

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
NOVEMBER 22, 2005

Item 1 Minutes

Submittal of the Minutes from the October 4, 2005 Cabinet Meeting.

(See Attachment 1, Page 1-16)

RECOMMEND APPROVAL

Item 2 BOT/Whitley Bay Marina, LLC/City of Cocoa Settlement Agreement

REQUEST: Consideration of a proposed settlement agreement in the case of Whitley Bay Marina, LLC v. Florida Department of Environmental Protection, Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, and the City of Cocoa, Florida Division of Administrative Hearings, Case Nos. 05-1173RX, 05-1174RU, 05-1350, 05-2173RP

COUNTY: Brevard

APPLICANTS: Florida Department of Environmental Protection's (DEP) Division of State Lands (DSL), City of Cocoa (City), and Whitley Bay Marina, LLC (WBM).

STAFF REMARKS: This case involves administrative challenges arising from the action taken by the Board of Trustees on March 17, 2005 regarding WBM.

On March 17, 2005, the Board of Trustees considered a request from WBM to: (1) assign an easement; and (2) modify two existing 10-year sovereignty submerged land leases to: (a) reflect a change in ownership; (b) extend the leases' terms to 25 years; and (c) remove special lease condition 31.B from both leases that required the marina to be 90 percent open to the public on a "first-come, first-served" basis. The Board of Trustees approved only the assignment of the existing leases and the easement to WBM.

On March 31, 2005, in response to the March 17, 2005 decision by the Board of Trustees, WBM filed petitions with the Florida Division of Administrative Hearings (DOAH) challenging the validity of the Board of Trustees' action, the validity of certain provisions of chapter 18-21, F.A.C., and challenging that special lease condition 31.B as an "agency statement" which must be adopted as a rule.

On May 17, 2005, the Board of Trustees adopted rule amendments to chapter 18-21, F.A.C. However, on June 16, 2005, WBM filed a petition with DOAH challenging the validity of the rule amendments to sections 18-21.003 and 18-21.011, F.A.C., related to submerged land lease fees and the clarification of certain rule definitions.

Item 2, cont.

The four petitions were consolidated for administrative hearing. Rather than continue litigation, the City and WBM have agreed to a settlement agreement subject to approval by the Board of Trustees. The material terms of the settlement agreement are as follows:

- (1) WBM will release the City from all obligations for the maintenance, repair or replacement of the public boardwalk (Riverwalk) and promenade located within the Marina for the duration of the leases and any extensions or renewals thereof;
- (2) WBM will grant easements over its upland property as necessary to allow the City to complete the Riverwalk between the Marina and the City's River Front Park;
- (3) WBM will repay the City the sum of \$607,837 for the construction of the Riverwalk and promenade;
- (4) WBM will assist the City, in consultation with DEP's Central District Office, to establish a public mooring field at an appropriate location and provide a maximum of \$50,000 for the reasonable costs associated with the project, with any excess cost borne by the City;
- (5) WBM will assist the City with providing water taxi service from the mooring field to the River Front Park, continue to allow hourly use of mooring space within the Marina for visitors to the Cocoa Village Enterprises, and will rename the Marina "Cocoa Village Marina";
- (6) WBM and the City will meet regularly and work together on specific matters that may improve the Marina's economic impact on the City and the successful economic operation of the Marina and its marketing program. WBM and the City shall consult with the Board of Trustees on issues involving the use of sovereignty submerged lands;
- (7) WBM, within ten days of approval of the proposed settlement agreement by the Board of Trustees, will dismiss with prejudice Petitions 05-1173RX, 05-1174RU, 05-1350, and 05-2173RP before the Florida Division of Administrative Hearings;
- (8) WBM will operate an active slip rental program that will include slips held under long-term use rights. Slips will be rented at commercially reasonable rates, taking into account the fees charged by other facilities within the region;
- (9) The Board of Trustees will issue two 25-year sovereignty submerged land leases without special lease condition 31.B and require WBM to withhold at least 20 slips from equity club membership and the active slip rental program in (7) above, and reserve those slips for local residents to be open on a first-come, first-served basis for rentals of up to one year; and
- (10) WBM agrees that no more than 96 slips shall be held under long-term use rights. After three years, WBM may provide statistical data to DEP and the City showing that at least 20

