

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MAY 11, 2004

Item 1 Bass Option Agreement/Conservation Easement/Green Swamp Florida Forever Project

REQUEST: Consideration of an option agreement to acquire a perpetual conservation easement over 3,502.32 acres within the Green Swamp Florida Forever project from Dellis Wayne Bass.

COUNTY: Polk

LOCATION: Sections 12, 13, 23 and 24, Township 26 South, Range 23 East; and Sections 18 and 19, Township 26 South, Range 24 East

CONSIDERATION: \$2,288,210

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY:</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>TRUSTEES'</u> <u>PURCHASE</u> <u>PRICE</u>	<u>OPTION</u> <u>DATE</u>
		<u>Marr</u> <u>(04/30/03)</u>	<u>String</u> <u>(04/30/03)</u>				
Bass-Robson Estate	3,502.32	\$2,175,000	\$2,399,000	\$2,486,900*	**	\$2,288,210*** (92%)	120 days after BOT approval

* Due to a change in the reserved rights in the conservation easement, the values were revised on 10/13/03.

** Family property acquired through parents' estate 10/31/1995.

*** \$653 price per acre; Fee Value is \$4,851,000; Conservation Easement Value is 51% of the Fee Value.

STAFF REMARKS: Effective July 1, 1999, the Legislature transferred all activities performed by the Green Swamp Land Authority to the Department of Environmental Protection (DEP) as provided in section 51, chapters 99-247, Laws of Florida. The Green Swamp Area of Critical State Concern contains 322,690 acres, of which 38,477.44 acres are protected by, or under agreement to be protected by, land protection agreements or conservation easements. After the Board of Trustees approves this agreement, 280,710.24 acres, or 87 percent of the area, will remain to be acquired. This acquisition is also within the Green Swamp Florida Forever project boundary. The Green Swamp project is an "A" group project on the Florida Forever Less Than Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 279,224 acres, of which 86,312.59 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 189,409.09 acres, or 68 percent of the Green Swamp Florida Forever project, will remain to be acquired.

Under the proposed conservation easement the property will be restricted in perpetuity by the provisions of the easement, a summary of which includes, but is not limited to the following:

- Dumping of trash, waste, hazardous materials and soil will be prohibited; and
- Surface mining and excavation by Grantor will be prohibited;
- Acts or uses detrimental to natural water flow and to the preservation of any historical, archeological or cultural area will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation except in areas designated as agricultural in the Baseline Documentation or as necessary for control of exotic and invasive plants and as otherwise specifically provided in this easement will be prohibited;
- New construction or placing of temporary or permanent structures or buildings on the property will be prohibited except as may be necessary for maintenance, normal operation or emergency situations or as otherwise provided herein;
- Commercial water wells on the property are prohibited;
- Row crops cultivated for commercial purposes are prohibited; and
- The Board of Trustees will have the right of notice of the owner's intent to sell, in the event the owner intends to sell the property.

Item 1, cont.

The proposed conservation easement will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- The right to engage in all non-commercial, passive, resource-based recreation not inconsistent with the purpose of the easement;
- The right to reconstruct barns and fences for agricultural uses up to 125 percent of original size;
- The right to maintain the owner's current agricultural business in improved areas;
- The right to convert improved agricultural areas to other agricultural uses other than row crops cultivated for commercial purposes;
- The right to use, maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings;
- The right to build nine new residential homes and subdivide with a minimum of 100 acres per residence;
- The right to engage in silviculture only in areas depicted on the Baseline Documentation Report in agricultural areas;
- The right to maintain existing firebreaks as depicted in the Baseline Documentation Report and construct new firebreaks with approval from the Division of Forestry; and
- The right to convert a maximum of 200 contiguous acres of palmetto natural area to improved pasture.

All mortgages and liens will be satisfied or subordinated at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy, a survey, an environmental site assessment and baseline documentation report will be provided by the purchaser prior to closing.

The mosaic of cypress swamps, pine forests, and pastures known as the Green Swamp is a vital part of the water supply of Central Florida. This region gives rise to four major river systems (the Withlacoochee, Oklawaha, Hillsborough and Peace) and, because it has the highest groundwater elevation in the peninsula, is important for maintaining the flow of water from the Floridan Aquifer. Preservation by acquiring the properties and conservation easements located within the area will protect the Floridan Aquifer and the headwaters of several rivers, and preserve a large area for wildlife.

The property will be monitored by DEP's Office of Environmental Services as the interim monitor for the conservation easement until a permanent monitor is established.

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

(See Attachment 1, Pages 1-46)

RECOMMEND APPROVAL

Item 2 Whaley, et al, Option Agreement/Conservation Easement/Monitor/Manager Designation/Management Policy Statement Modification/Confirmation/Big Bend Swamp/Holopaw Ranch Florida Forever Project

REQUEST: Consideration of (1) an option agreement to acquire a perpetual conservation easement over 3,724.30 acres within the Big Bend Swamp/Holopaw Ranch Florida Forever project from Cecil E. Whaley, et al; (2) designation of the Department of Environmental Protection’s Office of Environmental Services as the monitor for less-than-fee acquisitions and the Florida Fish and Wildlife Conservation Commission as lead manager, with the Department of Agriculture and Consumer Services’ Division of Forestry as cooperating managers, for full fee acquisitions; and (3) modification and confirmation of the management policy statement.

COUNTY: Osceola

LOCATION: Sections 25 and 36, Township 28 South, Range 32 East; Sections 29, 30, 31, and 32, Township 28 South, Range 33 East

CONSIDERATION: \$3,600,000

APPRAISED BY:							
PARCEL	ACRES	Clayton (08/18/03)	Williams (08/18/03)	APPROVED VALUE	SELLER’S PURCHASE PRICE	TRUSTEES’ PURCHASE PRICE	OPTION DATE
Whaley	3,724.30	\$3,730,000	\$3,912,000	\$3,912,000	*	\$3,600,000** (92%)	120 days after BOT approval

* The property was inherited over 5 years ago.
** \$967 per acre; Fee Value is \$7,450,000; Conservation Easement Value is 53% of the fee value

STAFF REMARKS: The Big Bend Swamp/Holopaw Ranch project is an “A” group project on the Florida Forever Less-than-Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 64,502 acres, of which these would be the first to be acquired, or protected by conservation easements, or are under agreement to be acquired, or protected by conservation easements. After the Board of Trustees approves this agreement, 60,777.70 acres, or 94 percent of the project, will remain to be acquired.

