcel; and
- All residential, commercial office and industrial development rights except those rights specifically retained by the fee owner in the conservation easement.

Easement Parcel (the combination of both Protected and Remainder parcels)

- The right to enter the easement property in order to monitor compliance;
- The right to prevent any activity on or use of the easement property that is inconsistent with the purposes or provisions of the easement; and
- The right to be indemnified by the Fee Owner for any and all liability, loss, damage, expense, judgment or claim arising out of negligent or willful action or activity resulting from the fee owner's use and ownership of or activities.

The prohibited uses are as follows but are not limited to:

Protected Parcel

- Acts detrimental to the preservation of the structural integrity or physical appearance or character of any portions of the Historic Gardens;

Item 2, cont.

- Construction or placing of temporary or permanent building, mobile homes or other structures in, on, or above the ground, or any other landscape alterations, that result in a change of land use practices within the Historic Gardens or that would result in changes to the historic lakefront, ski-show vista or appearance or hinder observation of the vista or lakefront activities from either of the two structures designated in the Baseline Documentation as "Stadiums";
- The construction or creation of new roads or trails within the Historic Gardens;
- No operation of motorized vehicles within the Historic Gardens except as necessary to maintain and manage the Historic Gardens or to provide public access consistent with the terms and purposes of this easement;
- No material, deleterious disturbances or change in the cultural and historic character of the Historic Gardens or the canals within the Historic Gardens;
- No signs, billboards, or outdoor advertising of any kind erected or displayed on the property except as otherwise provided for by the terms of this conservation easement; and
- Any subdivision or alternate use of the Historic Gardens not normally associated with generally accepted activities for the preservation and maintenance of culturally and historically significant gardens.

Easement Parcel (the combination of both Protected and Remainder parcels)

- No dumping or placing of contaminated soil, trash, liquid or solid waste (including sludge) or unsightly or offensive, or hazardous materials, wastes, or substances, pollutants, or contaminants;
- The exploration for and extraction of oil, gas, minerals, pear, muck, marl, limestone, lime rock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and similar substances, under and by virtue of the authority of a grant or reservation except as reasonably necessary to combat erosion of flooding, or except as necessary and lawfully allowed for the conduct of allowed activities;
- Activities that will be detrimental to drainage, flood control, water control, water quality or erosion, unless otherwise provided for in the conservation easement;
- Industrial activity, or ingress, egress or other passage across or upon the Easement Property in conjunction with any industrial activity;
- No commercial water wells on the Easement Property for purposes other than those activities conducted on the Easement Property;
- No commercial timber harvesting or agricultural activity.

The following are the Fee Owners Retained Rights, including but not limited to:

Protected Parcel

- The right to use, maintain, repair and reconstruct, but not, without Grantee's approval, to relocate or enlarge, all existing buildings, fences, roads, ponds, drainage ditches and such other facilities as depicted in the Baseline Documentation in the Historic Gardens;
- The right to engage in activities to preserve or restore the Conservation Purposes of the Historic Gardens;
- The right of public access to the Historic Gardens at Fee Owners discretion for passive recreational, educational uses and activities;
- The right to maintain the gardens and lakefront in a manner consistent with good garden and landscape management practices, including fertilizer, pesticide and herbicide use as guided by the Florida Department of Agriculture and Consumer Services or its successor as to application rate and purposes, and approved by the Polk County, Florida Agricultural Extension Agent; and

Item 2, cont.

- The right to engage in ordinary repair and maintenance to conserve the historic and cultural character of the Historic Gardens, and the right to engage in actions necessary to mitigate a casualty or other emergency, promptly reported to the easement holder.

Remainder Parcel

- The right to install, maintain, relocate, construct or reconstruct such structures, support facilities, features, amenities or apparatus necessary to operate a theme park consistent with the historic uses of the Easement Property as Cypress Gardens, Florida's first theme park;
- The right to install, construct or reconstruct such amenities that will support such activities that promote and do not detract from the cultural and historic character of the Historic Gardens;
- The right to display signs advertising the Property, signs referencing property boundaries and signs referencing prohibited activities;
- The right to create, improve or alter trails and paths necessary or beneficial for public use and appreciation of the Easement Property so long as the same are in keeping with the historic uses of Cypress Gardens and do not disturb the cultural and historic character of the Historic Gardens; and
- The right to purchase the easement rights over up to five acres of the Remainder Parcel for the purpose of obtaining a commercial construction loan for a hotel and restaurant; and
- Nothing in this Conservation Easement shall be construed to prohibit, if otherwise permitted under applicable ordinances, regulations or laws controlling land use and density, a hotel or extended stay hotel and an accompanying restaurant, provided that such facilities do not accommodate guests for overnight stays for periods greater than 14 consecutive days and further provided that such facility promotes the purposes of operating the Easement Property as a theme park and consistent with the historic uses of Cypress Gardens. Timeshare operations are expressly prohibited by this Conservation Easement.