Item 2, cont.

slips were available to the public for rent for periods of one year or less if all the slips in the Marina were subject to a term exceeding one year but not to exceed the term of the leases. If DEP, in consultation with the City, is satisfied that at least 20 slips have been available to the public for rent on a first-come, first-served basis at all times during the three-year period, DEP may remove the limit on the number of slips in the Marina which may be subject to a term exceeding one year but not to exceed the term of the leases. However, the City may exercise its reasonable discretion, regardless of the decision of DEP, to withhold a maximum of 10 of the 20 slips from being subject to a Long Term Use Right until the City becomes reasonably satisfied that the slips are open to the public on a "first come, first served" basis as defined by section 18-21.003(23), F.A.C.

(See Attachment 2, Pages 1-76)

RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT

Item 3 Sailfish Capital Center Marina Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a ten-year sovereignty submerged lands lease containing 192,025 square feet, more or less, for a proposed commercial marina; and (2) authorization for the severance of approximately 15,000 cubic yards of sovereignty material.

COUNTY: Martin
 Lease No. 430034626
 Application No. 43-0129236-002

APPLICANT: Sailfish Capital Center Marina

LOCATION: Section 32, Township 37 South, Range 41 East, in the North Fork of the St. Lucie River, Class III Waters, within the jurisdiction of the city of Stuart
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, with an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes (slow speed year-round)

CONSIDERATION: \$43,231.27, representing (1) \$24,481.27 as the initial lease fee computed at the base rate of \$0.1342 per square foot, discounted 30 percent because of the "first-come, first-served" nature of the facility, and including the initial 25 percent surcharge payment; and (2) \$18,750 for the severance of sovereignty material computed at the rate of \$1.25 per cubic yard, pursuant to section 18-21.011(3)(a), F.A.C. Sales tax will be assessed

Item 3, cont.

pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual rental value pursuant to section 18-21.011(1)(a)1, F.A.C.

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

The applicant is proposing to construct a 96-slip commercial docking facility to be used in conjunction with the upland commercial marina facility. The facility will accommodate commercial and recreational vessels up to 100 feet in length with drafts up to 6.5 feet.

A minimum of 90 percent of all of the slips will be maintained on an open to the public, first-come, first-served basis, and this requirement has been included as a special lease condition.

The applicant is also proposing to dredge approximately 15,000 cubic yards of sovereignty material to allow for sufficient depths for navigation within the marina basin. The spoil will be disposed of in an upland spoil site.

On August 21, 1987, DER staff conducted a site visit at the subject site in response to a complaint of concrete fill in surface waters. The violation was settled, with a previous property owner through a Consent Order, executed on October 13, 1989. The Consent Order required the concrete to be broken up and removed, a riprap breakwater installed, and mangroves and spartina to be planted and monitored for a minimum of two years. Although some of the mangroves that were planted were not initially successful, the site recovered on its own and the file was closed in April 1996. A site visit was conducted on September 24, 2003, and found that mangroves were continuing to recruit within the area. The proposed project will not impact any of the mangroves or wetland vegetation associated with the Consent Order.

The proposed docking facility crosses the Florida Department of Transportation's (FDOT) right-of-way beneath the Roosevelt Bridge. A FDOT general use permit was approved for the project on January 19, 2005.

The proposed project does not meet the 25-foot setback to the north or south; however, waivers have been obtained from the affected adjacent property owners.

Item 3, cont.

DEP's environmental resource permit (43-0129236-002) does not authorize sewage pumpout facilities, liveboards, or fueling facilities. There are no seagrasses at the subject site. Avoidance and minimization of impacts to mangroves have been addressed in the permit. The project was noticed as required and no objections were received.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWCC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. Martin County is a designated manatee county with an approved manatee protection plan. FWCC has determined that this project is consistent with the Martin County Manatee Protection Plan.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan, according to a letter received from the city of Stuart on March 5, 2004.