Under the proposed conservation easements the property will be restricted in perpetuity by the provisions of the easement, a summary of which includes, but is not limited to the following:

- Commercial water wells on the property are prohibited;
- Dumping of trash, waste, hazardous materials, soil and liquid will be prohibited;
- Exploration for and extraction of oil, gas, minerals, muck, limestone, etc. will be prohibited except as reasonably necessary to combat erosion or flooding;
- Activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, etc., will be prohibited except to meet the requirements imposed by a water management district;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation except in areas designated as agricultural in the Baseline Documentation or as necessary for control of exotic and invasive plants and as otherwise specifically provided in this easement will be prohibited;
- New construction or placing of temporary buildings, mobile homes or other structures in, on or above the ground will be prohibited, except as may be necessary for maintenance and normal operations of the property or during emergency situations;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species will be prohibited;
- The right to engage in silviculture will be prohibited; and

Item 2, cont.

- The Board of Trustees will have the right of notice of the owner's intent to sell, in the event the owner intends to sell the property

The proposed conservation easements will allow the owners to retain certain rights. The summary of owner's rights includes, but is not limited to the following:

- The right to observe, maintain, photograph, introduce and stock native fish or wildlife on the property;
- The right to conduct controlled or prescribed burning;
- The right to mortgage;
- The right to contest tax appraisals;
- The right to use, maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings;
- The right to construct five new residential homes and subdivide with a minimum of 500 acres per residence;
- The right to divide the property for sale or other disposition into one lot for each residence allowed by this Easement;
- The right to cultivate and harvest hay and Bahia sod and to plant and harvest row crops from existing pastures; and
- The right to construct and lease one cellular phone tower in the improved pasture area as depicted in the Baseline Documentation;

All mortgages and liens will be satisfied or subordinated at the time of closing. Department of Environmental Protection (DEP) staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately.

A title insurance policy, a survey, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

Many kinds of wildlife live in the expanses of palmetto prairies, pine flatwoods, and cypress swamps in Osceola County. Public acquisition of the Big Bend Swamp project will acquire certain rights from landowners to maintain a link of natural lands between the Bull Creek and Three Lakes Wildlife Management Areas, and help to ensure the survival of caracara, red-cockaded woodpeckers, sandhill cranes, and other wildlife that require these large natural areas.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate DEP's Office of Environmental Services as the monitor for less-than-fee acquisitions and the Florida Fish and Wildlife Conservation Commission (FWC) as lead manager, with the Department of Agriculture and Consumer Services' Division of Forestry (DOF) as cooperating managers, for full fee acquisitions.

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 2004 Florida Forever Annual Report adopted by the Board of Trustees on February 26, 2004. Staff recommends that the Board of Trustees confirm the management policy statement as modified:

Item 2, cont.

The Big Bend Swamp/Holopaw Ranch Lands project includes 64,502 acres and is comprised of a mosaic of upland and wetland natural communities that serve as important integral portions of a large south-central Florida natural area. These communities include cypress strands, mesic flatwoods, dome swamp, wet prairie, scrub and baygall. Ownership and management of these communities is important to the protection of the natural system comprising the Kissimmee River Basin and will form important adjunct lands for a public lands complex already under management (or proposed for management) by FWC. Additionally, this complex of natural communities serves as important habitat for such listed bird species as the Florida grasshopper sparrow, the Florida sandhill crane, red-cockaded woodpecker, American swallow-tailed kite, and is of special importance to the burrowing owl. Most of the characteristic vertebrates of the Kissimmee Basin require vast tracts of land to support viable populations. This project, though largely contemplated for less-than-fee purchase, consists of a variety of wetland and upland habitats that support a broad diversity of wildlife, both common and rare. Several islands of scrub provide habitat for such species as gopher tortoises and Florida scrub jays. The Big Bend Swamp/Holopaw Ranch proposal has the resource diversity to qualify as a wildlife management area, and portions of the project have the potential to provide the public with opportunities for activities such as hunting, hiking and wildlife observation. The FWC is recommended as the lead manager, with DOF as cooperating managers.

The primary management goal of the less-than-fee portions of the Big Bend Swamp/Holopaw Ranch Florida Forever project is for the present and future landowners to continue to maintain their lands in such a manner as to protect the significant forested and wetland habitats on their property for wildlife habitat, to prevent habitat fragmentation, to promote the survival of listed species in Osceola County, and to protect other significant natural and cultural resources.

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 1-65)

RECOMMEND APPROVAL

Item 3 Seven Option Agreements/Conservation Easements/Pinhook Swamp Florida Forever Project

REQUEST: Consideration of seven option agreements to acquire perpetual conservation easements over 11,585.90 acres within the Pinhook Swamp Florida Forever project from seven landowners.

COUNTY: Columbia

LOCATION: Sections 01 and 13, Township 01 North, Range 16 East; Sections 17 and 18, Township 02 North, Range 17 East; Sections 05 through 09, 16 and 17, Township 01 North, Range 17 East; Sections 12 through 14, 23 through 26, 35 and 36, Township 02 North, Range 16 East

Item 3, cont.

CONSIDERATION: \$4,711,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Candler (07/11/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Keen	1,620.43	\$486,000	\$486,000	\$ ***	\$427,680**** (88%)	120 days after BOT Approval
Carter/Nowicki	2,383.17	\$715,000	\$715,000	\$308,400*	\$657,800**** (92%)	120 days after BOT Approval
Carter Jr.	1,622.69	\$988,000	\$988,000	\$194,200**	\$908,960**** (92%)	120 days after BOT Approval
Griffin	1,620.45	\$729,000	\$729,000	\$ ***	\$670,680**** (92%)	120 days after BOT Approval
Grant/Lord	1,620.47	\$810,000	\$810,000	\$ ***	\$745,000 **** (92%)	120 days after BOT Approval
Espenship	1,620.45	\$810,000	\$810,000	\$ ***	\$745,200 **** (92%)	120 days after BOT Approval
Espenship, III	1,098.24	\$604,000	\$604,000	\$ ***	\$555,680 **** (92%)	120 days after BOT Approval
TOTALS	11,585.90		\$5,142,000		\$4,711,000	

