

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MARCH 17, 2005

**Item 1 BOT/U.S. Department of Agriculture/Forest Service Exchange Agreement/
Determinations/Request to Waive Statutory Requirement**

REQUEST: Consideration of (1) a determination that two parcels totaling 18,617.62 acres, more or less, of state-owned, conservation land in Baker and Lake counties are no longer needed for state conservation purposes, pursuant to Article X, Section 18 of the Florida Constitution and section 253.034(6), F.S.; (2) a determination that a conveyance provides greater benefit to the public than retention in state ownership; (3) an exchange agreement as amended under which the Board of Trustees would convey the land to the United States Department of Agriculture, Forest Service in exchange for ownership of mineral interests under state-owned, conservation land in Citrus, Hernando, Okaloosa, Pasco, Santa Rosa and Sumter counties, totaling 292,856.0 acres, more or less, and fee-simple ownership to conservation land in Franklin, Lake, Liberty, and Okaloosa counties, totaling 4,559.6 acres, more or less, owned by the United States Department of Agriculture, Forest Service; (4) permission to convey public roads received in the exchange to the state Department of Transportation or county government, as appropriate; and (5) a request that the Board of Trustees waive the statutory requirement for no less than a special warranty deed and accept quitclaim deeds and patents from the United States Department of Agriculture, Forest Service pursuant to section 259.041(1), F.S.

COUNTIES: Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Pasco, Santa Rosa, and Sumter

APPLICANT: The United States Department of Agriculture, Forest Service (USFS)

LOCATION: Multiple

CONSIDERATION: Value-for-Value with \$99,000 in boot to be deposited into the P2000 Fund of the State of Florida.

STATE OF FLORIDA TO RECEIVE:

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY			<u>APPROVED VALUE</u>	<u>CLOSING DATE</u>
		<u>Chandler (05/05/03)</u>	<u>Candler (07/03/03)</u>	<u>Lenz (05/09/03)</u>		
Rocky Bayou	366.72	\$16,645,000			\$16,645,000	***
Tates Hell	4,000.68		\$4,803,000		\$ 4,803,000	***
Ocala Nat. Forest	192.20		<u>(06/11/03)</u> \$ 240,000		\$ 240,000	***
Withlacoochee SF	111,994.00*			\$140,000	\$ 140,000	***
Blackwater River SF	180,862.00*			<u>(03/12/03)</u> \$592,000	\$ 592,000	***
TOTALS	4,559.60	Fee Simple Acres			\$22,420,000	
	292,856.00	Mineral Acres				

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USFS TO RECEIVE:

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Candler <u>(08/21/03)</u>	APPROVED <u>VALUE</u>	CLOSING <u>DATE</u>
Pinhook Swamp	18,528.75	\$22,235,000	\$22,235,000	***
Seminole SF	88.87	<u>(06/11/03)</u> \$284,000	\$ 284,000	***
TOTALS	<u>18,617.62</u>	Fee Simple Acres	<u>\$22,519,000</u>**	

* mineral acres

** \$22,519,000 (less) \$22,420,000 = \$99,000 "boot" to be paid by USFS

*** the closing shall take place as soon as possible, not to exceed 12 months from the date of execution of the Amendment to Exchange Agreement

Noted Features of Subject Property:

Rocky Bayou: Prime parcel for development of mixed-use residential and commercial projects of varying intensities Located on bayou with State Road 20 frontage in Niceville area of Okaloosa County, currently in use as Fred Gannon / Rocky Bayou State Park under a Special Use Permit. (\$16,645,000 / 366.72 acres = \$45,389 per acre average)

Tates Hell / New River: Timber tract adjacent to other state-owned property in Tates Hell. Value is inclusive of timber stands. Contains small in-holding (1.58 acre Harper hunt camp cut-out) which USFS will continue to manage. (\$4,803,000 / 4,000.68 acres = \$1,200 per acre average including timber and land)

Ocala National Forest: In-holding parcels in State of Florida's Seminole State Forest. Provides contiguity with existing state-owned land (\$240,000 / 192.2 acres = \$1,250 per acre average)

Withlacochee State Forest: Federally-owned oil, gas and mineral (OGM) rights (100 percent OGM interest) under state-owned surface rights. Portion formerly mined for limestone reserves. The Bankhead-Jones Farm Tenant Act restricts mining for only public need purposes (\$140,000 / 111,994 mineral acres = \$1.25 per acre average for OGM rights)

Blackwater River State Forest: Federally-owned OGM rights (75 percent OGM interest) under 180,862 acres of state-owned 182,657.60 surface acres. There are two leased sites, one has ended production and has been dismantled. The federal government interest in the leases as lessor will be assigned to the state. (\$592,000 / 180,862 mineral acres = \$3.27 per acre average for OGM rights).