The Easement Property (the combination of both Protected and Remainder parcels)

- The right to administer appropriate resource management, public access, interpretation and public safety programs to ensure that the Conservation Purposes are protected and that the public may experience a safe and enjoyable use and appreciation of the Property;
- The right to continue the existing horticultural uses of the Property; and
- The right to all water and water-well rights and the right to apply for and construct and continue operation of water wells on the Easement Property in accordance with all applicable federal and state laws, provided however Fee Owner shall not engage in any commercial sale of water extracted from the Easement Property for use off-site.

Pursuant to section 259.105(4)(f) F.S., the Division of Historical Resources evaluated the site for inclusion on the Florida Forever project list. Cypress Gardens, being one of Florida's first tourist attractions, is potentially eligible for listing in the *National Register of Historic Places*. Although much research and archival work still remains to be done to flesh out details about this resort, no one can argue that tourism has become the mainstay of Florida's economy and development during the past 70 years. Cypress Gardens, and its founder Dick Pope, Sr., played a monumental role in Florida's transformation from a regional hinterland to a national and international destination. It opened in 1936 after four years of construction on the original 37-acre Gardens. Cypress Gardens also hosted elaborate water skiing shows, starting during World War II, when the original goal was to entertain the troops at nearby bases. Significant

Item 2, cont.

structures and attractions on the property include the Snively Mansion, built in the 1920's, and a pool shaped like the state of Florida, built to accommodate an Esther Williams television production in 1959. Cypress Gardens has been used as a locale for movie productions that featured such celebrities as Elvis Presley, Esther Williams and Ricardo Montalban. Full-length features such as "Moon over Miami" were produced here. Cypress Gardens expanded during the 70s and 80s in an attempt to compete with Disney and other parks. In the early 80s, Pope retired and passed the reigns of the company to his son Dick Jr. The park underwent several other changes in ownership after Pope Jr. sold his interest in 1985. Cypress Gardens closed in the spring of 2003.

All mortgages and liens will be satisfied or subordinated at the time of closing. In the event the commitments for title insurance, to be obtained prior to closing, reveal any other encumbrances that may affect the value of the property or the proposed management of the property, staff will so advise the Board of Trustees prior to closing. In the mid 1990's, a very small area of petroleum contamination was discovered on the site. In 2003, under a termination agreement, the previous owner responsible for the contamination, agreed to accept full responsibility for all costs associated with any clean-up, remediation and monitoring. The site is currently being monitored. This issue is more fully discussed in paragraph 4b of the contract.

A title insurance policy, survey, and environmental site assessment will be provided by the seller prior to closing. Purchaser will reimburse the seller for the costs of the title insurance and survey, contingent upon closing and upon the Division of State Land's approval of the final title policy and survey. A baseline documentation report will be provided by the Purchaser prior to closing.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate the Department of Environmental Protection, Division of State Lands as the monitor.

Section 259.032(9)(e), F.S., requires that the Board of Trustees, concurrent with its approval of the initial acquisition agreement within a project, "evaluate and amend, as appropriate, the management policy statement for the project as provided by section 259.035, F.S., consistent with the purposes for which the lands are acquired." The management policy statement for this project was included in the 2003 Florida Forever Annual Report adopted by the Board of Trustees on August 26, 2003. Staff recommends that the Board of Trustees confirm the management policy statement as follows:

The goals of state management of Cypress Gardens would be to preserve existing traditional recreational uses, including nature trails, boating, outdoor education and historic interpretation, and to preserve significant archaeological or historic sites.

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 2, Pages 1-88)

RECOMMEND APPROVAL

Item 3 **Washington Storage Company, Inc. Option Agreement/Florida Board of Education/FIU Board of Trustees**

REQUEST: Consideration of an option agreement to acquire 0.653 acre (Wolfsonian Museum Annex) for the benefit of the Florida Board of Education and Florida International University Board of Trustees from Washington Storage Company, Inc.

COUNTY: Miami-Dade

APPLICANT: Florida International University Board of Trustees (FIU)

LOCATION: Section 33, Township 53, South, Range 42 East

CONSIDERATION: \$892,000

PARCEL	ACRES	APPRAISED BY		APPROVED VALUE	SELLER'S PURCHASE PRICE	PURCHASE*** PRICE	OPTION DATE
		Johnston (01/07/03)	Quinlivan (01/22/03)				
Washington	0.653*	\$4,200,000	\$4,200,000	\$4,200,000	\$687,800**	\$892,000 (21%)	120 days from BOT approval

* Storage Building site 13,467 square feet
 Parking Lot 15,000 square feet

** The property was purchased in 1987

*** The purchase price will be reduced by an amount equal to the \$25,000 per monthly lease payment. This credit will accrue from September 2003 to the date of closing.

STAFF REMARKS: This acquisition was negotiated by FIU. Funding for the purchase is available through a donation to the University from a probated estate in the amount of \$426,000, together with funding from a matching grant of \$426,000 that the University applied for and received from the state lottery funds. The matching funds were appropriated during the 2000-2001 Legislative session and are still available for use by FIU for the purpose of acquisitions and costs associated with this purchase. The FIU Foundation has agreed to provide, if needed, any additional money necessary to complete this transaction. Although the Board of Trustees will have no financial responsibilities in this acquisition, title to the parcel will be conveyed to the Board of Trustees at closing, pursuant to section 1001.74(31)(c), F.S.