- * On 2/25/02 240.50 acres were purchased at \$1,282 an acre
- ** On 7/14/99 501.81 acres were purchased at \$281 an acre; On 2/25/02 36.60 acres were purchased for \$53,200
- *** Inherited Property over 5 years ago
- **** Keen \$263.93 per acre; Fee Value is \$1,215,000; Conservation Easement Value is 40% of the fee value
- **** Carter/Nowicki \$276.02 per acre; Fee Value is \$1,787,000; Conservation Easement Value is 40% of the fee value
- **** Carter Jr. \$560.16 per acre; Fee Value is \$2,448,000; Conservation Easement Value is 41% of the fee value
- **** Griffin \$413.89 per acre; Fee Value is \$1,539,000; Conservation Easement Value is 48% of the fee value
- **** Grant/Lord \$459.74 per acre; Fee Value is \$1,620,000; Conservation Easement Value is 50% of the fee value
- **** Espenship \$459.87 per acre; Fee Value is \$1,620,000; Conservation Easement Value is 50% of the fee value
- **** Espenship III \$505.97 per acre; Fee Value is \$1,208,000; Conservation Easement Value is 50% of the fee value

STAFF REMARKS: Pinhook Swamp project is an “A” group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 183,991 acres, of which 111,361 acres have been acquired, are protected by conservation easements or are under agreement to be acquired or protected by conservation easements. After the Board of Trustees approves this agreement, 61,044.10 acres, or 33 percent of the project, will remain to be acquired.

Under the proposed conservation easements, the properties will be restricted in perpetuity by the provisions of the easements, summaries of which include, but are not limited to, the following:

- Commercial or industrial activity, or ingress, egress or other passage in conjunction with any such activity across or upon the property will be prohibited;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species will be prohibited;
- Acts or uses detrimental to the retention of land or water areas, or to the use of the property as a water recharge area will be prohibited;
- Dumping of trash, waste, hazardous materials and soil will be prohibited;
- New construction or placing of temporary buildings, mobile homes or other structures in, on or above the ground will be prohibited, except as may be necessary for maintenance and normal operations of the property or during emergency situations;
- Any subdivision of the land except as may otherwise be provided in this easement will be prohibited; however, division to Lineal Descendent will be permitted;
- The construction or creation of new roads or jeep trails will be prohibited; and
- The Board of Trustees will have the right of notice of the owner’s intent to sell, in the event the owner intends to sell the property.

Item 3, cont.

The proposed conservation easements will allow the owners to retain certain rights. The summary of owners’ rights include, but are not limited to, the following:

- The right to observe, maintain, photograph, introduce and stock native fish or wildlife;
- The right to conduct controlled or prescribed burning;
- The right to mortgage the property;
- The right to exclusive use of the improvements depicted in the Baseline Documentation;
- The right to use, maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings;
- The right to construct two new residential structures on the property, along with access driveways and two appropriately-sized outbuildings, such as barns.
- The right to engage in silviculture except in herbaceous wetlands and open water areas;
- The right to contest tax appraisals, assessments, taxes and other charges on the property; and
- Michael Carter, Jr. has the right to continue operations for the commercial deer farm.

All mortgages and liens will be satisfied or subordinated at the time of closing. Department of Environmental Protection (DEP) staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately.

Title insurance policies, surveys, environmental site evaluations and, if necessary, environmental site assessments will be provided by the purchasers prior to closing.

The pine flatwoods and swamps between the Osceola National Forest and the Okefenokee National Wildlife Refuge have been logged, but are otherwise undisturbed. Public acquisition of the Pinhook Swamp project will protect and restore a natural area linking these two conservation areas and the Suwannee River, providing a huge unpopulated tract of land for such wildlife as the Florida black bear and sandhill crane; maintaining the water flows from this area to the Okefenokee Swamp, Suwannee River and St. Mary’s River; and giving the public a large, near-wilderness tract in which to enjoy various recreational activities, from simple nature appreciation to active hunting and fishing.

The properties will be monitored by DEP’s Office of Environmental Services.

These acquisitions are consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 3, Pages 1-105)

RECOMMEND APPROVAL

**Item 4 District School Board of Collier County/Community School of Naples, Inc./
Deed Restriction Modification/Partial Release of Deed Restriction**

REQUEST: Consideration of a (1) modification of restriction in Board of Trustees’ Deed Number 25112 to the District School Board of Collier County; and (2) partial release and transfer of deed restriction from a 3.951-acre parcel conveyed under Deed Number 25112 to two parcels containing 3.309-acres and 0.692-acre, respectively, to be acquired by the District School Board of Collier County from the Community School of Naples, Inc.

Item 4, cont.

COUNTY: Collier
Deed Number 25112

APPLICANTS: District School Board of Collier County, Florida and Community School of Naples, Inc.

LOCATION: Section 12, Township 49 South, Range 25 East

STAFF REMARKS: On June 16, 1970, the Board of Trustees conveyed 180 acres in Collier County to the District School Board of Collier County (School Board) by Deed Number 25112. The deed contains a restriction that requires that the property be used solely for public school purposes. The deed also includes a reverter in favor of the Board of Trustees in the event the land ceases to be used for public school purposes. The School Board has negotiated a land exchange with its adjacent property owner, the Community School of Naples, Inc. (Community School), a non-profit organization, to obtain land for an additional entrance road that will connect its existing high school, elementary school and administration building with Livingston Road. The School Board proposes to convey a 3.951-acre portion of its campus (Spoon Parcel) to the Community School in exchange for two parcels of land containing 3.309 acres (Roadway Parcel) and 0.692 acre (Lake Parcel). The Roadway and Lake Parcels will be used for the entrance road and stormwater management, respectively. The Community School will use the Spoon Parcel for stormwater management. Initially the School Board sought a release of the deed restriction for the Spoon Parcel; however, Department of Environmental Protection (DEP) staff is recommending that the deed restriction instead be transferred from the Spoon Parcel to the Roadway and Lake parcels.

Mr. Michael P. Jonas, State Certified Appraiser with Coastal Engineering Consultants, Inc., has valued the Spoon Parcel to be conveyed to the Community School at \$535,000. The Roadway and Lake Parcels are valued at \$540,000.

Stormwater systems are to be built on both the Spoon Parcel and the Lake Parcel. The systems will jointly serve both the Community School and the School Board. Pursuant to a Shared Maintenance Agreement to be executed by both parties, each will grant the other a non-exclusive stormwater easement for the portions of the stormwater system to be constructed within their respective properties. The School Board will also grant the Community School a non-exclusive easement across the Roadway Parcel for utilities and pedestrian and vehicular ingress and egress for private school related purposes. To accommodate these uses, the restriction in Board of Trustees' Deed Number 25112 must be modified to allow community school access and utilities.