Pinhook Swamp: Vital connector to the USFS between the Okefenokee National Wildlife Management Area (Okefenokee WMA) at the Florida/Georgia border and the Osceola National Forest to the south. Timber tract value inclusive of timber resources is at value prior to a wildfire spread from a USFS controlled burn in nearby Okefenokee WMA. State of Florida will have fee ownership of approximately 38,752.25 acres in the Pinhook Swamp after the proposed exchange (\$22,235,000 / 18,528.75 acres = \$1,200 per acre average pre-fire value)

Seminole State Forest (Parcel 2207c): In-holding parcel to Ocala National Forest that would provide contiguity and assist manageability for USFS (\$284,000 / 88.80 acres = \$3,198 per acre average)

STAFF REMARKS: The purpose for this exchange is to make the administration of public lands more efficient. This action is needed to consolidate ownership and management boundaries. Consolidation would provide simpler avenues of public participation in land management decisions and would serve to streamline government. It would also reduce the cost of administration by simplifying logistics, reducing land management boundaries, and minimizing the number of agencies that have to be involved in land management decisions or respond to public requests for service. Dual objectives of the exchange are to place land and mineral rights more suitable for state management in state ownership and to place land more suitable for federal management into federal ownership.

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There are seven separate property interests to be transferred in this exchange: Fred Gannon/Rocky Bayou State Park; Tates Hell/New River; Ocala National Forest; Withlacoochee State Forest; Blackwater River State Forest; Pinhook Swamp; and Seminole State Forest.

Fred Gannon/Rocky Bayou State Park

Fred Gannon/Rocky Bayou State Park has been managed by the state as a park for more than 35 years under a special use permit issued to the state by the federal government. The 366-acre tract valued at over \$16 million is federally-owned, public domain lands (lands that have never been out of federal ownership). Considering appreciation in the value of the coastal property in the Florida panhandle, it is estimated that this property has at least doubled in value subsequent to the 2003 appraisal.

In 1987, the following language was incorporated into the USFS special use permit to the state,

34. The holder (state) agrees to diligently pursue a land exchange for the land covered by the permit, pursuant to appropriate federal and state law and for the approval of Forest Service and Florida Governor and Cabinet. This permit is issued for the sole temporary purpose of authorizing the holder to proceed with their plans for improving, developing and otherwise using the land for the designated purpose until the land exchange is complete. To that end, both parties agree to work toward consummating said exchange.

The need for a special use permit from the United States for the state to operate the Fred Gannon/Rocky Bayou State Park on USFS land will be eliminated with the conveyance of Tract A-946a to the state. The state's managing efficiency will increase when all property rights, surface and subsurface, are owned by the state. Also, the state's investment in park improvements will be protected.

Tates Hell/New River

The federally-owned, 4,000.68-acre, New River Tract in the Tate's Hell tract is bordered to the east, south, and west by the Tate's Hell State Forest and would make a logical addition to the state forest. The consolidation of this tract will eliminate boundary lines and consolidate the state forest. This tract was acquired by the United States in 1994/95.

Ocala National Forest

There are four isolated tracts, totaling 192.2 acres, falling outside the contiguous area of the Ocala National Forest that is intermingled with state-owned lands. Conveying these lands to the state will result in greater management efficiency for both the state and USFS. These four tracts in Lake County were established as part of the Ocala National Forest in 1908 and are public domain lands. Because of the fragmentation of the land and the recent state acquisition of land surrounding these tracts, it is neither logical nor efficient for USFS to continue

Item 1, cont.

management of these isolated tracts and would make a logical addition to the state forest. These four tracts will become part of the Seminole State Forest.

Withlacoochee State Forest

In 1958, the Florida Board of Forestry entered into a 25-year agreement of sale with USFS to acquire the Withlacoochee State Forest, subject to reservation by the federal government of 100 percent of mineral rights. Once acquired, the Withlacoochee State Forest was conveyed to the Board of Trustees in 1983, still subject to the federal government's reservation of 100 percent of the mineral rights.

Blackwater River State Forest

In 1955 and 1957, USFS deeded approximately 182,657.60 acres of land to the state for Blackwater River State Forest, reserving 75 percent of the mineral rights.