The property is improved with a four-story 34,790-square-foot storage building and a 15,000-square-foot parking lot. The building will be used for art collection, storage and conservation purposes. It will not be open to the public; however, it will be open by appointment to university faculty and students. This transaction is a continuation of the seller's history of charitable donations to FIU. The seller has executed the agreement to sell the parcel in "as is" condition. The Department of Environmental Protection (DEP) Division of State Lands (DSL) has conducted its due diligence prior to the acceptance of the contract and the results are as follows:

Environmental Site Assessment:

FIU, the property manager, has confirmed it will implement best management practices utilizing best available technology with regard to each of the following environmental concerns and will assume responsibility for any liability associated with the existing environmental concerns:

- A 7,000-gallon diesel underground storage tank (UST) had previously been located at 1500 Lennox Avenue (subject property parking area). The UST was removed in November 1999. In July of 2002, DEP and Miami-Dade Department of Environmental Resources Management granted Bell South a "No Further Action Plan" at the site for petroleum product contamination associated with the November 9, 1999 discharge.

Item 3, cont.

- Four compliance-monitoring wells are still located on the property. Screening of the groundwater in each of the compliance wells for possible concentrations of petroleum product contaminants is recommended by the Phase 1 environmental site assessment (ESA) consultant; or in the alternative, abandon the existing monitor wells.
- The ESA identifies four storm water inlets as areas of possible illegal dumping or discharging of hazardous materials and recommends monitoring and cleaning of storm water inlets.
- A flammable storage and chemical storage area was identified on the first floor of the structure. Proper labeling of contents and monitoring of the flammable storage and chemical storage area is recommended.
- It is recommended a certified structural inspector examine the emergency escape stairway for possible structural damage. If the stairway is deemed unusable due to safety issues, demolition and replacement of the stairway is recommended.
- Monitoring and cleaning of the hydraulic lift system is also recommended.
- A Limited Phase 2 ESA and a Lead Based Paint Inspection Report have been received and reviewed. The soil sample revealed limited petroleum contamination. Limited traces of lead based paint were found and the assessment did identify an upstairs room that has some mold. FIU intends to have the room inspected by a certified mold inspector and will implement best management practices with respect to all the environmental conditions identified.

Survey and Title Insurance Commitment:

- There are six easements held by Bell South Telecommunications, Inc., a Georgia Corporation f/k/a Southern Bell Telephone & Telegraph Company, a Georgia Corporation. These easements are identified on the survey and in the title insurance commitment, two easements on the parking lot site and four easements located on the museum storage-building site.
- Parking lot: There is an exclusive easement for parking and for installation, maintenance, use and support of an underground fuel storage tank (which has since been removed) and fuel transmission lines. The parking lot consists of 34 parking spaces. The easement encumbers 10 parking spaces, which limits the parking spaces to 24 for parking. The appraisers considered the negative impact to fee simple value in their final reconciliation of value.
- There is a perpetual non-exclusive easement for ingress and egress across the parking lot. The appraisers considered this easement in their reconciliation of value.
- Museum Storage Building Site. There are four perpetual exclusive easements for installation, maintenance, use and support of telecommunication equipment, maintenance and use of a refuse disposal storage and/or trash bins. The appraisers considered these easements in their final reconciliation of value.
- These perpetual exclusive easements include an indemnity agreement that will need to be amended out so long as the Board of Trustees own the property. DSL is currently negotiating the necessary amendment to the easements.

The purchase is subject to a reservation of a leasehold interest in an air-conditioned space, suitable for the storage of art and financial records and one parking space for the term of Mitchell Wolfson, Jr.'s life, plus six months.

All mortgages and liens will be satisfied at the time of closing. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and; therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing. In the event the

Item 3, cont.

commitment for title insurance, to be obtained prior to closing, reveals any other encumbrances that may affect the value of the property or the proposed management of the property, staff will so advise the Board of Trustees prior to closing.

This property will be managed by FIU as part of the existing campus.

This acquisition is consistent with section 187.201(1), F.S., the Education section of the State Comprehensive Plan.

(See Attachment 3, Pages 1-59)

RECOMMEND APPROVAL

Item 4 The Athena House Corporation, Inc./Delta Colony Housing Corp. Option Agreements/Florida Board of Education/FSU

REQUEST: Consideration of two option agreements to acquire 1.3 acres for the benefit of the Florida Board of Education and Florida State University from The Athena House Corporation, Inc. and Delta Colony Housing Corp.