A consideration of the status of any local government comprehensive plans was not made for this item. DEP has determined that the proposed action is not subject to the local government planning process.

(See Attachment 4, Pages 1-18)

RECOMMEND APPROVAL

Item 5 **Reconsideration of Sale of State-owned Land/Orange County/Alexandra (U.S.A.), Inc.**

DEFERRED FROM APRIL 13, 2004 AGENDA
DEFERRED FROM MARCH 30, 2004 AGENDA

REQUEST: Consideration of (1) an application by Alexandra (U.S.A.), Inc., to purchase two parcels, containing approximately 0.14 and 0.52 acre of filled, formerly sovereignty submerged lands; and (2) modification of a 1999 sale by the Board of Trustees of 4.69 acres of filled, formerly sovereignty submerged lands to Alexandra (U.S.A.), Inc.

COUNTY: Orange
Deed No. 30145 (4848-48)

APPLICANT: Alexandra (U.S.A.), Inc.

LOCATION: Section 05, Township 24 South, Range 28 East, Lake Sheen, Class III waters

CONSIDERATION: \$266,644, to be deposited in the Internal Improvement Trust Fund; and quitclaim of applicant's interest in three parcels of submerged lands, containing 2.85 acres (Parcel B), 1.20 acres (Parcel B-1), and 1.46 acres (Parcel C), respectively, for the purpose of clearing the Board of Trustees' title.

STAFF REMARKS: In 1994 and 1995, Alexandra (U.S.A.), Inc. (Alexandra), purchased property in Orange County for residential development purposes. The purchase included a 4.93-acre finger of land ("banana parcel") that extends into Lake Sheen, and two parcels of submerged lands and associated wetlands to the north and south of the banana parcel containing 2.84 acres (Parcel B) and 2.23 acres (Parcel C), respectively. At the time of purchase, the banana parcel appeared relatively unimproved, with large trees ringing the perimeter along the lakefront. It was not until an application for a dredge and fill permit was submitted to the South Florida Water Management District (SFWMD) that title to the banana parcel became an issue. Aerial photographs taken in 1954 showed the area to be submerged lands in their natural state, and aerial photographs dated February 1958 showed recent fill in the area of the banana parcel.

On June 22, 1999, the Board of Trustees approved the sale of 4.69 acres of the banana parcel (Parcel A) to Alexandra for \$212,500 for the purpose of clearing the applicant's title. In addition to the cash payment, Alexandra agreed to quitclaim to the Board of Trustees its interest in the two parcels of submerged lands and to grant the Board of Trustees a conservation easement over a 1.45-acre parcel of wetlands located west of and adjacent to the banana parcel.

Following Board of Trustees' approval, the applicant requested that the legal description of Parcel A be modified to reflect the ambulatory nature of the ordinary high water line. Department of Environmental Protection (DEP) staff agreed to the modification, which was to be forwarded to the Governor and Cabinet for approval via a letter of negative response. While waiting for revised legal descriptions, the applicant acquired a 75-foot strip of land to the north of Parcel B that also included filled, formerly sovereignty submerged lands and submerged lands. Alexandra contacted DEP staff to negotiate an agreement similar to the 1999 transaction that would clear both parties' respective titles. Subsequent negotiations resulted in the following new request that requires Board of Trustees' approval:

Item 5, cont.

NEW REQUEST

1. The 75-foot strip of land Alexandra acquired that adjoins the northern boundary of Parcel B consists of a 0.14-acre parcel of land above the 99.5-foot contour (Parcel A-1), and a 1.20-acre parcel of submerged lands below the 99.5-foot contour (Parcel B-1). Alexandra would like to purchase Parcel A-1 from the Board of Trustees, and it is prepared to quitclaim Parcel B-1 to the Board of Trustees.

2. At the time of Board of Trustees' approval of the 1999 transaction, a 0.52-acre strip of land above the 99.5-foot contour located between Parcel A and Parcel C (Parcel C-1) was included in the lands to be deeded to the Board of Trustees as part of Parcel C. Because Parcel C-1 is landward of the 99.5-foot contour, it should have been included with Parcel A in the conveyance to Alexandra. Alexandra would like to purchase the 0.52-acre strip of land.

MODIFICATION OF 1999 SALE

1. During the course of closing the 1999 transaction and negotiating the sale of the additional parcels, DEP staff determined that there were use restrictions on a portion of the lands involved in the 1999 transaction that represented unacceptable encumbrances. As a condition of development permits and the subdivision plat, a 0.25-acre portion of Parcel C south of and including a 30-foot right-of-way across the southern portion of Parcel C (Parcel E) is designated for conservation purposes and is subject to a conservation easement in favor of the SFWMD. Alexandra has also dedicated its development rights to Parcel E to Orange County. Although Alexandra has offered to grant the Board of Trustees a conservation easement over Parcel E, DEP staff believes that there is no benefit to be derived from receiving a conservation easement over lands already subject to multiple development restrictions. More importantly, DEP's Bureau of Survey and Mapping (BSM) has reviewed aerial photographs of the area and determined that in the event Alexandra were to apply for regulatory permits involving these lands, it would recommend that proprietary authorization was not required. For this reason DEP staff recommends eliminating Parcel E from the lands originally proposed for quitclaim to the Board of Trustees by Alexandra.

2. DEP staff also learned that Parcel D, originally proposed for a conservation easement to the Board of Trustees, is also subject to a conservation easement in favor of the SFWMD, and its development rights have also been dedicated to Orange County. Because these lands will already be restricted for conservation purposes, there is no benefit to the Board of Trustees in accepting another conservation easement across the property. For this reason, DEP staff recommends eliminating the conservation easement over Parcel D from the previously negotiated transaction. In recognition of this change, Alexandra has agreed to eliminate the ten percent reduction in purchase price it was to receive for the conservation easement to the Board of Trustees across Parcel D.

PURCHASE PRICE FOR NEW PARCELS

In 1999, the Board of Trustees approved a sale price of \$212,500 for 4.69 acres, or \$45,309 per acre. The following facts were considered in negotiating the purchase price:

1. Although the property was appraised at \$800,000, that figure reflected the value of a parcel of land available for development with all the amenities and infrastructure associated with a developed subdivision, such as paved roads, utilities, and access. Were the Board of Trustees to have sold the property as a separate, landlocked parcel, it is unlikely it would have received \$800,000.