The two largest tracts of state-owned land for which the federal government owns the mineral interests are the Withlacoochee and Blackwater River State Forests. Obtaining the federal mineral interests under state-owned surface rights has been a state goal since the early 1970's. Also, by acquiring the mineral interests under the state forests, the number of managing agencies will be reduced from three (USFS, U.S. Bureau of Land Management, state) to one (state), thereby reducing management costs and increasing management efficiency for the public.

Pinhook Swamp

With the conveyance of the 18,528.75-acre tract in the Pinhook Purchase Unit conveyed into federal ownership, one of the largest, federal, ecological corridors east of the Mississippi River will be created with the connection of the Okefenokee National Wildlife Management Area and the Osceola National Forest. This addition will help enhance the Osceola National Forest and eliminate isolated federal tracts and non-federal in holdings, which will allow the ecological resources to be managed in a consistent manner with surrounding public lands. The exchange will provide an opportunity to achieve better management of the associated federal lands and resources.

Seminole State Forest

The 88.87-acre in holding in the Seminole State Forest will be conveyed into federal ownership that will contribute to a consistent ownership pattern and enhance management efficiency. State Highway 42 is a logical boundary between the Ocala National Forest and Seminole State Forest. It would be more logical and economical for USFS to manage and own this tract since it is north of Highway 42 and adjacent to currently managed Ocala National Forest lands.

On May 15, 2001, the Board of Trustees approved (1) a memorandum of understanding (MOU) between USFS and the Board of Trustees for a value-for-value, assembled exchange of mineral and other property interests, and the associated joint processing documents, such as an

Item 1, cont.

agreement to initiate, survey standards, appraisal standards, and an exchange agreement; and (2) substitution of the land acquisition procedures of the USFS for this transaction pursuant to section 259.041(1), F.S.

On May 31, 2001, the Board of Trustees entered into an agreement to initiate assembled exchange with USFS, which acknowledged the subject parties' intent to exchange real property of equal value. This assembled land exchange was developed pursuant to 36 CFR 254.5. In this case, USFS requested that the state secure the non-federal ownership in Pinhook Swamp for the purposes of the exchange.

In March, 2004, the exchange agreement was executed subject to Board of Trustees' approval. Before the exchange agreement could be submitted to the Board of Trustees for approval, a controlled burn on USFS property adjacent to the state's Pinhook Swamp went out of prescription and burned onto the Pinhook Swamp property. As a result, there was a diminishment in value of the state-owned tract. In November, 2004, the Chris Zajacek Memorial Land Exchange Act of 2004, was approved by Congress. The federal legislation provided the authority to USFS to compensate the state utilizing the pre-fire value of the lands damaged by the fire. The exchange agreement was amended to provide in consideration of the state releasing its tort claim against the federal government for the fire damage to the exchange property.

USFS will manage the land it receives in the exchange as a unit of the national forest system under the same general policy guidelines under which the land has been managed since its acquisition:

The primary goals of management of the Pinhook Swamp Florida Forever project are: to conserve and protect significant habitat for native species or endangered and threatened species, to conserve, protect, manage, or restore important ecosystems, landscapes, and forests, in order to enhance or protect significant surface water, coastal, recreational, timber, fish or wildlife resources which local or state regulatory programs cannot adequately protect; and to provide areas, including recreational trails, for natural resource-based recreation.

Additionally, federal management practices are also directed by the following:

- *Proclamation* establishing Osceola as a National Forest in 1931;
- *National Forest System Organic Act of 1897*, which states, "No national forest shall be established, except to improve and protect the forest within the boundaries...";
- *Forest and Rangeland Renewable Resources Planning Act of 1974*, which states that National Forest Management Plans shall be developed and maintained in coordination with state and local governments and other federal agencies. This Act also includes

Item 1, cont.

- provisions for providing a multitude of renewable forest resources; and
- *National Forests in Florida's Land and Resource Management Plan of 1999*, which allows federally-owned land to be managed in a condition to allow or mimic natural processes and patterns to maintain a rich diversity of native plants and animals, plus a wide range of opportunities for people to use and experience the forest.

Certain of the lands to be received by the state from the federal government in this exchange include state and county public roads at Rocky Bayou/Fred Gannon State Park. The federal government does not have a mechanism to convey ownership of these roads to the state Department of Transportation or the appropriate county. The Department of Environmental Protection, Division of State Lands, proposes to transfer these roads to the appropriate state or county transportation entity during the closing. The area included in the public roadways has not been assigned value in the determination of the value-for-value exchange.

All federal regulations and processes pursuant to 36 CFR 254, have been adhered to by USFS. Under the National Environmental Policy Act and the National Historic Preservation Act all environmental and cultural resource analyses were completed. This involved public scoping and input. All issues were resolved and/or mitigated. As a result, the record of decision issued by the USFS went uncontested and was not appealed.