COUNTY: Leon

APPLICANT: Florida State University (FSU)

LOCATION: Sections 35 and 36, Township 01 North, Range 01 West

CONSIDERATION: \$2,318,300

PARCEL	ACRES	APPRAISED BY		APPROVED VALUE	SELLER'S PURCHASE PRICE	PURCHASE PRICE	OPTION DATE
		Brown (7/28/03)	Griffith (7/28/03)				
Athena House	0.74	\$1,900,000	\$1,700,000	\$1,900,000	\$635,000*	\$1,750,000 (92%)	120 days after BOT approval
Delta Colony	0.56	\$ 693,000	\$634,000	\$693,000	\$395,000**	\$568,300 (82%)	120 days after BOT approval
TOTALS	<u>1.30</u>			<u>\$2,593,000</u>		<u>\$2,318,300</u>	

*The parcel, also known as "FSU parcel 216", was acquired by the seller in August 1995

**The parcel, also known as "FSU parcel 161", was acquired by the seller in February 1995

STAFF REMARKS: These acquisitions were negotiated by FSU. Funds for the acquisitions were appropriated during the 1994-1995 Legislative session and are still available for use by FSU for acquisition and costs associated with these purchases. Although the Board of Trustees will have no financial responsibilities in these acquisitions, title to the property will be conveyed to the Board of Trustees at closing, pursuant to section 1001.74(31)(c), F.S..

The Athena property is improved with a 17,642-square-foot, four-story fraternity house and the Delta Colony property is improved with a 4,785-square-foot, two-story fraternity house. FSU will continue using the facilities until the properties are needed for the construction of new educational facilities.

Item 4, cont.

All mortgages and liens will be satisfied at the time of closing. In the event the commitments for title insurance, to be obtained prior to closing, reveal any encumbrances that may affect the value of the properties or the proposed management of the properties, staff will so advise the Board of Trustees prior to closing.

Title insurance policies, surveys and environmental site assessments will be provided by the acquiring agency prior to closing.

These properties will be managed by FSU as part of the existing campus.

These acquisitions are consistent with section 187.201(1), F.S., the Education section of the State Comprehensive Plan.

(See Attachment 4, Pages 1-75)

RECOMMEND APPROVAL

**Item 5 SJRWMD Acquisition Agreement/Four Creeks Forest/Thomas Creek/
Northeast Florida Timberlands Florida Forever Project**

REQUEST: Authority to enter into an acquisition agreement with the St. Johns River Water Management District for two parcels, Four Creeks and Thomas Creek, owned by Rayonier in the Northeast Florida Timberlands Florida Forever project.

COUNTIES: Nassau and Duval

LOCATION: Sections 13, 14, 22 through 24, 27, 43, 44, 46 and 52, Township 02 North, Range 25 East; Sections 07 through 10, 13 through 18, 35, 36, 40, 42, 43, 45 and 46, Township 02 North, Range 26 East; Sections 25, 34 and 35, Township 01 North, Range 24 East; Sections 04 through 06, 20, 31, 32, 40, 41, 43 and 44, Township 01 North, Range 25 East

STAFF REMARKS: The Northeast Florida Timberlands project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 26, 2003. The project contains 164,378 acres, of which 19,448 acres have been acquired or are under agreement to be acquired.

To facilitate the acquisition of this project, the St. Johns River Water Management District (District) has offered to take the lead in the acquisition of the Four Creeks Forest parcel (Rayonier/14,500 acres) and the Thomas Creek parcel (Rayonier/2,700 acres, consisting of two parcels). Department of Environmental Protection (DEP) staff has prepared an agreement that would allow the District to acquire the parcels within the Northeast Florida Timberlands Florida Forever project in accordance with section 259.041(17), F.S., utilizing the procedures set out in section 373.139, F.S. On September 13, 1994, the Board of Trustees approved the use of the District's procedures to allow the District to acquire lands to be held jointly by the Board of Trustees and the District. Pursuant to section 373.139, F.S., the District has identified these parcels as needed for water management, water supply, and the conservation and protection of water resources.

Item 5, cont.

On December 9, 2003, the Governing Board of the District approved and executed the agreement. Incorporated into the agreement are a number of assurances that the District is giving the Board of Trustees in return for its consideration of this agreement. The District has agreed to: (1) comply with the procedures set out in section 373.139, F.S.; (2) defend the Board of Trustees against all title and survey disputes or defects and environmental contamination associated with each acquisition negotiated by the District that were either known or should have been known by the District at the time the District acquired the parcel; and (3) reimburse the Board of Trustees 50 percent of any overpayment of the purchase price if an audit or investigation determines that the purchase price paid exceeded the actual value.

Pursuant to the proposed agreement, District staff will obtain and review appraisals, negotiate a purchase contract and secure the approval of its Governing Board. The District will provide the DSL with a board resolution requesting reimbursement of the Board of Trustees' share of the purchase price. DEP staff will seek approval for the Board of Trustees' share of the purchase price for each parcel the District contracts to purchase. In addition, the agreement provides for the District, under some circumstances, to be reimbursed 50 percent of all costs associated with its attempt to acquire lands within the project, including all pre-acquisition and closing related costs, with the pre-acquisition costs and certain closing costs being reimbursed even if the District is unsuccessful in acquiring any property. The agreement authorizes DEP staff to reimburse these costs from incidental expense funds. If the Board of Trustees approves a specific purchase, the District will proceed to closing with title to be vested jointly, with the District and the Board of Trustees each holding an undivided 50 percent interest.

