AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OCTOBER 26, 2004

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Item 1 **Minutes**

Submittal of the Minutes from the August 10, 2004 and August 24, 2004 Cabinet Meetings.

(See Attachment 1, Pages 1-43)

RECOMMEND APPROVAL

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Item 2 **Oceans Informational Presentation**

On September 20th, the U.S. Commission on Ocean Policy, appointed by President George W. Bush, culminated more than two years of work with the release of an extensive review of the nation's ocean policy – the first major assessment in 30 years. The report is extensive and provides hundreds of recommendations to the nation on how the United States can improve the management of our ocean resources. Some of the key recommendations include promoting ecosystem-based management, enhancing regional approaches, using sound science to make wise decisions, and improving ocean education. The release of this report provides an ideal opportunity for Florida to demonstrate our ongoing commitment to stewardship of our coast and oceans. This informational agenda item will be a powerpoint presentation that will provide an overview of the report findings, highlight some of the key issues for Florida, and inform the Board of Trustees about what DEP is doing to increase ocean protection in the State of Florida and within our regions.

RECOMMEND INFORMATIONAL

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Item 3 **Annual Land Management Review Team Findings**

REQUEST: Consideration of the Annual Land Management Review Team findings.

COUNTY: Statewide

STAFF REMARKS: Section 259.036, F.S., requires the Board of Trustees, acting through the Department of Environmental Protection (DEP), to conduct land management reviews of selected conservation, preservation and recreation lands titled in the Board of Trustees to determine whether those lands are being managed for the purposes for which they were acquired and in accordance with their adopted management plans. The legislation requires DEP to submit a report of its findings to the Board of Trustees no later than the second board meeting in October of each year. The 2003 Florida legislature amended section 259.036, F.S., to require that all lands that are subject to being reviewed that are over 1,000 acres, be reviewed at least every five years.

Properties to be reviewed were selected from a database of the Board of Trustees' lands based on size of the property, plan due-dates, managing agency, when the last land management review was conducted, and geographic location. Regional review team members were selected in accordance with the requirements of the legislation to include representatives of the following: (1) the county or local community in which the parcel is located; (2) the Division of Recreation and Parks; (3) the Division of Forestry; (4) the Florida Fish and Wildlife Conservation Commission; (5) the DEP district office; (6) a private land manager; (7) the local Soil and Water Conservation District board of supervisors; and (8) a conservation organization. Participating state agencies, soil and water conservation districts, and conservation groups have had continual input into the development and ongoing evolution of the review process. Additionally, DEP

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Item 3, cont.

coordinates with representatives of the Water Management Districts (WMD) to integrate management reviews where WMD lands are adjacent to Board of Trustees' lands and when the Board of Trustees has joint ownership of parcels with a WMD.

Twenty-five reviews were conducted during the 2003-2004 fiscal year involving more than 382,000 acres of managed lands. Reports of the management review team findings are provided to the managing agency, to the Acquisition and Restoration Council, and are available on the DEP, Division of State Lands' web site. An overview of the management review team findings follows:

- Public access was adequate to excellent on 24 (96 percent) of the sites visited;
- On 22 sites (88 percent), managers were doing an adequate to excellent job of restoring disturbed natural areas;
- On 13 sites (54 percent), the prescribed burn program was found to be excellent and on 3 sites (18 percent) visited, the burn frequency was found to be inadequate to preserve, restore, or maintain the natural communities. (Each managing agency is responsible for prescribed burning the lands they manage);
- Control of non-native invasive plants were a management issue on most of the lands reviewed, and control measures were determined to be adequate to excellent on 23 sites (92 percent);
- Nineteen sites (76 percent) had plans that adequately covered testing for degradation of surface waters;
- Twenty four sites (96 percent) were adequate to excellent in actual management practices to protect listed plants and animals on site;
- Four (16 percent) of the sites were found to have inadequate plans for on-site protection of listed plants and animals or inventories of listed plants and animals;
- On 19 sites (76 percent), law enforcement was adequate to excellent to protect the resources; and
- On 24 sites (96 percent), the public education and outreach programs were found to be adequate to excellent.

The review teams observed many examples of management meriting special mention, including:

- At Rookery Bay National Estuarine Research Reserve in Collier County, the team commended the Office of Coastal and Aquatic Managed Areas for its research and environmental education program, its efficient use of physical and staff resources for the advancement of its programs, for its success at obtaining grants and funds, and for its ability to coordinate with developers and other agencies to accomplish its goals.
- At Tiger Bay State Forest in Volusia County, the Division of Forestry was commended for its excellent reforestation effort following the 1998 wildfires, outstanding road improvements, and outstanding creative effort with its roadside kiosk design, construction and interpretive exhibits.
- At Andrews Wildlife Management Area in Levy County, the Florida Fish and Wildlife Conservation Commission was commended for the outstanding quality hunting opportunities, including its supervised youth hunt program. The team also commended it for successfully combining excellent stewardship of hardwood communities with excellent public access.
- At the Gold Head Branch State Park in Clay County, the Division of Recreation and Parks was commended by the team for its outstanding efforts to restore Lake Johnson, using berm removal, hydrological restoration and prescribed fire. It was also commended for its outstanding improvements to the recreational buildings.