Pursuant to section 18-2.018(3)(b)1.c., F.A.C., disposal of Board of Trustees-owned uplands may be conveyed to another party if the Board of Trustees determines that the conveyance of the parcel by sale, gift or exchange provides a greater benefit to the public than its retention in state ownership.

Pursuant to Article X, Section 18, Florida Constitution, the fee interest in conservation land may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for state conservation purposes and only upon a vote of two-thirds of the governing board.

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

A consideration of the status of the local government comprehensive plan was not made for this item, other than to the extent necessary in the processing of appraisals by the independent fee appraisers. The DEP has determined that the disposition of land is not subject to the local government planning process.

(See Attachment 1, Pages 1-283)

RECOMMEND APPROVAL

Item 2 Lambert Option Agreement/Managing Agency Designation/Management Policy Statement Confirmation/St. Johns River Blueway Florida Forever Project

REQUEST: Consideration of (1) an option agreement to acquire 731.30 acres within the St. Johns River Blueway Florida Forever project from William and Lucille Lambert; (2) designation of the St. Johns River Water Management District as the managing agency; and (3) confirmation of the management policy statement.

COUNTY: St. Johns

LOCATION: Sections 28 and 29, Township 08 South, Range 28 East

CONSIDERATION: \$2,000,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY		<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>
		Arline (06/23/04)	Clayton (09/02/04)				
Lambert	731.3	\$2,200,000	\$2,000,000	\$2,200,000	\$200,000*	\$2,000,000**	120 days after (91%)BOT approval

* Seller purchased the property September 27, 1983

** \$2,734.86 per acre

Noted features for subject property:

- Property has approximately 1,725 feet along the west right-of-way of County Road 13
- Approximately 134 acres (18%) is classified as uplands, allowing for 58 potential homesites.
- Property is located approximately three quarters of a mile east of the St. Johns River
- Based on information provided, the property is not encumbered by any easements, encroachments or oil, gas and mineral reservations.

STAFF REMARKS: The St. Johns River Blueway Florida Forever project is a “B” group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. At the time negotiations began and concluded, the Project was an “A” group project on the Florida Forever Full Fee Project List approved by the Board of Trustees. The project contains 27,997 acres, of which these are the first to be acquired. After the Board of Trustees approves this agreement, 27,265.7 acres or 97 percent of the project will remain to be acquired.

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

Item 2, cont.

This project is located in one of the fastest areas of growth in the state. The project is designed to preserve the last remaining undeveloped shorelines of the St. Johns River and several of its tributaries. The project area has numerous recorded archeological and historical resources, and has the potential for many more.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate the Department of Agriculture and Consumer Services, Division of Forestry as the lead manager of this project and the St. Johns River Water Management District as the managing agency for this site. The site will be managed as an addition to the Deep Creek Water Management Area.

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 2005 Florida Forever Annual Report adopted by the Board of Trustees on February 16, 2005. Staff recommends that the Board of Trustees confirm the management policy statement as follows:

The Division of Forestry proposes to manage the project under a multiple use management regime consistent with the State Forest System. Management would be designed to accomplish the goals and measures for this project. These goals and measures are referenced later in this prospectus. The primary land management goal for the Division of Forestry, is to restore, maintain and protect in perpetuity all native ecosystems; to integrate compatible human use; and to insure long-term viability of populations and species considered rare. This ecosystem approach will guide the Division of Forestry's management activities on this 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 2, Pages 1-40)

RECOMMEND APPROVAL

Item 3 Boomer Option Agreement/Estero Bay Florida Forever Project

REQUEST: Consideration of an option agreement to acquire 104.09 acres within the Estero Bay Florida Forever project from Nola Boomer, John H. Boomer and the Estate of Jorgine D. Boomer.

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Item 3 cont.

COUNTY: Lee

LOCATION: Section 28, Township 46 South, Range 25 East

CONSIDERATION: \$7,250,000 (Board of Trustees' 50 percent share of the total purchase price of \$14,500,000)

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u>	<u>SELLER'S</u>	<u>TRUSTEES'</u>	<u>CLOSING</u>
		<u>Norris</u>	<u>Marr</u>				
Boomer Family Value w/ life estate	104.09	<u>(08/27/04)</u>	<u>(08/27/04)</u>		*	\$14,500,000	120 days after BOT approval

*The property has been in the Boomer family since before 1917.