(See Attachment 3, Pages 1-16)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$43,231.27**

Item 4 Palm Beach Marina, Inc., Recommended Consolidated Intent

REQUEST: Consideration of an application for the modification of a five-year sovereignty submerged lands lease to (1) change the term to ten years; and (2) increase the preempted area from 25,403 square feet to 58,756.81 square feet, more or less, for an existing temporary docking facility.

COUNTY: Palm Beach
 Lease No. 500005006
 File No. 50-0139713-003

APPLICANT: Palm Beach Marina, Inc., a Florida Corporation
 (d/b/a Gateway Marina)

LOCATION: Section 15, Township 45 South, Range 43 East, in Lake Worth Lagoon,
 Class III waters, within the local jurisdiction of the town of Hypoluxo
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, without an approved manatee protection plan
 Manatee Aggregation Area: Yes
 Manatee Protection Speed Zone: Yes (slow speed year-round)

Item 4, cont.

CONSIDERATION: \$6,638.63, representing the initial lease fee computed at the base rate of \$0.1342 per square foot, discounted 30 percent because of the "first-come, first-served" nature of the facility, and including the 25 percent surcharge payment for the additional area. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. Lease fees may be adjusted based on six percent of the annual rental value pursuant to section 18-21.011(1)(a)1, F.A.C.

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

The lessee is requesting to expand an existing temporary docking facility in conjunction with an upland dry storage facility having an existing capacity for approximately 240 dry spaces. There are currently three existing piers that contain approximately 32 available temporary mooring slips within the existing sovereignty submerged lands lease. The expansion would result in an addition of 42 temporary mooring slips for a total of approximately 74 temporary mooring slips and expand the existing preempted area from 25,403 square feet to approximately 58,756.81 square feet, for a total increase of 33,353.81 square feet.

A minimum of 90 percent of all of the slips are currently available and will be maintained on an open to the public, first-come, first-served basis, and this requirement has been included as a special lease condition.

As the demand for marina storage space increases, the lessee seeks to expand the use of the existing dock structures and temporary slips to accommodate the increased boat traffic on weekends and holidays, with expansions of all three piers. The docking facility would continue to work in conjunction with the upland dry storage facility.

The existing facility was first brought under lease by DEP, under delegation of authority, on December 18, 1992. The lease authorized a temporary docking facility in conjunction with an upland dry storage facility containing the preemption of 18,831 square feet of sovereignty lands.

Item 4, cont.

A lease modification was approved by DEP, under delegation of authority, on May 20, 1998 to allow for an additional 32 temporary to expand the temporary mooring of recreational vessels in conjunction with the upland dry storage facility mooring wet slips by extending the middle and south piers, for a total preemption of 25,403 square feet. However, the initial lease and an accompanying sketch of these structures did not specify the number of slips at the facility, thus not accurately reflecting the existing number of slips as 32. Upon subsequent renewals, the lease continued to contain this sketch. The current lease renewal, issued December 18, 2002, erroneously states that the facility has the ability to operate an existing 240-slip temporary docking facility, which appears to be boat slips in the water but is actually addressing the upland storage capacity. The current proposed modification will show the lease facility with a total of approximately 74 existing temporary slips with an upland storage capacity of 240 dry slips. The size of the vessels will not be changing with the proposed expansion.

The project is located within the 25-foot riparian setback area and a setback waiver has been obtained from the affected adjacent property owners on the north and sound ends from the previous authorizations, but an updated waiver is being obtained from the property owner to the south as ownership has changed since the application was received. This has been addressed as a special approval condition.

The existing lease authorizes fueling facilities and a sewage pumpout facility, and it does not authorize liveboards. The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. Palm Beach County is a designated manatee county without an approved manatee protection plan, but is deemed to be making significant progress by FFWCC.

A site visit was conducted on May 27, 2005 to verify resource coverage in the area of the proposed expansion. *Halophila johnsonii* (Johnson's seagrass) and *Halodule wrightii* (Shoal grass) were located in patches varying from 5 to 25 percent coverage throughout the footprint of the proposed northernmost extension. No other seagrasses were observed within the footprint of the proposed middle and southern extensions. In order to protect seagrasses, design modifications including the use of grated decking, a reduction in the width of the pier, and the limitation of temporary mooring has been made in efforts to avoid and minimize impacts to seagrass resources.