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Item 3, cont.

Overall, the review teams found that the managers of these areas are dedicated professionals who are doing an excellent job with the resources available. Many of the management problems noted in the findings may be directly related to the following:

- On 12 sites (48 percent) the teams found that staffing levels were inadequate;
- On 11 sites (44 percent) the teams found funding levels were inadequate to properly manage resources; and
- On 3 sites (12 percent) the team found the equipment inadequate to properly manage the natural resources.

Pursuant to section 259.036, F.S., if the land management review team determines that reviewed lands are not being managed for the purposes for which they were acquired or in compliance with the adopted land management plan, DEP shall provide the review findings to the Board of Trustees, and the managing agency must report to the Board of Trustees its reasons for managing the lands as it has. All 25 properties reviewed were found to be managed for the purpose for which they were acquired. Actual management practices, including public access, were found to be in compliance with the management plans at all the properties.

The report of the annual review team findings is consistent with section 259.036, F.S., and with the Natural Systems and Recreation Lands section of the State Comprehensive Plan.

The Annual Land Management Review Team Report was submitted under separate cover.

(See Attachment 3, Page 1)

RECOMMEND ACCEPTANCE

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Item 4 **DCF/American Habilitation Services, Inc. Sublease/DOA/Determination**

DEFERRED FROM THE SEPTEMBER 21, 2004 AGENDA

REQUEST: Consideration of (1) a request to approve a 12-year sublease agreement between the Department of Children and Families and American Habilitation Services, Inc.; (2) a determination that the proposed use is not contrary to the public interest pursuant to section 18-2.018(1)(a), F.A.C.; (3) delegation of authority to the Secretary of the Department of Environmental Protection, or designee, to approve future subleases for DCF's cluster facilities pursuant to section 253.002(1), F.S.; (4) a standard sublease form for future use by the Department of Children and Families; and (5) a determination that an award of the sublease without conducting a competitive bid is in the public interest pursuant to section 18-2.018(2)(i), F.A.C.

COUNTY: Duval
Sublease No. 3247-01

APPLICANTS: Department of Children and Families (DCF) and American Habilitation Services, Inc. (AHS)

LOCATION: Section 11, Township 03 South, Range 25 East

CONSIDERATION: AHS will pay DCF $1 annually

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Item 4, cont.

STAFF REMARKS: DCF currently leases a 3.74-acre parcel, more or less, in Duval County under Board of Trustees' Lease No. 3247. The parcel is known as the Point West Cluster (Facility). AHS, a for-profit corporation is proposing to enter into a sublease agreement with DCF for the operation of the facility used to house developmentally disabled individuals. DCF has negotiated a price of $1 annually, provided AHS will be fully responsible for maintenance and upkeep of the facility.

AHS has been providing services to the Facility since July 1, 1991, under contract with the Department of Health and Rehabilitative Services (HRS). Subsequently, the Facility was divested from HRS to DCF in 1997. The contract is still in effect. Since 1991, subleases for the private corporations' use of state-owned lands were sent to the private providers by both HRS and DCF, but the subleases were never executed. In order to receive funding, the Agency for Health Care Administration (AHCA) is now requiring the corporations to enter into subleases. These subleases will conform to provisions contained in the Board of Trustees' lease with DCF and will meet AHCA requirements.

The Department of Environmental Protection (DEP), Division of State Lands (DSL) does not have delegated authority to approve subleases to for-profit entities. For this reason, the sublease is being submitted to the Board of Trustees for approval. Pursuant to section 18-2.018(2)(i), F.A.C., the Board of Trustees shall authorize uses of uplands that will generate income or revenue to a private user, or will limit or preempt use by the general public, on the basis of competitive bidding unless the Board of Trustees determine it to be in the public interest to do otherwise. Because AHS has been providing services since 1991 and because they have provided such a valuable ongoing service, it is in the public interest to allow them to continue operating rather than require a competitive bid of the sublease at this point. This will allow AHS to provide uninterrupted service to the existing facility for developmentally disabled individuals.