The Northeast Florida Timberlands project will be managed by the Department of Agriculture and Consumer Services' Division of Forestry under a multiple-use management regime consistent with the State Forest system.

This acquisition will be consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 5, Pages 1-8)

RECOMMEND APPROVAL

Item 6 Sale of State-Owned Land/Nassau County/Carrol E. Franklin

REQUEST: Consideration of a request to sell 31.86 acres (18 parcels) of state-owned land in Nassau County to Carrol E. Franklin.

COUNTY: Nassau
Deed No. 31188

APPLICANT: Carrol E. Franklin

LOCATION: Section 09, Township 03 North, Range 24 East; Section 14, Township 01 North, Range 24 East; Sections 05 and 24, Township 02 North, Range 24 East; Sections 29 and 30, Township 02 North, Range 25

Item 6, cont.

CONSIDERATION: \$16,200 to be deposited into the Internal Improvement Trust Fund

PARCEL	ACRES	APPRAISED BY		BUYER'S PURCHASE PRICE	CLOSING DATE
		LUCAS (05/15/02)	APPROVED VALUE		
45-0050.0	0.09	\$100	\$100	\$100	60 days after
45-0170.0	0.86	\$450	\$450	\$450	BOT approval
45-0190.0	5.00	\$2,500	\$2,500	\$2,500	
45-1030.0	1.49	\$750	\$750	\$750	
45-1040.0	1.78	\$900	\$900	\$900	
45-1060.0	1.84	\$950	\$950	\$950	
45-1070.0	1.66	\$850	\$850	\$850	
45-1080.0	1.21	\$600	\$600	\$600	
45-1090.0	1.55	\$800	\$800	\$800	
45-1100.0	1.66	\$850	\$850	\$850	
45-1110.0	1.72	\$850	\$850	\$850	
45-1120.0	1.32	\$650	\$650	\$650	
45-1130.0	1.84	\$950	\$950	\$950	
45-1140.0	1.45	\$750	\$750	\$750	
45-1150.0	1.72	\$850	\$850	\$850	
45-1161.0	1.55	\$800	\$800	\$800	
45-1410.0	0.12	\$100	\$100	\$100	
45-1440.0	5.00	\$2,500	\$2,500	\$2,500	
TOTALS	31.86		\$16,200	\$16,200	

STAFF REMARKS: The Board of Trustees originally acquired these parcels of land pursuant to chapter 18296, 1937 Laws of Florida, known as the Murphy Act. The act provided for statutory forfeiture of lands for nonpayment of taxes. Tax certificates unredeemed as of June 9, 1939, were automatically converted to fee simple title in the name of the state. Pursuant to section 253.034(6)(c), F.S., for nonconservation lands, the Department of Environmental Protection (DEP), Division of State Lands (DSL) shall review such lands and shall recommend to the Board of Trustees whether such lands should be retained in public ownership or disposed of by the Board of Trustees.

Pursuant to section 253.034(6)(h), F.S., lands determined to be surplus, which were acquired by a unit of government by gift, donation, grant, quitclaim deed, or other such conveyance where no monetary consideration was exchanged, may be sold based on one appraisal.

DSL received a request from Carrol E. Franklin to purchase 18 parcels totaling 31.86 acres of state-owned land. Mr. Franklin owns property close to these parcels and is requesting to purchase these parcels for investment purposes and hunting.

In accordance with section 253.111, F.S., Nassau County and state agencies were notified of the sale and did not express any interest in the properties. Pursuant to section 253.115, F.S., property owners within 500 feet of the subject properties were also notified and no objections were received.

A consideration of the status of the local government comprehensive plan was not made for this item. DEP has determined that surplus land sales are not subject to the local government planning process.

(See Attachment 6, Pages 1-26)

RECOMMEND APPROVAL

Item 7 **City of Sarasota Recommended Consolidated Intent**

REQUEST: Consideration of an application for the modification of a 25-year sovereignty submerged lands lease for an existing city-owned, commercial marina to increase the number of wetlands from 234 to 316 within the existing 919,587-square-foot lease area.