The modified lease request was not required to be noticed but nine property owners were specifically noticed and no objections were received by October 1, 2005.

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. In accordance with the Compliance Agreement between the DCA

Item 4, cont.

and the local government, an amendment has been adopted which brought the plan into compliance. The proposed action is consistent with the adopted plan as amended according to a letter received from the Town of Hypoluxo, dated July 12, 2005.

(See Attachment 4, Pages 1-23)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$6,638.63**

Item 5 Palm Beach Yacht Club Associates Lease Renewal/Expansion

REQUEST: Consideration for renewal and expansion of a 10-year sovereignty submerged lands lease to increase the preempted area from 68,564 square feet to 113,911 square feet, more or less, for an existing public marina.

COUNTY: Palm Beach
 Lease No. 500002276

APPLICANT: Palm Beach Yacht Club Associates (f/k/a Flagler Marina Associates)

LOCATION: Section 15, Township 43 South, Range 43 East, in Lake Worth Lagoon, Class III Waters, within the local jurisdiction of the city of West Palm Beach
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, without a manatee protection plan
 Manatee Protection Speed Zone: Yes, slow speed zones

CONSIDERATION: \$20,489.45, representing (1) \$12,222.19 as the initial lease fee computed at the base rate of \$0.1342 per square foot, discounted 30 percent because of the first-come, first-serve nature of the facility, and including the initial 25 percent surcharge payment for the additional area; (2) \$7,767.26 as lease fees in arrears for the unauthorized use of sovereignty submerged lands from March 31, 1984 through October 4, 2004, pursuant to a temporary use agreement (TUA), which has been paid; and (3) \$500 as an administrative fine for the unauthorized use of sovereignty submerged lands, which has been paid. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual rental value, pursuant to section 18-21.011(1)(a)1, F.A.C.

STAFF REMARKS: The applicant is requesting renewal of an expired lease as well as expansion of that lease to include the submerged land lying between an existing dock structure

Item 5, cont.

and an existing breakwater. The expansion will increase the preempted area of the Palm Beach Yacht Club public marina from 68,564 square feet to approximately 113,911 square feet, for a total increase of 45,347 square feet. Approval of this request would add 3 slips to the facility for a total of 50-slips. No additional structures are proposed.

On July 2, 1974, the Board of Trustees approved a 25-year lease containing 68,040 square feet to the Palm Beach Yacht Club (later adjusted to include 68,584 square feet). The 25-year lease expired in 1999 and although a new lease document was never executed, the facility continued to operate and pay annual lease fees to the Department of Environmental Protection (DEP). The applicant is up to date on its fees for the historically leased area.

On September 5, 2002, the applicant applied for a permit to modify the existing finger piers. During the processing of the application it was identified that the lease document had expired and the area between the breakwater and the docking structure needed to be included within the preempted area to be leased. On December 3, 2003, the permit application was withdrawn and the file was referred to DEP's Southeast District Enforcement staff.

On January 7, 2004, a follow-up inspection was performed by enforcement staff and identified three vessels were being moored along the breakwater. The mooring area is outside the area previously leased by Palm Beach Yacht Club. On August 12, 2004, a TUA was executed and lease fees in arrears in the amount of \$7,767.26 were collected for 3,900 square feet of preempted area used for the mooring of 3 vessels along the breakwater. A Consent Order (OGC File No. 05-2569) was executed and administrative fines in the amount of \$500.00 were collected.

A Butler Act Disclaimer, Disclaimer No. 30498 (4723-50), and quitclaim deed were granted by the Board of Trustees to Palm Beach Yacht Club on July 12, 2001 for the 11,538 square feet of dock structure at the facility. The area subject to the Disclaimer is not included within the square footage of the lease.

The applicant has paid lease fees through October 1, 2005 for 68,564 square feet calculated at the base rate of \$0.1342 for a total of \$4,094.00. The applicant has been billed for the October 1, 2005 through October 1, 2006 billing cycle.

The Florida Fish and Wildlife Conservation Commission (FFWCC), Division of Habitat and Species Conservation, Imperiled Species Management Section, Manatees, reviewed the application on October 17, 2005 and has no objection to this application. Palm Beach County is a designated manatee county without an approved manatee protection plan, but is deemed to be making significant progress by FFWCC.