Pursuant to section 18-2.018(1)(a), F.A.C., the decision to authorize the use of Board of Trustees-owned uplands requires a determination that such use is not contrary to the public interest. The facility currently serves 24 persons with developmental disabilities, and it is the only placement that provides care for these clients. For this reason, DSL staff believes that the proposed sublease is not contrary to the public interest.

AHS currently provide services for six other cluster facilities. In order to expedite future subleases for these facilities, DCF is requesting that the Secretary of DEP, or designee, be given the delegated authority to approve future subleases by DCF, so long as any future subleases are in the standard form presently being considered for approval and so long as the current provider remains unchanged. If the current provider changes, these subleases would be competitively bid and require prior approval by the Board of Trustees.

On September 21, 2004, the sublease was deferred from the Board of Trustees' agenda to allow DSL staff to revise the language in the sublease agreement to provide for immediate termination of the sublease upon termination of the provider agreement for any reason.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. A compliance agreement between DCA and the City of Jacksonville (City) has been finalized. The proposed action is consistent with the adopted plan according to a letter received from the City.

(See Attachment 4, Pages 1-33)

RECOMMEND APPROVAL

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Item 5 **The Nature Conservancy Charitable Trust Assignment of Option Agreement/Perdido Pitcher Plant Prairie Florida Forever Project**

REQUEST: Consideration of the acceptance of an assignment of an option agreement to acquire 24.5 acres within the Perdido Pitcher Plant Prairie Florida Forever project from The Nature Conservancy Charitable Trust.

COUNTY: Escambia

LOCATION: Section 13, Township 03 South, Range 31 West

CONSIDERATION: $473,800 ($460,000 for the acquisition; $13,800 for the purchase of the option agreement)

PARCEL	ACRES	APPRAISED BY Asmar 04/02/04	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Throssell	24.5	$490,000	$490,000	*	$473,800** (97%)	150 days after BOT approval

* Seller purchased as part of a larger parcel in 1972
** $19,338.78 per acre

STAFF REMARKS: The Perdido Pitcher Plant Prairie project is an "A" group project on the Florida Forever Full Fee Interim Project List approved by the Board of Trustees on September 21, 2004. The project contains 7,661 acres, of which 4,296 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 3,340.5 acres or 44 percent of the project will remain to be acquired.

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protection's (DEP) Division of State Lands and The Nature Conservancy Charitable Trust (TNC), TNC has acquired an option to purchase this 24.5-acre parcel from Willa Jean Throssell. After this acquisition is approved, the Board of Trustees will acquire the option from TNC for $13,800, which represents agreed upon compensation to TNC for overhead associated with acquiring the option. The Board of Trustees may then exercise the option and purchase the property. The assignment of option agreement provides that payment to TNC is contingent upon the Board of Trustees successfully acquiring the property from the owner.

Representatives from Pensacola Naval Air Station attended the Acquisition and Restoration Council meeting on June 5, 2002, publicly supporting the purchase of the entire project because growth adjacent to military bases threatens air-training missions and creates safety hazards under busy flight paths.

All mortgages and liens will be satisfied at the time of closing. There are outstanding oil, gas and mineral interests on the property. The outstanding mineral interests were considered by the appraiser in the final reconciliation of value. DEP's Division of Recreation and Parks (DRP), the future managing agency, has determined that the property can be managed with the interests in place. 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. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for these and any other title issues that arise prior to closing.

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

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Item 5, cont.

The pine flatwoods and swamps west of Pensacola are interrupted by wet grassy prairies dotted with carnivorous pitcher plants-some of the last remnants of a landscape unique to the northern Gulf coast. Public acquisition of the Perdido Pitcher Plant Prairie project will conserve these prairies and the undeveloped land around them, helping to protect the water quality of Perdido Bay and Big Lagoon, and giving the public a wealth of opportunities to learn about and enjoy this natural land. This parcel is almost completely surrounded by public land and acquisition will facilitate management of park property.

The property will be managed by DRP as an addition to the Tarkiln Bayou Preserve State Park.

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 5, Pages 1-24)

RECOMMEND APPROVAL

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Item 6 **TNC Assignment of Option Agreement/Apalachicola River Florida Forever Project**

DEFERRED FROM THE AUGUST 10, 2004 AGENDA

REQUEST: Consideration of the acceptance of an assignment of an option agreement to acquire a perpetual conservation easement over 2,124.5 acres within the Apalachicola River Florida Forever project from The Nature Conservancy.