Noted features of subject property:

- The property has 1,100 feet of frontage along the western right-of-way of U.S. Highway 41, and 3,200 feet of frontage on Broadway Street
- The property has approximately 2,300 feet of frontage on the north side of the Estero River which flows west into the Estero Bay Aquatic Preserve
- The current zoning for the entire 104.09 acres is AG-2 (Agriculture)
- The northeast corner (15.30 acres) has a Land Use of Urban Community, which can be developed as commercial, residential or public/quasi-public uses
- 25.67 acres are encumbered with a life estate and is improved with a 3,917 sq. ft. house that was built in 1917 with renovations and modifications done in the early 1930's
- The property is in a major path of development between Fort Myers and Naples

STAFF REMARKS: The Estero Bay Florida Forever project is a "B" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. At the time negotiations began and concluded, the project was an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees. This project contains 14,358 acres, of which 9,004 acres have been acquired or are under agreement to be acquired by the Board of Trustees. After the Board of Trustees approves this agreement, 9,108.09 acres or 37 percent of the project will remain to be acquired. On February 6, 2004, the Acquisition and Restoration Council (ARC) approved the addition of this parcel into the project boundary by amendment.

This acquisition is in partnership with the Lee County Conservation 2020 Land Program. Lee County's Conservation Lands and Stewardship Advisory Committee recommended the Lee County Board of County Commissioners (LBCC) enter into a joint acquisition agreement with the state to protect this environmentally sensitive and historically significant parcel from eminent threat of development. The acquisition agreement was approved by LBCC at its regularly scheduled meeting on October 26, 2004. In an effort to comply with all of the provisions of the joint acquisition agreement, Lee County staff plans to present the option agreement to LBCC, with the recommendation for approval of the terms of the option agreement, at its regularly scheduled meeting on March 15, 2005. A resolution approving the terms of Lee County's participation in the option agreement will be provided to the Board of Trustees prior to March 17, 2005. Because of this participation and the provisions of chapter

Item 3 cont.

125.355, F.S., applicable to LBCC, the appraised values and approved values may not be disclosed until LBCC signs the agreement after its meeting on March 15, 2005.

The property is to be split, with Lee County taking title to an inland area totaling 50 percent of the property value and the state acquiring the remaining acreage totaling 50 percent of the property value to include nearly half a mile of shoreline along the Estero River and a historic single-family residence known in the Lee County area as the Boomer estate. This structure, called Mirosal by the Boomer family, represents the only residence still in existence built by the Koreshan settlers. Following Cyrus Teed from Chicago to Estero, Florida in 1894, Lucius and Berthaldine Boomer were generous benefactors to the original Koreshan settlement and were one of the few settlers with children. One of the four Boomer children, also named after his father Lucius, built the residence for his then widowed mother, Berthaldine Boomer, who lived at the home site until her death in 1935. The younger Lucius later became a successful businessman, famous for his tenure as president of the luxurious Waldorf-Astoria in New York. His son, George Boomer, lived at the home site until his death in 1999. The caretaker house, known as the Garcia house, has been donated to the Estero Historical Society. It is scheduled to be moved to the new Estero Community Park sometime during 2005.

The acquisition of this property is subject to a 25-acre, more or less, life estate reserved by George Boomer's widow, Nola Boomer. The portion reserved as a life estate would not be available for public use while Mrs. Boomer is alive. This acquisition would protect and preserve the historical elements to this acquisition, would protect the Koreshan State Historic Site from impending development, and would provide opportunity to acquire the parcel at current real estate market prices, thereby protecting future escalating acquisition costs. The appraisal process took these negotiated factors into consideration in determining the value of the parcel.

This parcel is located within the optimum boundary for the Koreshan State Historic Site, as identified in the approved land management plan prepared by the Department of Environmental Protection's (DEP) Division of Recreation and Parks (DRP). Keeping the property and its nearly half mile of river frontage from being intensely developed will help with efforts to maintain and enhance water quality efforts within the river and bay systems.

All mortgages and liens will be satisfied 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. Two leases currently encumber the property: a grazing lease and a billboard lease. These are not considered to have any impact on value. Both of the leases will terminate in the closing process and the billboard will be removed prior to closing. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and, therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing.

Item 3 cont.

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

Approximately 80 percent of the natural resources of the property are in fair condition. Most of the property is wooded, containing pine flatwoods, scrubby pine flatwoods, and a narrow band of hardwood hammock along the riverfront. Two bromeliads found on the site during a cursory January 13, 2004 site inspection are listed as endangered by the state: the Cardinal air plant (*Tillandsia fasciculata*) and the Giant air plant (*Tillandsia utriculata*). Gopher tortoises (a state species of special concern) also inhabit the parcel.