COUNTY: Sarasota
 Lease No. 581022443
 Application No. 58-01292793-003

APPLICANT: City of Sarasota (City)

LOCATION: Sections 19 and 24, Township 36 South, Ranges 17 and 18 East, in Sarasota Bay, Class III Waters, within the local jurisdiction of the City of Sarasota
Aquatic Preserve: No
Outstanding Florida Waters: Yes, Class III
Designated Manatee County: Yes, without an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Area idle/slow speed/caution zone: No

CONSIDERATION: (1) \$12,498.10, as the annual lease fee computed at the base rate of \$0.1278 per square foot for 139,706 square feet, discounted 30 percent because of the first-come, first-served nature of the facility; (2) three percent of the gross receipts from marina operations (exclusive of fuel sales) per year, until July 31, 2012, for a 779,881-square-foot area; and (3) on August 1, 2012, lease fees for the 779,881-square-foot area will be assessed at the prevailing rate, pursuant to section 18-21.011, F.A.C., in effect at that time. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fees may be adjusted based on six percent of the rental value pursuant to section 18-21.011, F.A.C.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2), and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

In 1964, the Board of Trustees granted two dedications to the City for the use of filled, formerly submerged lands in Sarasota Bay. One dedication was for the creation of a municipal park and the second for a breakwater. At the same time that the second dedication was approved, the Board of Trustees also gave approval to a marina development plan and an operating agreement. The marina development plan included the construction of buildings on the riparian uplands and the construction of docks, all within a defined marina operations area. Over the years, the Board of Trustees has approved several amended operating agreements between the City and Jack Graham, Inc., the current operator of the facility. The current 30-year operating agreement extends to July 31, 2027.

As a condition of its first approval of an operating agreement between the City and Jack Graham, Inc., in 1983, the Board of Trustees required Jack Graham, Inc., to enter into a separate contract agreement with the Board of Trustees whereby Jack Graham, Inc., would

Item 7, cont.

pay the state three percent of the gross receipts attributable to the marina operations area, excluding fuel sales. This contract remains in effect through July 31, 2012. In 1985, the City registered all of the existing docking facilities within the marina operations area under the state's grandfather registration program deferring the requirement to obtain a lease until January 1, 1998. In 1986, Jack Graham, Inc., received a regulatory permit and a five-year sovereignty submerged lands lease for a dock extension containing 139,706 square feet of preempted area located adjacent to and outside of the marina operations area. In 1996, Jack Graham, Inc., assigned the lease to the City. On December 4, 1997, the Board of Trustees approved a lease modification that incorporated the registered grandfathered structures, in the marina operations area, into the lease area and extended the lease term to 25 years (expires July 31, 2022). The agenda item prepared by the Division of State Lands (DSL) provided a lease area of 617,385 square feet that included the original 139,706 square feet, plus an estimated 477,679 square feet of grandfathered area. Because the 477,679 square feet was an estimate only and not based on a survey or lease area sketch and description, the City, pursuant to a special approval condition in the agenda item, provided a sketch and description in early 1998 showing a lease area of 832,703 square feet (an increase of 215,318 square feet). This was incorporated into the lease modification that was executed on April 12, 1999. However, it appears that through an oversight an 86,884-square-foot area, that would have completed the incorporation of the entire marina operations area into the lease, was not included in the sketch and description and, it therefore, was inadvertently omitted from the lease modification.

On September 28, 1999, the Board of Trustees approved a modification to the City's 25-year lease to authorize an increase in the number of boat slips from 200 to 234 within the existing lease area. DEP's district staff who prepared the agenda item assumed that the 617,385 square feet, provided in the draft lease modification that was attached to the December 4, 1997 agenda

item, was the final lease area square footage, and thus mistakenly used this square footage to form the basis of the September 28, 1999, agenda item. Once the certified agenda item from September 28, 1999, was sent to DSL for the execution of the lease modification, staff realized that the 617,385 square feet in the December 4, 1997 agenda item, and not the 832,703 square feet contained in the April 12, 1999 lease modification, had been erroneously carried forward in the September 28, 1999 agenda item. In addition to applying the correct square footage to the new lease modification, staff took steps to add the last piece of the previously omitted marina operations area to the lease modification. At the request of staff, the City provided a sketch and description of this 86,884-square-foot area. As a result, the final executed lease modification for the increase in wetslips from 200 to 234 reflected 919,587 square feet (617,385 + 215,318 + 86,884).

The City's current proposal is to expand the existing 234-slip, city-owned, commercial marina by constructing 108 slips and removing 26 existing slips for a net increase of 82 slips, thereby, creating a 316-slip facility. All proposed structures would be constructed within the boundaries of the existing 919,587-square-foot sovereignty submerged lands lease. The proposed slips would be added in two phases and result in the final build out of the marina. The purpose of the phasing is to allow sufficient time for the recently adopted Sarasota County Manatee Protection Plan (MPP) to be reviewed and approved by the Florida Fish and Wildlife Conservation Commission (FFWCC) and subsequently adopted into the City's Comprehensive Plan. Completion of the dock construction in two phases would enable the City to qualify for an exemption from a Development of Regional Impact review, pursuant to Chapter 380, F.S., according to a letter from the Department of Community Affairs on October 3, 2003. In Phase One, 53 slips would be added. In Phase Two, 29 more slips would be added upon the incorporation of the MPP into the City's Comprehensive Plan.

Item 7, cont.

The marina, when completed, would be occupied by vessels ranging in length between 35 and 120 feet with a draft between one and four feet. The total number of net permanent slips proposed is 74. The total number of net transient slips proposed is 8. A minimum of 90 percent of the slips in the entire facility will be available for rent to the public on a first-come, first-served basis.