COUNTY: Calhoun

LOCATION: Sections 04 through 09 and 17 through 20, Township 02 South, Range 08 West

CONSIDERATION: $2,160,745 ($2,124,500 for the acquisition; $36,245 for the purchase of the option agreement)

		APPRAISED BY:					
PARCEL	ACRES	Rogers (01/06/03)	Ryan (01/06/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Corbin/ Tucker	2,124.5	$1,850,000	$2,170,000	$2,170,000	*	$2,160,745** (99%)	120 days after BOT approval

* The property has been in the family for over 60 years.
** $1,017 per acre; Fee Value is $3,930,000; Conservation Easement Value is 55% of the Fee Value

STAFF REMARKS: The Apalachicola River project is an "A" group project on the Florida Forever Less Than Fee Interim Project List approved by the Board of Trustees on September 21, 2004. The project contains 27,155 acres, of which 2,294.21 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement 22,736.29 acres, or 84 percent of the Apalachicola River Florida Forever project, will remain to be acquired.

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protections' (DEP) Division of State Lands (DSL) and The Nature Conservancy

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Item 6, cont.

(TNC), TNC has acquired an option to purchase an easement over this 2,124.5-acre parcel from David Finlay Corbin, John Kendrick Tucker and Thomas Michael Tucker. There are approximately 1.5 miles of river frontage. After this acquisition is approved, the Board of Trustees will acquire the option from TNC for $36,245, which represents agreed upon compensation to TNC for overhead associated with acquiring the option. The Board of Trustees may then exercise the option and purchase the easement. The assignment of option agreement provides that payment to TNC is contingent upon the Board of Trustees successfully acquiring the easement from the owner. In no event will the Board of Trustees' purchase price exceed the approved value.

On August 24, 2004, the Board of Trustees considered a conservation easement over this property that included a provision for the owner to directional drill for oil and gas from off of the property. A motion was made to approve the item; however, the motion failed for lack of a second. The conservation easement has now been re-negotiated to delete the provision for directional drilling and specifically prohibits directional drilling.

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 prohibited uses:

- Dumping of soil, trash, liquid or solid waste, hazardous materials will be prohibited;
- Exploration for and extraction of oil, gas, minerals, peat, muck, limestone, etc. will be prohibited, except as reasonably necessary to combat erosion or flooding. According to the Bureau of Geology, current information does not suggest the presence of any economically viable near-surface commodities at this location other than perhaps the quartz sand;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife preservation will be prohibited;
- Acts or uses detrimental to the retention of land or water areas in their natural, scenic and wooded condition will be prohibited;
- Commercial water wells will be prohibited;
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portion of the property having historical, archaeological or cultural significance will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying of biocides of trees, shrubs, or other natural vegetation except as specifically provided in the easement will be prohibited;
- The planting of nuisance exotic or non-native plants will be prohibited;
- Commercial and industrial activities will be prohibited;
- Except as allowed in the owner's reserved rights, new construction or placing of temporary or permanent buildings, mobile homes, or other structures in, on or above ground will be prohibited;
- Placement of signs, billboards, or outdoor advertising will be prohibited;
- Construction of new roads or jeep trails will be prohibited;
- The operation of dune buggies, motorcycles, all terrain vehicles or other loud, destructive or offensive recreation or motorized vehicles will be prohibited, except on allowed access roads and except for emergency vehicles, farm equipment, timber equipment, and vehicles used in connection with prescribed burns;
- Except for the agricultural uses allowed in the Disturbed Uplands pursuant to the owner's reserved rights, there shall be no more intense agricultural use of the property

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Item 6, cont.

than currently exists and there shall be no conversion of non-agricultural areas to agricultural uses;

- Actions or activities that adversely impact threatened or endangered species will be prohibited;
- New food plots will be prohibited in the Special Natural Area;
- Timber harvesting or other silviculture activities will be prohibited in the Special Natural Area;
- The cutting of cypress anywhere on the property 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 owners wish to sell the property.

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 rights to observe, maintain, photograph, fish, hunt and introduce and stock native fish or wildlife;
- The right to utilize the property for non-commercial hiking, camping and horseback riding;
- The right to maintain existing food plots and create new food plots for game and other wildlife in the Disturbed Uplands, provided the total food plot acreage does not exceed five percent of the total acreage at any point in time;
- The right to conduct prescribed burning within the Disturbed Uplands;
- The right to mortgage the property;
- The right to contest tax appraisals, assessments and taxes;
- The right to continue to use, maintain, repair and reconstruct, but not relocate or enlarge, all existing buildings and structures;
- The right to utilize sand from the existing sandpit for road maintenance on the property;
- The right to construct three residential structures within the Disturbed Uplands limited to two contiguous acres for each structure;
- The right to subdivide the property for sale or other disposition into up to four units;
- The right to engage in silviculture practices within the Disturbed Uplands; and
- The right to produce row crops in Area 1 (approximately 261 acres) of the Disturbed Uplands.