Estero Bay is one of the most productive estuaries in the state, and is the state's first aquatic preserve, designated in 1966. Its mangroves shelter important nesting colonies of water birds, and feed and protect many aquatic animals. These animals, in turn, are the foundation of a commercial and sport fishery. Important archaeological remains of the Calusa Indians dot the area. The Estero Bay project will protect the bay's water quality, its native plants and animals, its archaeological sites, and will provide recreational opportunities to the people of the rapidly growing Fort Myers area.

This property will be managed by DRP as an addition to the Koreshan State Historic Site. DRP will be responsible for uniform management of the entire parent tract, subject to the 25-acre, more or less, life estate for Nola Boomer, under a uniform management agreement to be devised by Lee County Parks and Recreation and DRP following the acquisition of the property.

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 3, Pages 1-85)

RECOMMEND APPROVAL

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Item 4 **Palm Beach County School Board Deed Restriction Modification**

REQUEST: Consideration of a request to modify a deed restriction approved by the Board of Trustees in the conveyance of 19.77 acres of state-owned land to the Board of Public Instruction of Palm Beach County.

COUNTY: Palm Beach
Deed No. 18599

Item 4 cont.

APPLICANT: Palm Beach County School Board (School Board)

LOCATION: Section 31, Township 43 South, Range 37 East

STAFF REMARKS: On January 21, 1941, the Board of Trustees approved the conveyance of 19.77 acres of state-owned land to the Board of Public Instruction of Palm Beach County, now the School Board. The conveyance as approved provided the quitclaim deed include a provision restricting use of the property to public school purposes. Lakeshore Middle School was subsequently built on the property.

Students at Lakeshore Middle School have been relocated to a new school, and on May 21, 2002, the Board of Trustees approved certain modifications to the deed restriction (O.R. Book 14151, page 0999) to include public recreation, public health, public education, and other community purposes. The School Board deeded a portion of the property to the City of Belle Glade (City) consistent with the Modification of Restrictions approved in 2002.

The School Board is requesting a further modification to convey additional portions of the property to the City for development and operation of an assisted living/senior housing facility; to offer affordable housing and supportive services to residents of the facility; and, to provide community-based services to the citizenry of the City and surrounding rural areas of Palm Beach County.

The Department of Environmental Protection (DEP), Division of State Lands, is recommending modification of the restrictions in Deed Number 18599 to expand the types of public uses allowed on the property to include the development and operation of an assisted living/senior housing facility. This may include the sale and/or leasing of portions of the property to McCurdy Senior Housing Corporation, a Florida not-for-profit corporation, whose sole member is Florida Housing Corporation, a Florida not-for-profit corporation, for the development and operation of a 100-bed, more or less, assisted living/senior housing facility.

The McCurdy Center affordable assisted living project was granted the distinction as a Florida Coming Home Program demonstration project by the Department of Elder Affairs (DEA). The proposed project meets the high standards set by the Robert Wood Johnson Foundation's National Coming Home Program, DEA and its primary partners, which are the Agency for Health Care Administration and the Florida Housing Finance Corporation. The proposed modification of deed restrictions is crucial for the project to move forward in accessing predevelopment and development funds to build the assisted living facility and community center in the City.

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

Item 4 cont.

(See Attachment 4, Pages 1-28)

RECOMMEND APPROVAL

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Item 5 DMS/Analysis of Office Space Efficiency/Resulting Impact on State-owned Property in Tallahassee

DEFERRED FROM THE FEBRUARY 16, 2005 AGENDA

REQUEST: Consideration of the Department of Management Services' analysis of office space efficiency and the resulting impact on state-owned property in Tallahassee.

COUNTY: Leon

APPLICANT: Department of Management Services (DMS)

LOCATION: Multiple

STAFF REMARKS: DMS has completed an analysis of state-owned property in the City of Tallahassee (City). This analysis is part of the agency's Workspace Management Initiative designed to improve office space quality for state employees, improve efficiency and control costs associated with property management. It is a statewide initiative that will first focus on Leon County (County). The analysis has included tenant requests, space quality and utilization, operating costs, building deficiencies, potential value or other uses of the property, and local community impact. The analysis has resulted in 11 parcels presented to the Board of Trustees for their consideration for future uses.

Several DMS facilities have high operating expenses, primarily due to utility consumption related to antiquated equipment. Those not conducive to state office use include an old jail, homes, former motels and other structures that lack floor plan efficiency.