Item 5, cont.

- 2. Alexandra had already paid in excess of \$300,000 for the banana parcel.

- 3. Alexandra believes it can substantiate its claim that all or a substantial portion of the parcel was filled prior to June 11, 1957. The applicant has provided an affidavit from an adjacent landowner attesting to the fact that dredge and fill activities were occurring in 1955. His statement is based on the date a lawsuit was filed involving his father and the applicant's predecessor in title regarding the placement of the fill. The affidavit attests only to there having been dredge and fill activities going on in the area in 1955. It does not indicate the extent to which filling had occurred or whether the banana parcel was in existence on June 11, 1957. However, if Alexandra elects to file suit, and the court rules in its favor, the Board of Trustees will receive only \$2,500. Although DEP does not believe section 253.12(6), F.S., applies in this instance, a lawsuit would be expensive and time-consuming.

- 4. Alexandra agreed to quitclaim its interest in Parcels B and C to the Board of Trustees and grant a conservation easement to the Board of Trustees over Parcel D.

By eliminating the conservation easement over Parcel D and the ten percent reduction in purchase price it was to receive for the conservation easement, the purchase price increases from \$212,500 to \$233,750 or \$49,840 per acre for the original 4.69 acres. Alexandra now seeks approval to purchase Parcels A-1 (0.14 acre) and C-1 (0.52 acre) for \$32,894 (0.66 acres x \$49,840). As additional consideration, Alexandra will quitclaim Parcel B-1, containing 1.20 acres of submerged lands lying below the 99.5-foot contour, to the Board of Trustees.

DEP staff recommends accepting the above-noted modifications to the 1999 sale because: (1) existing use restrictions over Parcel D already provide protection for the wetland resources on the property, thus the additional conservation easement to the Board of Trustees would provide no benefit to the state; (2) similar use restrictions on Parcel E also already protect wetland resources on the property; and (3) DEP staff has determined that the Board of Trustees would not claim any proprietary interest in Parcel E should the applicant apply for any regulatory permits.

DEP staff also recommends the sale of Parcels A-1 and C-1, because: (1) the 10 percent reduction given for the conservation easement over Parcel D will be eliminated, increasing the payment to be received by the Board of Trustees; (2) the filling was not done by Alexandra; (3) Alexandra has already paid in excess of \$300,000 for the banana parcel; (4) both parties will have clear title to their respective lands; and (5) there will be no need for lengthy and expensive litigation between the parties regarding when the lands were filled and the applicability of section 253.12(6), F.S.

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

RECOMMEND DEFERRAL TO THE JUNE 24, 2004 CABINET MEETING

Item 6 **Acme 1930 Corporation Conveyance/Donation**

REQUEST: Consideration of (1) an application for the conveyance of two parcels of filled, formally submerged, sovereignty lands (821 square feet) to Acme 1930 Corporation; and (2) acceptance of the donation of two parcels of privately-owned lands.

Item 6, cont.

COUNTY: Palm Beach County
Deed No.: 40153 (5023-50)
BOT Application No.: 500225126

APPLICANT: Acme 1930 Corporation

LOCATION: Section 28, Township 42 South, Range 43 East, adjacent to Lake Worth,
Class III Waters, within the local jurisdiction of the city of Riviera Beach
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, without an approved manatee protection plan
Manatee Aggregation Area: Yes
Manatee Protection Speed Zone: Yes

CONSIDERATION: \$38,092.92, to be deposited in the Internal Improvement Trust Fund, representing the value of the two parcels multiplied by the applicable rule mandated factor stipulated in section 18-21.013(3) (c), F.A.C. These values have been established based on an acceptable appraisal of the two parcels establishing fair market value as reviewed by the Bureau of Appraisal. Two parcels of privately-owned submerged lands, with a combined value of \$11,000, will be donated to the state.

STAFF REMARKS: The applicant is requesting title to two parcels of filled, formally submerged, sovereignty lands. A previous owner filled one of the subject parcels (223.20 square feet), which originally was a boat ramp below mean high water, to upland grade in the mid 1980s. The applicant filled the second parcel (598.12 square feet) in 1999 to connect this filled land with an existing seawall. The two parcels total 821 square feet. The filled parcels are currently within a sovereignty submerged land lease held by the applicant (Lease No. 500026896). The leased structures have been inspected and no regulatory or proprietary violations were observed.

Pursuant to the provisions of section 18-21.013(3)(c), F.A.C., the purchase price for any sovereignty submerged land that had been filled by an owner previous to the applicant after July 14, 1967, should be calculated at two times the present appraised value, minus any improvements. The value for such land filled by the applicant after June 11, 1957, is calculated at three times the present appraised value, minus any improvements.

An appraisal recently submitted by the applicant and approved by the Department of Environmental Protection (DEP), Bureau of Appraisal, indicates that the value of the filled parcels is \$17 per square foot for the unimproved property value. Based on the value per square foot, the parcel filled by the previous owner would calculate to be \$3,794.40 and the parcel filled by the applicant would calculate at \$10,168.04. Considering the rule stipulated rule factors, the entire value of the filled parcels is established at \$7,588.80 and \$30,504.12, respectively.

Pursuant to Article Ten, Section 11, of the Florida Constitution and section 18-21.004(1) (a), F.A.C., the Board of Trustees may convey sovereignty lands, if determined to be in the public interest. Initially, DEP staff concurs with the applicant that the proposed conveyance is in the public interest because the filled parcels do not lend themselves to public use due to their small size and land-locked nature; and both parcels were previously partially filled with concrete by the predecessor and used as a boat ramp. There is no significant resource value in the filled land and the practicality and liability of managing these parcels and provisions of public access would be unrealistic.

Item 6, cont.

The applicant has title to two parcels of submerged lands. The conveyance of these parcels was approved by the Legislature in section 1 of chapter 57-362, Laws of Florida Acts 1957 and approved by the Board of Trustees [Deed No. 25565 (2578-50)] on June 3, 1975. These two parcels, containing 402.75 and 249.82 square-feet and totaling 652.62 square-feet, are located immediately contiguous to the seawall and within the riparian rights of the applicant.

In an effort to further demonstrate public interest of the request, the applicant has agreed to offer the two parcels of privately-owned submerged land to be returned to public ownership. DEP staff would then include these parcels within the existing sovereignty submerged lands lease. The applicant states that the proposed re-conveyance would constitute a public interest demonstration that would be consistent with previous Board of Trustees' actions regarding conveyances of similarly filled, formally submerged, sovereignty lands. In light of the proposal, staff considers the conveyance of the filled land to be in the public interest.