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 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 evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

The Apalachicola River ecosystem contains tremendous conservation significance in terms of biological diversity and economic importance. The Apalachicola River is 21st in magnitude of flow volume among the rivers of the coterminous United States and is the largest and longest river system in the southeastern United States. The rich floodplain forest/floodplain swamp mosaic found on the lands comprising the Corbin/Tucker tract and protected in perpetuity under the terms of the conservation easement contribute to the overall effort to protect the Apalachicola River watershed and the wildlife that inhabit the river's drainage basin.

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Item 6, cont.

The property will be monitored by DEP's Office of Environmental Services.

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 6, Pages 1-76)

RECOMMEND APPROVAL

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Item 7 **First American Title Insurance Company/Robert Lee/Tangarene Hancock Smith Settlement Agreement**

REQUEST: Consideration of a proposed settlement agreement in the claim of Robert Lee and Tangarene Hancock Smith, First American Title Insurance Company Claim No.: F99-308.

COUNTY: Putnam

APPLICANTS: First American Title Insurance Company, Robert Lee Smith, and Tangarene Hancock Smith

LOCATION: Section 32, Township 08 South, Range 25 East

STAFF REMARKS: This settlement is the result of a boundary dispute in the Etoniah State Forest between the Board of Trustees and Robert Lee Smith and Tangarene Hancock Smith.

In 1995, the Board of Trustees acquired a parcel containing 4,727.28 acres for a total purchase price of $3,981,870. Title insurance was obtained from First American Title Insurance Company (First American). During the acquisition process, Regional Engineers, Planners and Surveyors, Inc. completed a boundary survey of the parcel. The Smiths dispute the accuracy of that survey.

In February 2003, John L. Turner, Jr., a Florida Registered Land Surveyor, No. 1215, again surveyed the area at the request of First American, in order to more specifically describe the Smith property. Mr. Smith has agreed to accept the legal description provided in the Turner survey of February 2003. Staff has reviewed the Turner survey and legal description.

The purpose of the proposed settlement agreement is to avoid the cost and risk of litigating this matter. The terms of the settlement agreement require the execution of quitclaim deeds by both the Board of Trustees and the Smiths. First American will compensate the Board of Trustees for the 2.6 acres conveyed to Mr. Smith by quit claim deed at $740 per acre, which was the per acre price at acquisition.

The Department of Agriculture and Consumer Services, Division of Forestry will continue to manage this property as a part of Etoniah Creek State Forest.

(See Attachment 7, Pages 1-15)

RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT

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Item 8 **Edna Lee Wilson, et al v. Estate of Nathan Lee/BOT Settlement Agreement**

REQUEST: Consideration of a proposed settlement agreement in the case of Edna Lee Wilson, et al. v. Estate of Nathan Lee, Board of Trustees of the Internal Improvement Trust Fund, et al., United States District Court for the Northern District of Florida (Pensacola Division), Case No. 3:02ev436/RV/MCR.

COUNTY: Okaloosa

APPLICANTS: Florida Department of Environmental Protection, Division of State Lands, Edna Lee Wilson, Ronald McKay, Earl D. McKay, Pearl E. McKay, and Luann Gray

LOCATION: The Northwest ¼of the Southeast ¼,Section 36, Township 6 North, Range 24 West, in Okaloosa County, Florida, said parcel of land consisting of 40 acres more or less.

STAFF REMARKS: Defendants assert a claim to a 40-acre parcel located within the present boundaries of Blackwater River State Forest, Okaloosa County, Florida. The United States of America acquired title from the Okaloosa Land Company in 1937. It was then sold to the Florida Board of Forestry in 1955 and subsequently transferred to the Board of Trustees in 1967.

Mrs. Edna Lee Wilson claims that she or her predecessor in title adversely possessed the disputed parcel before government ownership in 1937. Section 2936 of the Revised General Statutes of Florida (1920) states that adverse possession without color of title required "continuous occupancy" for seven years, with "occupancy" defined as substantially enclosing the land or cultivating or improving the land.

Mrs. Wilson is 95 years old. She has given a sworn statement that she and her family occupied the disputed parcel when she was a child. The statement describes her family's cultivation of the disputed parcel. Mrs. Wilson was born on the disputed parcel and helped her father in the field. The family owned cows and pigs. Mules were used to plow the fields to grow corn, peas, greens, and okra.

Mrs. Wilson's uncle, Nathan Lee, and her grandfather, Martin Lee, worked as slaves on a plantation near Elba, Alabama. After their emancipation, they arrived in Okaloosa County. In 1894, Mrs. Wilson's great-uncle, Nathan Lee, obtained a homestead from the United States in 1894. The homestead consisted of a 160-acre upside-down "L" that wraps around the disputed parcel.