DMS requested that the Department of Environmental Protection, Division of State Lands (DSL), initiate appraisals of a number of properties, primarily in the downtown City area. The appraisals have now been completed and any dispositions of these properties will be made in a manner most beneficial to the state. The decision to consider surplus properties was based on market interest, appraised value, and the ability to relocate occupants.

Additionally, DMS has formed a work group to solicit feedback from the community to ensure a responsible and disciplined approach is taken. The work group consists of members from the following: City, County, Chamber of Commerce, FSU, FAMU, Downtown Improvement Authority, Gaines Street Revitalization, and Blueprint 2000. DMS, DSL and the impacted

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local interests have committed to collaboratively produce recommendations to fully leverage each of these assets on behalf of the state. With this additional information, a recommendation has been developed by DMS and DSL staff that DSL initiate the surplus procedure for sale of the Chevron, 319, Johns, and Clemons parcels or these 2 city blocks. Of these, only the Johns building currently has employees which DMS stated could readily be relocated and be vacant by August 2005. The City advised it is ready to move forward with purchasing of the Johns and Chevron Blocks as soon as the state is ready. The City has also expressed interest in other parcels for purchase and a possible land exchange.

Upon Board of Trustees approval of this item, staff will move forward with the proposed action to prepare these properties for disposition.

(See Attachment 5, Page 1)

RECOMMEND APPROVAL

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Item 6 Whitley Bay Marina LLC Leases/Easement Modifications

DEFERRED FROM THE FEBRUARY 16, 2005 AGENDA

REQUEST: Consideration of an application for (1) modification of two existing 10-year sovereignty submerged lands leases to (a) assign the leases to reflect a change of ownership; (b) extend the term to 25 years; and (c) remove special lease condition 31b; and (2) modification of an existing sovereignty submerged lands easement to assign the easement to reflect a change of ownership.

COUNTY: Brevard
Lease Nos. 050001674 and 050786344; Easement No. 00297(4160-05)

APPLICANT: Whitley Bay Marina LLC (WBM)

LOCATION: Section 33, Township 24 South, Range 36 East, in the Indian River, Class III Waters, within the local jurisdiction of the city of Cocoa
Aquatic Preserve: No
Outstanding Florida Waters: No
Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: As defined in Rule 18-21, F.A.C.

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STAFF REMARKS: Whitley Bay Marina (Marina) is located in the city of Cocoa (City) on the Indian River Lagoon in Brevard County. The Marina is currently a commercial marina subject to two 10-year sovereignty submerged land leases, one of which expires in 2008 and the other in 2010. The Marina also has a sovereignty submerged lands easement for a 754-foot-long wooden breakwater near the docks. WBM recently acquired the Marina and the upland area riparian to the Marina and has requested a modification of the easement to reflect the change in ownership and modification of the two leases to reflect the change of ownership, to extend the term of the leases to 25 years with removal of the special lease condition allowing for lease fee discounts if a minimum of 90 percent of the slips are made available to the public on a 'first-come, first-served' basis. When ownership was transferred in September of 2004, it was agreed that the conditions of the leases would remain unchanged, requiring the same lease fees payment and no conditions limiting the term or fee of a slip rental. Currently, the uplands contain a clubhouse and ship's store, shower and bath facilities, and parking. The facility also provides public access to the Marina via an easement to the City along the shoreline as well as over a portion of the docks. WBM intends to spend over \$2,000,000 to repair and upgrade the marina and upland facilities. Its reasons for requesting to extend the terms of the two leases to 25 years are because of this substantial investment being made and the financing requirements of the lender.

WBM intends to make the slips available to members of the newly formed yacht club. A membership fee would be paid to the club and would include the right to use a designated slip, membership in Rockledge Country Club, use of the clubhouse and business center, a full time Dockmaster, dock attendants, and concierge services. The fees range from \$70,313 to \$255,000. Temporary transient rentals would be made available to the public through a rental pool of slips that are not currently occupied by club members. Department of Environmental Protection staff determined that the special lease condition allowing for lease fee discounts if a minimum of 90 percent of the slips are made available to the public on a 'first-come, first-served' basis did not apply to these leases because of the membership required to obtain on-going use of a slip. WBM has agreed to remove the conditions from the leases.

The commercial marina facility is now being considered as a private yacht club rather than a marina because of the membership fee required by WBM in order to obtain a slip. The issue has prompted heightened public concern regarding public access to marina slips in general and specifically in Brevard County. While there may be marinas on privately-owned submerged land, there are 17 marina facilities on state-owned submerged land that are at least 90 percent open to the public in Brevard County, none of which are located in the City. The nearest public marinas were the Indian Cove and Island Pointe Marinas directly across the Indian River Lagoon from Whitley Bay Marina in Merritt Island. However, staff has indicated that both marinas have been sold and the upland property is being converted to multi-family residential. The new owners of the Indian Cove and Island Pointe marinas have been informed that lease modifications will be required as a result of this conversion in order to conform with the private residential multi-family dock provisions of section 18-21.004(4), F.A.C, including

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the "40:1" and Unit: Slip ratios for any portion of the marina facility serving the multi-family upland development.