The submerged parcels offered for donation to the state were appraised at a value of \$17 per square foot, and found acceptable to DEP's Bureau of Appraisal. Combined, they are valued at \$11,000.

If the sale is determined to be in the public interest, pursuant to section 18-21.013(3), F.A.C., the Board of Trustees may pursue any of three options for filled state-owned submerged land, if the filling occurred after June 11, 1957. The three options are as follows: (1) direct the fill material to be removed by or at the expense of the applicant; (2) direct the fill to remain as state-owned; or (3) sell the filled land.

In an analysis of the situation in relation to the existing rules, staff would not recommend the first option since these parcels are landlocked by privately-owned parcels. Removal of the fill for the two subject parcels would not allow or encourage any environmental enhancement, and would likely allow a catch area for debris and detritus, causing environmental damage. The second option would not be recommended because the parcels are landlocked and not suitable for management by the state for public use. Therefore, staff recommends sale of the parcels.

No additional construction or other activity would be authorized by the approval of this application.

The proposed conveyance was noticed, pursuant to section 253.115, F.S. One hundred sixty-four property owners were specifically noticed and four objections were received before October 1, 2002, the end of the comment period. The objections concerned potential additional redevelopment of the immediate area, loss of riparian rights and access, and the loss of view of the waterbody. Staff responded to these concerns and advised that no additional work would be allowed by this proposed conveyance of land that has already been filled. Further, any rights they currently enjoy would not be interrupted by this action. No additional correspondence has been received.

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

(See Attachment 6, Pages 1-22)

RECOMMEND APPROVAL

Item 7 Hardy/Waiver of Eminent Domain Policy/Eminent Domain Authorization/
DOA/Save Our Everglades Florida Forever Project

DEFERRED FROM THE APRIL 29, 2004 AGENDA
DEFERRED FROM THE APRIL 13, 2004 AGENDA
WITHDRAWN FROM THE MARCH 13, 2003 AGENDA
DEFERRED FROM THE FEBRUARY 11, 2003 AGENDA
DEFERRED FROM THE JANUARY 28, 2003 AGENDA

Item 7 **Hardy/Waiver of Eminent Domain Policy/Eminent Domain Authorization/
DOA/Save Our Everglades Florida Forever Project**

**DEFERRED FROM THE APRIL 29, 2004 AGENDA
DEFERRED FROM THE APRIL 13, 2004 AGENDA
WITHDRAWN FROM THE MARCH 13, 2003 AGENDA
DEFERRED FROM THE FEBRUARY 11, 2003 AGENDA
DEFERRED FROM THE JANUARY 28, 2003 AGENDA**

REQUEST: Consideration of a request to (1) obtain a waiver of the Board of Trustees' eminent domain policy that eminent domain will not be exercised to acquire a homestead without the written approval of the owner in order to acquire the homestead property within the Hole in the Donut area of the Golden Gate Estates South owned by Jesse Hardy; (2) direct the Department of Environmental Protection to acquire by the exercise of the power of eminent domain pursuant to the provisions of chapters 259, 73 and 74, F.S., fee simple title to the homestead parcel owned by Jesse Hardy within the Save Our Everglades Florida Forever Project, on which two bona fide offers have been made; and (3) delegate authority to the Secretary of the Department of Environmental Protection, or designee, to accomplish the acquisition as described herein through negotiation or condemnation, including authority to prepare and execute the necessary parcel-specific condemnation resolution.

COUNTY: Collier

LOCATION: Section 16, Township 50 South, Range 28 East

STAFF REMARKS: The Save Our Everglades project is an "A" group project on the Florida Forever Small Parcel Project List approved by the Board of Trustees on February 26, 2004. That portion of the project area lying south of I-75, commonly referred to as Golden Gate Estates South, contains 55,247.17 acres, of which 54,262 acres have been acquired or are

under agreement to be acquired, leaving 985 acres, or 1 percent of the project area to be acquired. The Golden Gate Estates South portion of this project includes the Southern Golden Gate Estates (SGGE) subdivision and surrounding acreage tracts bordered by the Florida Panther National Wildlife Refuge to the north (I-75), Ten Thousand Islands National Wildlife Refuge to the south (U.S. 41) and the Fakahatchee Strand and Belle Meade Florida Forever projects to the east and west, respectively.

The failed SGGE subdivision was a ditch and drain development that over-drained the area. The purpose of the project is to stop over-draining of the land, raise groundwater levels, and improve the freshwater/saltwater balance in the estuarine systems by reducing or eliminating the point discharge of water from the Faka-Union Canal at the Port of the Islands and by improving and redistributing sheet flow of surface water over eighteen linear miles. This allows the water to go back into the ground and increases the nutrients picked up by vegetation. Because of the raising of groundwater and surface water levels, plugging of canals, and redistribution of flow of water, public ownership is required. Public access will be impacted by removal of roads, plugging of canals will cause septic tanks not to work, and there will be no flood protection south of I-75 within the project boundaries. Environmental factors, safety factors, and cost factors all were considered in defining the project and land within the project boundaries. Acquisition of this parcel is critical for the following reasons:

On January 23, 2001, the Board of Trustees recognized that (1) property within the Save Our Everglades Florida Forever project lying south of I-75 is of special importance to the state; (2) the acquisition of the land is necessary to protect hydrological connections among Big Cypress

Item 7, cont.

National Preserve, Fakahatchee Strand State Preserve, and Everglades National Park, and to protect and restore the Everglades, which is an endangered natural resource of unique value to the state; and (3) the failure to acquire this property will result in irreparable loss to the state and seriously impair the state's ability to manage or protect other state-owned lands. The Board of Trustees also recognized that this land is a necessary component of the Comprehensive Everglades Restoration Plan. Through a series of actions by the Board of Trustees over the last three years, the Department of Environmental Protection (DEP) has been directed to acquire by eminent domain 1,862 parcels, of which 1,859 parcels or 3,285.79 acres have been acquired to date through Orders of Taking. These three parcels are owned by the Miccosukee Tribe of Indians of Florida and pending an Order of Taking hearing.