Rather than occupy the 40-acre parcel at the southernmost tip of the upside-down "L," Mrs. Wilson alleges that Nathan Lee and his brother, Martin Lee, squared up the homestead to include the disputed parcel. The Homestead Act of 1862 stated, "that any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres." Mrs. Wilson alleges that Martin Lee and his heirs have occupied and cultivated the disputed parcel since 1889.

Florida Board of Forestry records indicate that in 1952, Mrs. Wilson was in possession of the disputed parcel and that the northeast 20-acre triangle of the disputed parcel was in cultivation. The records state, "it appears that [Edna Wilson's] lands were occupied for many years prior to the time the Government acquired them from the Okaloosa Land Company."

On October 29, 2003, Mrs. Wilson voluntarily dismissed the 42 U.S.C. Section 1983 civil rights claim. On November 15, 2002, the adverse possession claim was referred to mediation.

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Item 8, cont.

On January 13, 2003, a proposed settlement was reached. The case has been stayed pending final settlement.

Rather than continue with the litigation, both sides recognizing the strengths and weaknesses in their cases, the costs and length of litigation and the uncertainty of the outcome of a trial have agreed to a proposed settlement agreement. The material terms of the settlement agreement are as follows:

(1) Mrs. Wilson and her heirs will deliver a quitclaim deed to the Board of Trustees for the southwest 20-acre triangle of the disputed parcel.

(2) The Board of Trustees will deliver to Mrs. Wilson and her heirs a quitclaim deed for the northeast 20-acre triangle of the disputed parcel. Delivery is contingent on Mrs. Wilson and her heirs removing all of their encroachments from the state owned land. In particular, Mrs. Wilson will have to remove a house located in part on the southwest triangle of the disputed parcel and in part on the 40-acre parcel directly to the south of the disputed parcel.

(3) Mrs. Wilson and her heirs disclaim any interest in the South 1/2 of the Southeast 1/4 of Section 36, Township 6 North, Range 24 West. This area includes the 40-acre parcel at the southernmost tip of the upside-down "L" in the 1894 homestead certificate. It also includes the 40-acre parcel directly to the south of the disputed parcel wherein a portion of the Wilson house and other encroachments are situated.

(See Attachment 8, Pages 1-65)

RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT

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Item 9 **Chapter 18-21, F.A.C., Notice of Proposed Rulemaking/Ownership Oriented Facilities**

REQUEST: Consideration of a request to publish a Notice of Proposed Rulemaking regarding amendments to chapter 18-21, F.A.C., that specify 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.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP)
("Unit:Slip and 40:1" Rule Amendments)

STAFF REMARKS: Section 18-21.004, F.A.C., contains limitations on the number of slips and maximum area of preemption that is allowed for private residential multi-family docking facilities on sovereignty submerged lands. Specifically, private residential multi-family docks, which serve a limited segment of the public within a multi-family residential upland facility, are limited to the lesser of: (1) a maximum preempted area of 40 square feet of preempted area for each linear foot of shoreline (40:1); and (2) a graduated ratio of slips, ranging from 1:1 to 4:1, based on the number of upland residential units. These ratios apply to facilities outside aquatic preserves that preempt more than 10:1 and to facilities in certain aquatic

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Item 9, cont.

preserves that allow preemption of more than 10:1. These limitations became effective on December 25, 1986, as a result of studies in the 1980s, which documented that private-residential multi-family docking facilities were being under-utilized or were being constructed as a sales incentive to buyers of the upland facility, with the end result of large numbers of empty slips preempting public use of sovereignty submerged land. The chapter 18-21, F.A.C., limitations exist to balance the preemption of public trust lands for private purposes with the rights of all citizens to use those same lands.

Emerging trends include two situations: (1) the conversion of commercial marinas that are currently open to the public on a first-come, first-served basis to private residential multi-slip docks; and (2) upland developments with associated mixed-use docking facilities, which consist of a combination of open-to-the-public facilities and private residential multi-family docking facilities serving the same parcel. Questions have arisen regarding the limitations of the number of slips and the area of sovereignty submerged lands preemption that is allowable for such facilities. These questions were considered on October 28, 2003, when the Board of Trustees considered the WCI Communities, Inc. item. At that time the Board of Trustees directed staff of the DEP to begin rulemaking to amend chapter 18-21, F.A.C., to consider revisions to the maximum number of slips and preemption allowed for private residential multi-family docks. The Board of Trustees directed that the rule amendments also should address those docks serving mixed-use upland residential and revenue-generating activities and those docks where the upland is being converted to multi-family use from some other use. The Board of Trustees previously expressed a desire for the rule to include conditions that have been historically applied so that these facilities can be delegated to staff to process, while retaining the ability of the Board of Trustees to continue to review any facility that would be considered of heightened public concern or that include a request to exceed the 40:1 ratio.