The City is very interested in the Marina being available to the public. They, along with the Cocoa Redevelopment Agency (CRA), invested over \$1,200,000 in the boardwalks, promenades, streetscape improvements, stormwater infrastructure improvements and the relocation of a sewer lift station on the site, all associated with the riverwalk and Cocoa Villages near the Marina. The City is also obligated under an agreement with WBM to financially maintain the boardwalk. The City relied on the fact that the Marina was open to the public when making this investment decision to enhance this portion of the downtown area for citizens and visitors.

On November 6, 2001, Cocoa electors approved the following non-binding referendum question, "If an opportunity arises, should the City Council pursue the acquisition of a public marina along the Indian River for purposes of preserving the general public's access to dock boats and other watercraft within the Cocoa downtown area?" A total of 1,343 electors voted, of which 794 (59 percent) voted "yes" and 549 (41 percent) voted "no". The Marina was subsequently offered to the City for \$5,000,000 but it did not purchase the Marina, in part because income projections showed the City would not turn a profit for 21 years from the date of purchase. In addition, the City and CRA felt the general public's access to dock boats and other watercraft within the Cocoa downtown area had been preserved because the new owner had accepted the current lease conditions at the time of the sale.

The City Council met on January 11, 2005 and passed Resolution No. 2005-04 requesting that the Board of Trustees reject WBM's application to amend its leases through the removal of the provision requiring 90 percent of the slips to be open to the general public on a 'first-come, first-served' basis; encouraging the Board of Trustees to protect and promote public access to the state's public waterways; and expressing its support of the retention and preservation of state lands so that benefits will accrue to all Floridians. WBM's attorney sent a letter, dated February 2, 2005, to the City threatening litigation if the City Council did not revoke its resolution and support WBM's application.

In addition, the Brevard County Legislative Delegation has provided a formal request for the Board of Trustees to deny the action due to concerns over the lack of public access to marinas in the area.

The Board of Trustees has five possible options that can be considered in response to this request:

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1. grant the 25-year extended term leases with no provision for reduced lease fees as a result of public availability on a 'first-come, first-served' basis;
2. deny the extended term leases and keep the current leases in place and assign them to the new owner;
3. grant two standard 5-year term leases with no provision for reduced lease fees as a result of public availability on a 'first-come, first-served' basis;
4. have a percentage of the slips available to the yacht club members and a percentage of the slips available to the public on a 'first-come, first-served' basis with no membership fee required on the latter; or,
5. grant two new 10-year term leases (1) retaining the special lease condition of public availability on a 'first-come, first-served' basis, as defined in section 18-21.003(23), F.A.C.; and (2) with the addition of a special lease condition that limits slip rental terms to no longer than one-year with no automatic renewal rights or conditions.

DEP staff is recommending that the Board of Trustees approve option five of the item because of the multiple factors that make this situation unique. Staff believes that granting the applicant's request for private use of the submerged lands is contrary to the public interest for the following reasons. The City has invested in infrastructure, boardwalks and promenades within and around the Marina, for which the City and the redevelopment agency (RDA) obtained loans. In order to get a favorable rate, the loans had to be used for public purposes. A private yacht club, which does not benefit the public at large, could subject the City or RDA to lose the loan's tax-exempt status, which would result in adverse economic impact to the City. Secondly, the City committed to maintain the boardwalks and promenades when the Marina was to be open to the public. That may not be possible for the private facility. Additionally, the Marina is the only one in the geographic area open to the public and loss of the facility will adversely impact the public's access to its submerged lands. The public/private partnership that has been developed between the Whitley Bay Marina and the City in the downtown revitalization efforts directly impacts the use of the submerged lands. The Board of Trustees may deny an application for private use of sovereignty submerged lands if it is contrary to the public interest under Article X, Section 11 of the Florida Constitution. Rather than deny the application staff recommends approval of option five.

(See Attachment 6, Pages 1-84)

RECOMMEND APPROVAL OF (1) OPTION FIVE ABOVE; AND (2) THE MODIFICATION OF THE SOVEREIGNTY SUBMERGED LANDS EASEMENT TO REFLECT THE CHANGE OF OWNERSHIP