The uplands adjacent to the lease area currently include a marina plaza, a restaurant, and retail shops. An October 10, 2003 site inspection revealed that the facility was not in compliance with the terms and conditions of the existing lease due to the existence of two non-water dependent structures in the lease area. These include a charter fishing boat office and a small building associated with a boat rental business. Pursuant to section 18-21.003(57), F.A.C., the subject structures are non-water dependent because the uses involve activities that do not require "direct access to the water body or sovereign submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or sovereign submerged lands is an integral part of the activity." A charter fishing boat office (Structure 1) is located on a floating barge in a slip at the midway point of the newest dock in the North Basin. The City states that this office had been relocated from its previous location adjacent to a seawall in the South Basin where it had existed since 1976. Sometime after 1998 (based on available aerials), the City directed the tenant to move the structure to the current location in order to segregate commercial vendors from wet slip renters. The applicant feels that since these structures previously existed within the marina, they should be allowed to remain. Structure 1 contains a ticket dispensing area, several items related to business and communication, a walk-in freezer for bait storage, an ice machine, a kitchen, and a bathroom. The dimensions are 15-feet wide by 24-feet long. The City has registered the barge as a vessel; however, DEP has not recognized, in the past, such structures as vessels since they are in fact being used as fixed structures and not as vessels freely navigating to and from the facility, and they have utilities running to them. Aside from the fact the structure has changed locations, it does not qualify for grandfathering, because it would have had to be in place prior to March 10, 1970 (date for revenue generating structures). Structure 2, a pre-fabricated 8-foot by 10-foot, fully enclosed and climatized shed-like building, is located on a dock adjacent to a seawall in the South Basin and utilized for a boat rental business. Structure 2 contains several items related to business and communication, flotation devices, a microwave, and a refrigerator.

Pursuant to Section 18-21.004(1)(f), F.A.C., the Board of Trustees may allow an exception to the prohibition of non-water dependent structures on a case-by-case basis when a public project is involved and the Board of Trustees determines that the structure is in the public interest. However, the structure must meet the following conditions: (1) be located in areas along seawalls or other nonnatural shorelines; (2) be located outside of aquatic preserves or class II waters; and (3) the non-water dependent structure uses are incidental to the basic purpose of the project, and constitute only minor nearshore encroachments on sovereignty lands. Staff is of the opinion that an exception to the rule is not warranted in this case and the structures should be removed for the following reasons:

- This is not a public project because the marina, even though publicly owned, is operated for profit by a private contractor.
- While the structures are not located in an aquatic preserve or class II waters and meet criteria number (2), one of the structures, the charter fishing boat office, is not located adjacent to a seawall and therefore does not meet criteria number (1).
- The lessee maintains that these structures are incidental to the overall purpose of the marina and constitute minor nearshore encroachments and meet criteria number (3). Staff would agree with this contention if such use of sovereignty submerged lands was

Item 7, cont.

confined to the subject marina only. However, staff is of the opinion that it is not in the public interest to allow these structures to remain as the ramifications for doing so are the setting of a precedent that would likely lead other marina operators statewide to pursue similar exceptions before the Board of Trustees. With upland space at a premium at many marinas, it follows that marina operators, if given a choice, would desire that those upland structures and activities that lend themselves to placement on sovereignty submerged lands be placed there. Staff foresees the potential for cumulative impacts to public trust lands and the diminishment of the public's right to use and enjoy those lands.

Therefore, a special approval condition has been added that requires the lessee to remove the non-water dependent structures from sovereignty submerged lands within 30 days following approval of the lease modification by the Board of Trustees and prior to receipt of fully executed lease modification.

DEP's environmental resource permit modification prohibits liveaboards in the proposed lease modification areas. There are currently three liveaboards, allowed by previous permits, in the entire marina. The permit modification requires the City, in addition to providing sewage pumpout services to existing wet slip renters, make available unlimited sewage pumpout services to the boating public at no charge. The permit modification only authorizes fueling facilities in the proposed reconfigured fuel dock area. In order to reduce impacts to water quality, specific conditions in the permit modification also require the use of concrete in floating decks, support pilings and mooring pilings. Because there are sparse sea grasses located in the A-dock area, the permit modification requires the use of grating material in the decking to allow maximum light penetration.

The recommendations of FFWCC regarding protection of manatees have been addressed as specific conditions in the permit modification. Sarasota County is a designated manatee county without an approved MPP. However, Sarasota County adopted a MPP on September 24, 2003 and has forwarded the MPP to FFWCC for final review.

Section 163.3194(3)(b), F.S., in summary, states that a local development approved or undertaken by a local government shall be consistent with the comprehensive plan if it meets all criteria of the plan and all other criteria enumerated by the local government. The proposed action is consistent with the adopted plan according to a letter received from the City on April 17, 2003.