Staff published a Notice of Proposed Rule Development to amend chapter 18-21, F.A.C., on January 23, 2004, and the Board of Trustees accepted staff's rulemaking plans on January 27, 2004. Staff discussed rule concepts at public workshops held on February 19, 24 and 26, 2004, in Pensacola, West Palm Beach (also available by teleconference), and Tampa. Some people attending the February workshops did not want any changes to the rule. Others recommended eliminating the unit:slip and 40:1 ratios. Most of the comments received seemed to favor eliminating the unit:slip ratio, while retaining the 40:1 ratio. Many changes also were suggested to specific rule wording and structure. A summary of those comments is attached. After considering those comments, staff presented a draft conceptual rule at public workshops held on June 9, 10, and 11, 2004, in Ft. Myers, Orlando (also available by teleconference), and Jacksonville. The range of comments was similar to those received during the first round of workshops, with the addition of a comment that the Board of Trustees did not need to consider environmental issues because other rules and agencies addressed those concerns.

The proposed rule replaces the graduated unit:slip ratio scale in rule 18-21.004(4)(b), F.A.C., with a fixed maximum of one wetslip for each approved upland residential unit, and retains the 40:1 preempted area ratio, but allows an exception to 40:1 under limited conditions outlined below. This recommendation is based on the following factors: (1) calculating the ratio is often misunderstood and is difficult to calculate; (2) the graduated unit:slip scale has only marginal impact in the amount of preemption of sovereignty submerged lands, and typically is not the major controlling factor in limiting preemption; (3) the unit:slip ratio, by itself, does not address the size of the preempted area (i.e., several small slips may not preempt as much area as one large slip); (4) many facilities reach the 40:1 maximum before exceeding the unit:slip ratio maximum; and (5) there are other proprietary and regulatory rules that restrict the number of vessels allowed at a facility and that protect environmental resources and listed

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Item 9, cont.

species. In summary, the proposed changes will provide more flexibility in the design of private residential multi-family docking facilities without significantly increasing private preemption of sovereignty submerged lands or increasing adverse impacts to environmental resources and listed species.

In addition to the above, the proposed rule:

- Requires that any portion of a dock or pier that is used or converted to use for private residential multi-family purposes is subject to the unit:slip and 40:1 preempted area ratios.
- Provides an exception to the 40:1 maximum preemption where:
    a. The project is consistent with all other applicable rules and statutes of the Board of Trustees;
    b. Ingress and egress would not require any dredging (i.e., surrounding waters have sufficient water depths);
    c. Additional preemption will not require or will reduce dredging within the lease boundary, and will not cause or will reduce impacts to resources;
    d. Threatened, endangered or special concern species will not be adversely affected; and
    e. The project provides a net positive public benefit to offset the increase in the preempted area.

  The exception has been added to the list of activities that are not delegated to staff in rule 18-21.0051, F.A.C., and will require Board of Trustees' review.
- Adds an option for several riparian single-family homeowners to build one private residential multi-family dock or pier in lieu of several private residential single-family docks or piers, provided that the proposed multi-family dock or pier:
    1. Results in less total/cumulative preemption and greater environmental protection;
    2. Conforms to the criteria for "all docks" and "multi-slip" docks when located in an aquatic preserve, except the proposed dock will be exempt from the prohibition of rule 18-20.004(c)3, F.A.C., and will be allowed to terminate in an Resource Protection Area (RPA) 1 or 2, if an RPA 3 is not available. The decking will be required to be a minimum of 5 feet above mean or ordinary high water with 25 percent of the terminal platform at a lower elevation for access. Additionally, the proposed boat use must allow a minimum of 1 foot of clearance between the deepest draft of a vessel and the top of resources at mean or ordinary low water;
    3. Provides no more than 2 slips per participating riparian parcel;
    4. Includes access for all participating riparian parcel owners; and
    5. Is accompanied with a conservation easement or other restrictive covenant on all the shorelines of participating parcels to the Board of Trustees that prevents further riparian rights of ingress and egress for additional docks and piers.
- Provides that a multi-family dock built in lieu of several single-family docks or piers will qualify for a letter of consent in rule 18-21.005(1)(c)19, F.A.C., notwithstanding the provisions of chapters 18-20 and 18-18, F.A.C., that would have required a lease.
- Modifies the delegations of authority provisions of rule 18-21.0051(2), F.A.C., to provide that only requests to "approve" items not delegated to staff must be considered by the Board of Trustees. This is designed to eliminate the need for staff to present an item to the Board of Trustees where the proposed agency action is denial of the sovereignty submerged lands authorization unless that action is deemed to be of heightened public concern.
- Modifies delegations of authority provisions to require any requests to exceed the 40:1 preemption ratio be reviewed by the Board of Trustees.