Section 259.041(14), F.S., authorizes the Board of Trustees, by majority vote of all of its members, to direct DEP to exercise the Board's power of eminent domain pursuant to the provisions of chapters 73 and 74, F.S. Eminent domain may be used to acquire any of the property on the Florida Forever "A" group project priority list if: (1) the state has made at least two bona fide offers to purchase the land through negotiation and an impasse between the state and the land owner has been reached; and (2) the land is of special importance to the state because (a) it involves an endangered or natural resource and is in imminent danger of being developed; (b) it is of unique value to the state and failure to acquire the property would constitute an irreparable loss to the state; or (c) the failure to acquire the property would seriously impair the state's ability to manage or protect other state-owned lands.

Mr. Hardy, identified as qualifying for homestead status, would fall under the Board of Trustees' homestead eminent domain policy. This is the owner's primary residence and he qualifies under the Federal Relocation Program as a displaced homeowner. On March 13, 2001, the Collier County Board of Commissioners approved a conditional use permit for Mr. Hardy to construct and maintain an aquaculture farm. Based upon the date of approval of this permit, and that Mr. Hardy is exempt under the Tropical Fish Farms license exemption status to purchase and maintain an Occupational License on site, and that Mr. Hardy has registered his aquaculture operation with the State of Florida Department of Agriculture and Consumer Services, it would appear Mr. Hardy may also qualify for additional re-establishment expenses for his business under the Federal Uniform Relocation and Real Property Policies Act of 1970. DEP staff has requested on a number of occasions that Mr. Hardy provide business accounts receivables in order for staff to determine the benefits that he may be entitled to receive; however, he has failed to provide assistance as requested.

The filing of the requested eminent domain action will require a waiver of the Board of Trustees' policy that eminent domain will not be exercised to acquire a homestead without the written approval of the owner. In order to meet the project timetable and avoid costly delays, it is requested that the Board of Trustees authorize DEP to proceed with filing the necessary eminent domain action to acquire this homestead property within the project area, even without the homeowner's consent to the action.

Mr. Hardy acquired his 160-acre parcel in August 1976 for \$60,000. The chronology of offers is as follows:

- 1) First formal offer by DEP to acquire his property was made on October 23, 2002, for \$711,725 (the DSL value as of 12-06-00). The offer included compensation for the 160-acre homestead and value given his excavation efforts preliminary to his fish farming business. The owner declined the offer by giving no response.
- 2) The second DEP offer of \$909,158 (the DSL value as of 9-12-02) was made on November 2, 2002. The owner declined the offer by giving no response.
- 3) On January 31, 2003, staff increased the offer to \$1,208,843 to include the second

Item 7, cont.

offer amount of \$909,158, lump sum payment of estimated relocation benefits in the amount of \$149,685 and an additional incentive of \$150,000 in an effort not to go to eminent domain. Again, the owner declined the offer by giving no response.

- 4) The fourth offer was delivered to owner on March 14, 2003 in the amount of \$1,547,157, to include the offer to negotiate a Use Agreement until such time the Restoration would begin in his area. On March 26, 2003, the owner declined the offer but provided a Counter-offer to negotiate a flowage easement or some lesser than fee estate interest. Purchaser declined.
- 5) On June 27, 2003 a fifth offer in the amount of \$1,547,157 was presented to owner with notification purchaser withdraws proposal to negotiate a Use Agreement and notifies owner the restoration efforts would begin as soon as October 2003. The owner declined the offer by giving no response.
- 6) On August 11, 2003 a sixth offer was presented to owner which re-stated the \$1,547,157 offer given on June 27, 2003 with encouragement for Mr. Hardy to accept the offer prior to beginning Phase 1 of the Restoration efforts. Owner declined the offer.
- 7) A seventh offer was delivered to Mr. Hardy on August 28, 2003. This offer was advising Mr. Hardy the June 27, 2003 offer of \$1,547,157 did not include compensation for business relocation benefits. Although staff has been unable to determine the status of Mr. Hardy's business, DSL has determined he would receive a maximum benefit package of \$20,000 for federal business relocation under the current rules. On September 17, 2003 Mr. Hardy refused the state's seventh offer and he advised that negotiations are at an impasse.
- 8) As provided under the current federal relocation rules, three comparable properties have been identified as possible sites for relocating Mr. Hardy's residence and business.
- 9) A preliminary range of value for Mr. Hardy's property of between \$1.1 million to \$2.6 million has been considered by DSL appraisal staff and a confidential memorandum has been used as a basis for establishing an offer for Mr. Hardy to consider. Upon learning that Mr. Hardy wasn't interested in dealing with the state negotiators, Representative Greg Evers expressed an interest in acting as DSL's emissary and on Monday afternoon, April 5, 2004, he and DSL Senior Acquisition Review Agent Jerry Parrish discussed with Mr. Hardy the sale of his property to the state. During subsequent telephone conversations Mr. Hardy was offered 160 acres in St. Lucie County, owned by the South Florida Water Management District (SFWMD), as a possible land exchange for Mr. Hardy, and he declined any land exchange options. He declined an offer of \$4.5 million representing the preliminary appraisal amount and a calculation for cost avoidance from using eminent domain, stating emphatically he was not interested in selling or exchanging his land. He does not want to move from his property.

DSL has actively pursued negotiations as stated above as well as other attempts to negotiate with Mr. Hardy through the SFWMD and through a friend. All efforts to secure a voluntary sale of his property have failed and we are clearly at an impasse. However, the bona fide offer requirements of section 259.041, (14), F.S., have been satisfied.

Pursuant to the Board of Trustees' eminent domain policy, DSL has mailed proper notice to Mr. Hardy at least 45 days prior to this Board of Trustees' meeting. In accordance with the eminent domain policy, the notice advised the owner that homesteaded property was exempt from eminent domain without the owner's written permission. The agenda item, deferred from the January 28, 2003 and February 11, 2003 meetings, was withdrawn at the March 13, 2003 Board of Trustees' meeting in an attempt to continue good faith negotiations. However, even with the continuances, negotiations are at an impasse.