(See Attachment 7, Pages 1-21)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION
AND PAYMENT OF \$12,498.10**

Item 8 Chapter 18-21, F.A.C./Initiation of Rule Amendments Status Report/
Ownership Oriented Facilities/Fees

REQUEST: Consideration of a status report on initiation of rule amendments to Chapter 18-21, F.A.C., regarding: (1) the maximum number of slips and preemption allowed for private residential multi-family docks (a.k.a., ownership oriented facilities), including those docks serving mixed use upland residential and revenue-generating activities; and (2) the fees for the use of sovereignty submerged lands and processing of various instruments associated with such use.

Item 8, cont.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP)

STAFF REMARKS: On October 28, 2003, the Board of Trustees, as part of the discussion of the WCI Communities, Inc. item, directed staff of the DEP to begin rulemaking to amend Chapter 18-21, F.A.C., Sovereignty Submerged Lands Management, to consider revisions to the maximum number of slips and preemption allowed for private residential multi-family docks (a.k.a., ownership oriented facilities), including those docks serving mixed use upland residential and revenue-generating activities. Staff published a Notice of Proposed Rule Development on January 23, 2004, which includes notice of public workshops to be held February 19 in Pensacola, February 24 in West Palm Beach, and February 26 in Tampa. After receiving public comments at the workshops, staff will prepare a rule for consideration by the Board of Trustees.

Criteria governing the private use of sovereignty submerged lands stem from the Public Trust Doctrine and Article X, Section 11 of the Constitution of the state of Florida. Under these provisions, sovereignty submerged lands are held in trust for all the people for their use and for the enjoyment of traditional public activities such as fishing, swimming, and navigation. Limitations placed on private uses of such public lands under Chapter 253, F.S., and Chapter 18-21, F.A.C., are intended to balance the preemption of public lands for private purposes with the rights of all citizens to use those same lands. While Chapter 18-21, F.A.C., does not have a fixed limitation of the amount of preemption for marina facilities that are open to the general public, it does limit the number of slips and amount of preemption for private residential, multi-family docking facilities that serve a limited segment of the public in an associated ownership-oriented upland facility. Under section 18-21.004, F.A.C., private residential multi-family docks are limited to the lesser of a maximum preempted area of 40 square feet of preempted area for each linear foot of shoreline and a graduated ratio of slips, ranging from 1:1 to 4:1, based on the number of upland residential units. These limits were adopted in December 1986, based on studies that revealed that a large number of unused mooring slips existed at ownership oriented facilities. These unused slips were preempting traditional uses of public trust lands from the general public and were not available for the use of the general public. Additional limitations are applicable to multi-family docks in aquatic preserves. These limitations are not directly subject to this rulemaking effort although it is anticipated that the applicability of the unit:slip ratio to facilities in Pinellas County and Boca Ciega Bay Aquatic Preserves may be clarified in conjunction with this rulemaking.

Since completion of the studies on which the above limitations were developed, the number and sizes of boats owned has increased. In addition, there has been an increase in the number of upland developments with mixed residential and revenue-generating uses and the conversion of existing revenue-generating marinas to multi-family use. Because private residential multi-family docks are limited in size and number of slips in Chapter 18-21, F.A.C., and revenue-generating docks are not, several of these mixed use docking facilities have required review by the Board of Trustees. Special lease conditions on such facilities have restricted the preempted area and the number of slips that can be used by the upland ownership oriented (residential) development to the same ratios that would be allowed by rule for multi-family docks, with the remainder of the slips required to remain open to the public on a first-come, first-served basis. Other conditions have required signs advertising the availability of the dock to the public and required parking accommodations for the public to help ensure public access to the portion of the dock that is designated to serve the public. Examples of previous mixed-use facilities that have been authorized by the Board of Trustees are Island Marina (2/21/1991 Item 26, 12/12/1995 Item 6), Pier 81 (9/11/2001 Item 4), City of Punta Gorda (6/15/1995 Item 13), and Marbella Yacht Club/Oak Harbor Development (8/26/2003 Item 10).

Item 8, cont.

Staff have received input regarding revisions to private residential multi-family dock criteria from Technical Advisory Committee discussions during December 1999 through November 2000, when staff was developing a draft "Dock Criteria" rule, and more recently during development of the "Forms of Authorization" rule. Additional input will be solicited at the upcoming public workshops before specific rule language is developed. That language will consider balancing today's public and private needs and uses of sovereignty submerged lands with protections to ensure that manatees, water quality, and submerged resources are not adversely affected.

Additionally, as part of the discussion on the WCI Communities, Inc. request on October 28, 2003, the Board of Trustees directed staff to consider amending the rules to ensure that the six percent of any sublease or subsequent sublease of a slip is included in the sovereignty submerged land lease fee calculations due. This and other fee issues associated with docking facilities will be discussed at the February public workshops. The Division of State Lands (Division) will use information collected to identify appropriate changes to the various fees charged. After completion of the public workshops, the Division may pursue, through separate rulemaking, changes to the current fee structure in Chapter 18-21, F.A.C. The Division will submit any proposed changes to the Board of Trustees for its consideration prior to proceeding to rulemaking.

RECOMMEND ACCEPTANCE