Upon approval by the Board of Trustees, a Notice of Proposed Rulemaking on the unit:slip and 40:1 ratios will be published in the Department's Official Noticing Internet site. The notice

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Item 9, cont.

will include the dates for two public hearings to be held in Orlando and Tallahassee (both will be accessible via teleconference). Staff must return to the Board of Trustees for final rule adoption, and will present any changes that are warranted as a result of the hearings or comments received.

(See Attachment 9, Pages 1-23)

RECOMMEND APPROVAL

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Item 10 **Chapter 18-21, F.A.C., Notice of Proposed Rulemaking/Fee Adjustments**

REQUEST: Consideration of a request to publish a Notice of Proposed Rulemaking regarding amendments to chapter 18-21, F.A.C., that adjust some fees associated with the usage of sovereignty submerged lands and clarifies certain current rule provisions.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP), Division of State Lands (DSL)

STAFF REMARKS: On October 28, 2003, as part of the discussion of the WCI Communities, Inc. request, the Board of Trustees directed staff to consider amending chapter 18-21, F.A.C., to among other things, ensure that six percent of the income of any sublease or subsequent sublease of a slip is included in the lease fee calculations due. On January 27, 2004, the Board of Trustees accepted the DSL decision to conduct workshops on this issue and other issues associated with chapter 18-21, F.A.C.

On January 23, 2004, staff published a Notice of Proposed Rule Development to amend chapter 18-21, F.A.C., to address these issues. Staff conducted public workshops on February 19, 24 and 26, 2004, in Pensacola, West Palm Beach, and Tampa. A general summary of the comments received is as follows:

- Questions over how money is being spent and how to cut costs;
- Suggestion to have Department of Revenue (DOR) collect lease fees monthly;
- Suggestion that if DOR won't collect, use monthly coupon system;
- Fees: some want flat percentage with no base rate;
- Link Clean Marina to extended term lease, with allowance for penalty if dropped from the program;
- Need for additional mooring fields mentioned;
- Want allowance for temporary overage of lease area;
- Access issues: DEP/Board of Trustees should provide more access to public waters;
- Liveaboard issues;
- Issue with single family not having to pay fees while condominiums pay fees;
- Issues with unit:slip ratios;
- First-come, first-served definition needs clarification; and
- Severed material fees.

After considering these comments, staff presented draft rule amendments, which were published on August 6, 2004, at public workshops held on August 20, 23, 24 and 25, 2004.

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Item 10, cont.

The workshops were held in Pensacola, Jacksonville, Tampa and West Palm Beach. A general summary of the comments received at the workshops is as follows:

- Questions/comments regarding the impetus for amending the rule;
- Questions/comments regarding studies comparing our lease fees with those in other states;
- Request was made for an economic analysis of the impact of the proposed changes;
- Assertion made that statute dictates that we only recover costs with fees;
- Assertion that high fees limit public access, propose only a base fee (no 6 percent);
- Concern that these changes would immediately affect current leases;
- Questions over where figures come from (especially assignment fee); and
- Suggestion that Application, Assignment and Modification fees be linked to Consumer Price Index.

Additionally, several written comments were received and a meeting was held with the Legislative/Government Relations Chair of Marine Industries Association of Florida, Inc.

Considering past Board of Trustees' actions and the comments received, staff has developed proposed rule amendments to chapter 18-21, F.A.C. The changes of the proposed rule amendments can be summarized as follows:

- Providing a definition of "income" that addresses the issues identified with the WCI item;
- Increase the fee to assign a lease, except for single-family residential facilities;
- Provide a 10 percent discount to facilities participating in the Clean Marina or Clean Boatyard program;
- Waive the extended term lease surcharge for facilities that are open to the public and participating in the Clean Marina program;
- Replace the first come, first served provision with new wording designed to better identify facilities that are open to the public without qualifying requirements; and
- Provide for a waiver of fees in limited circumstances for government entities for severed dredged material.

Upon approval by the Board of Trustees, staff will proceed with the proposed rule amendments and publish a Notice of Proposed Rulemaking on the DEP's Internet Official Noticing site. The notice will include the dates for two public hearings to be held in Orlando and Tallahassee (both will be accessible via teleconference). Staff will return to the Board of Trustees for final rule adoption, and will present any changes that staff believe are warranted as a result of the hearings or comments received.

(See Attachment 10, Pages 1-20)

RECOMMEND APPROVAL