Item 5, cont.

A minimum of 90 percent of all of the slips will continue to be maintained on an open to the public, first-come, first-served basis, which was also a special condition of the expired 25-year lease and will remain in the proposed lease modification.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan, according to a letter received from the City on March 5, 2004.

(See Attachment 5, Pages 1-9)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITION AND PAYMENT OF \$20,489.45

Item 6 BOT Delegations Additions/Revisions

REQUEST: Consideration of additions and revisions to delegations granted by the Board of Trustees.

COUNTY: Statewide

STAFF REMARKS: On September 21, 2004, the Board of Trustees affirmed existing delegations granted to the Department of Environmental Protection (DEP). While executing its duties, it came to the attention of DEP staff that some of the delegations presented at the meeting on September 21, 2004, were incorrect, and revisions were submitted for reaffirmation by the Board of Trustees on February 16, 2005. At that time, DEP was directed to return in a year from the date of the original affirmation to review the delegations and consider recommendations for additional delegations and modifications to existing delegations, where necessary, to address changes in the day-to-day operations of the Board of Trustees and to improve DEP staff's ability to provide quality customer service. Two changes are recommended to the current delegations as follows:

DIR-1(3)(c) and DSL-36 – Deletes, "or agree to convey." This language was added to DEP's internal delegations and was picked up in the delegations affirmed by the Board of Trustees on September 21, 2004. Staff subsequently noticed the addition, which limits authority delegated by the Board of Trustees in 1993. By deleting the words "or agree to convey," DEP staff will be able to execute documents such as sales and exchange contracts approved by the Board of Trustees. Deeds will still require the signature of the Board of Trustees.

Item 6, cont.

DDM1(e) – When amending the delegation for heightened public concern, DEP staff inadvertently omitted the delegation to District Directors to take action on applications when such application is not reasonably expected to result in heightened public concern.

The following delegations were approved on an item-by-item basis over the years as program specific delegations, but were not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

DSL-42 – Adds the delegation to impose fines for upland violations. The Board of Trustees is authorized to administer fines for unauthorized use of state-owned lands pursuant to section 253.04(2), F.S.

DSL-43 – Adds the delegation of authority to approve ground sublease agreements within the University of South Florida's research park. This delegation was originally approved in a specific request to the Board of Trustees on February 26, 2004, substitute item number 3, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

DSL-44 – Adds the delegation of authority to approve sub-subleases and amendments to sub-subleases within the City of Pembroke Pines' Health-Care Park pursuant to section 253.002(1), F.S. This delegation was originally approved in a specific request to the Board of Trustees on June 24, 2004, substitute item number 8, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

DSL-45 – Adds the delegation of authority to approve subleases for Department of Children and Families' (DCF) cluster facilities pursuant to section 253.002(1), F.S. This delegation was originally approved in a specific request to the Board of Trustees on October 26, 2004, item number 4, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005. Adds "or its successor's" after DCF. Following the delegation from the Board of Trustees, the Agency for Persons With Disabilities separated from DCF and became a separate agency.

DSL-46 – Adds the delegation of authority to resolve survey discrepancies as identified on the Point Washington State Forest boundary encroachment map dated November 10, 2004, by settlements in lieu of litigation. This delegation was originally approved in a specific request to the Board of Trustees on February 16, 2005, item number 4, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

DSL-47 – Adds the delegation of authority to: (1) acquire, fee simple title to all remaining land within the portion of the Save Our Everglades (SOE) CARL project lying south of I-75 on which two bona fide offers have been made by the exercise of the

Item 6, cont.

power of eminent domain, pursuant to the provisions of chapters 259.73 and 74, F.S.; and (2) delegate authority to the Secretary of DEP to accomplish the acquisition as described herein through negotiation or condemnation, including the authority to prepare and execute all necessary parcel-specific condemnation resolutions. This delegation was originally approved in a specific request to the Board of Trustees on multiple dates which were January 23, 2001, item number 15; February 6, 2001, item number 5; April 10, 2001, item number 6; May 15, 2001, item number 5; September 11, 2001, item number 3; November 27, 2001, item number 6; April 23, 2002, item number 5; March 13, 2003, item number 8; and March 25, 2003, item number 10, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