**Board of Trustees
Agenda – May 11, 2004
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Purchasing fee simple title to Mr. Hardy's parcel is a critical component to the project plans for SGGE's hydrological restoration project. Although other Florida Forever projects throughout the state provide for DEP to consider acquisition of less-than-fee title, the SGGE project area, with the inter-agency restoration goals, does not allow for alternative ownership for the following reasons:

- The interest in land within the project area had to be identified in the Project Implementation Report and Environmental Impact Statement (PIR) in preparation for review in Congress for project authorization. This interest was identified as fee simple.
- Inter-agency staff discussions between the South Florida Water Management District (SFWMD), the Big Cypress Basin Board, the United States Army Corp of Engineers, Jacksonville Office (ACOE), DEP's Office of Ecosystem Projects, DEP's Bureau of Land Acquisition, the Division of Forestry (DOF), the United States Fish and Wildlife Service (USFWS), and National Wildlife Federation were instrumental in assisting DEP with establishing a policy to acquire the lands in SGGE in fee simple. Any less-than-fee estate would be inconsistent with the goals of the restoration for this project.
- 49 CFR 24.1 (Part 24, Subpart A), Federal Rules governing the acquisition and relocation of qualified landowners require that each person be treated fairly and consistently. DEP's policy has been fee simple title acquisition. Any offers for less-than-fee must be provided each and every landowner. This is the last remaining homestead parcel and it would be inappropriate to make any alterations to DEP's acquisition policy for the SGGE project area, given no other landowner has been granted a less-than- fee alternative.
- DEP has acquired fee simple title to all parcels within the project area except three parcels owned by the Miccosukee Tribe of Indians of Florida (Tribe) and Mr. Hardy. The parcels owned by the Tribe are waiting an Order of Taking hearing. DEP is prepared to certify to USFWS's Division of Federal Aid, that each and every landowner has been treated fairly, consistently and equitably, as required under 49 CFR 24.1(Section 24, Subpart A).
- The Water Resources Development Act 2000 requires that there be no significant adverse impact to flood level of service for members of the public as a result of the project. The restoration project will cause a wide range of increases in maximum water levels throughout the project. To leave residents in the project areas would place lives and property in harms way, and would be in violation of this law. SFWMD and the ACOE could not guarantee the flooding would not affect Mr. Hardy's property.
- Any change in the policy of acquiring fee simple title to this property would fail to comply with the federal rule for ensuring equal and fair treatment of all project landowners.

Additionally,

- The lakes being created on Mr. Hardy's property will act as giant sinks and draw groundwater in much the same way the canals draw ground water. Prairie Canal is a good example of this in that the majority of the water in that canal is groundwater being drawn from Fakahatchee Strand and SGGE. The effects of the Prairie Canal extend out two to three miles on either side, so any remaining lakes on Mr. Hardy's property are likely to have a similar effect.
- The benefits of the project will be diminished by the draw down of the water table in the areas around Mr. Hardy's property.
- The safety of the public remains foremost in DEP's policy to acquire all the lands within the SGGE project boundary in fee simple title. Having private citizens coming and going on the properties, without controls under the management plan, would place them in harms way.
- DEP has been notified that the "early start" progress thus far within Phase 1 of the restoration plan has been a success. The first construction piece of Phase 1 is complete.
- Phase 1 of the Everglades Restoration was begun in October 2003. Not only has the Prairie Canal been plugged in several places, thereby creating the potential for flooding in

Item 7, cont.

some areas, but demolition of the improved properties now owned by the state has also begun.

- Mr. Hardy's property lies within Phase 2 of the restoration plan. Even though it may be as much as twelve to eighteen months before Phase 2 will begin, six very important issues must be considered:
 1. The parcel must be acquired in fee simple title before Phase 2 of the restoration efforts can begin.
 2. With the success of the "early start" portion, immediate processing of this last remaining parcel within the project area is important so as not to delay the inter-agency restoration efforts concerning Phase 2.
 3. With the restoration efforts underway, and the continued efforts to demolish the current structures, safety of the landowner must be considered.
 4. Time is of the essence. It is estimated that it will take approximately six to twelve months to process the parcel under eminent domain within the Collier County court system, given the expectations that Mr. Hardy will defend against an Order of Taking and the need for a jury trial to determine the compensation due Mr. Hardy for his parcel.
 5. Upon delivery of the Statement of Eligibility to the owner as provided under the Federal Relocation guidelines, Mr. Hardy would have up to a year in which to relocate his residence and/or business. Three properties have been located as potential relocation properties for Mr. Hardy; however, given the unique circumstances surrounding Mr. Hardy's parcel, additional time to secure actual relocation housing and business relocation properties may be required. Currently the project area is host to a variety of undesirable uses such as illegal weapons use, poaching of plants and animals, squatters and illegal dumping of trash and toxic substances. Continued delay in bringing the project area under management control will cause additional expense to the project as well as problems in providing police protection.
- Use of fire management in the project area will be severely hindered if individuals continue to live in the project area due to the need to provide fire suppression services to the residents.
- Post restoration access to the private property within the study area would be an issue as well. Removal of roads is necessary for the restoration of sheet flow. Any remaining paths are expected to be largely under water during the wet season and only passable with a high clearance vehicle the remainder of the year.
- Increased ground water levels in the project area could negatively affect the ability of residents to use their septic systems, thereby creating a concern for public health and safety.
- The continued presence of residents in the project area could disrupt one of the purposes of the project: to provide increasing habitat areas and allow for free movement of threatened and endangered species such as the Florida Panther.

Purchasing this parcel will help complete the project and will:

- 1) Benefit the restoration of significant wetlands crucial to the reestablishment of the historic water flow pattern in the western Everglades;
- 2) Help preserve and restore the fresh water flow necessary for maintaining the rich productivity of Gulf Coast estuaries, such as Rookery Bay and the Ten Thousand Islands;
- 3) Ultimately contribute to the formation of a continuous public conservation corridor extending across South Florida from the Gulf Coast to approximately ten miles from the Atlantic Ocean;
- 4) Help protect the western Everglades ecosystem from encroachment of residential, commercial and industrial development; and

Item 7, cont.

- 5) Allow for the timely implementation of the hydrological restoration plan that will restore important habitat for numerous endangered and threatened species, including the Florida panther, one of the world's most endangered mammals; and
- 6) Progress on the full project as defined in the CERP PIR would be impacted if the property were not acquired.

All mortgages and liens will be satisfied from the deposit as determined at the Order of Taking hearing. A title insurance commitment has been received and reviewed by legal staff. DSL will also order a Phase 2 environmental site assessment after the Order of Taking hearing and the Board of Trustees will be advised if there are any adverse effects to the subject property caused by the excavation, or use of heavy diesel driven trucks and other land moving equipment requiring petroleum products.

The property will be managed by DOF as an addition to Picayune State Forest. DEP's Division of Recreation and Parks will manage the property in the area east of the Faka-Union Canal. SFWMD will coordinate the implementation of the hydrologic restoration project.

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 7, Pages 1-32)

RECOMMEND PENDING