DSL-48 – Adds the delegation of authority to: (1) acquire, by the exercise of the power of eminent domain pursuant to the provisions of chapters 259.73 and 74, F.S., fee simple title to all remaining land (thirteen parcels) within the portion of SOE Florida Forever project (Phases VI and XII) lying south of I-75; including any parcel that has not been settled or sent to eminent domain, even if there is an executed contract that is unable to close. Two bona fide offers have been made on all un-acquired properties; (2) obtain authority to exercise the power of eminent domain concerning claimed prescriptive rights, if any, to all roadways, rights-of-way or primitive roads/dirt farm trails within the project area to include, but not limited to, that certain Miller Boulevard Extension running a mile plus or minus to the north of U.S. 41, along and into the Golden Gate Estates South project area; and (3) delegation authority to the Secretary of DEP, or his designee, to accomplish the acquisitions as described herein through negotiation or condemnation, including authority to prepare and execute all necessary parcel-specific condemnation resolutions. This delegation was originally approved in a specific request to the Board of Trustees on February 11, 2003, item number 3, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

DSL-49 – Adds the delegation of authority to: (1) extend offers and approve any contract for the sale and purchase of land pursuant to section 259.041(1), F.S., at \$7,000 over, or up to 125 percent, per parcel of the current appraised value, whichever is grater, when the purchase price per parcel does not exceed \$100,000; (2) recognize and appraise as Rate of Growth Ordinance (ROGO) parcels those parcels that previously qualified for ROGO; and (3) allow payment in lieu of litigation to settle claims by private landowners to lands that appear to be sovereignty submerged lands, such payment not to exceed \$1,000 per parcel. For the following Florida Forever projects: Florida Keys Ecosystem, North Key Largo Hammocks, and Coupon Bight/Key Deer. This delegation was originally approved in a specific request to the Board of Trustees on February 16, 2005, item number 8, but was not included in the delegations reaffirmed by the Board of Trustees on February 16, 2005.

Item 6, cont.

On September 21, 2004, the Board of Trustees approved an amendment to item number 12 regarding delegation of authority to take final agency action on an application that is reasonably expected to result in a heightened public concern under section 18-21.0051(4), F.A.C. Pursuant to the approval of said amendment, the determination of whether an application triggers the heightened public concern provision, hence requires Board of Trustees' action, shall be made only by the DEP's Secretary or Deputy Secretary. In order to implement this amendment, the Deputy Secretary of Land and Recreation has reviewed all projects with any level of heightened public concern, such as one or more objection letters; potential challenges; negative comments from state or local agencies; controversial location; etc., where those concerns can not be resolved and where the anticipated agency action is to approve the proposed activity. However, this review was not required if the proposed activity requires final agency action by the Board of Trustees based on one of the size thresholds under section 18-21.0051(2), F.A.C., or staff determines that the proposed activity is of heightened public concern.

Under this process a total of 23 projects were reviewed for a determination of whether or not to elevate them to the Board of Trustees under the heightened public concern criteria with the following results:

- Two projects were elevated to and approved by the Board of Trustees - Basil Street and River Wilderness. The River Wilderness project was modified to provide additional public interest as part of this process.
- Two projects were tentatively elevated to the Board of Trustees - Dunes and Il Lugano. The Dunes project was denied by the water management district Board and, hence, did not move forward to the Board of Trustees. Il Lugano was subsequently modified by reducing the number of slips to conform to the Florida Fish and Wildlife Conservation Commission's recommendation which eliminated the heightened public concern issue.
- Three projects may be elevated in the future depending on the outcome of the review process:
 - Las Olas Marina - conversion of 16 public slips at a municipal marina to private water taxi use. The file is incomplete and the applicant has been sent a preliminary evaluation letter notifying them the application does not appear to qualify for approval;
 - Two Rivers - modification of an existing revenue generating facility that is not under lease. A temporary use agreement and lease fees in arrears are currently being negotiated; and
 - Channel Marker 71 - expansion of a revenue generating dock that is under lease in an otherwise residential neighborhood. The file is currently incomplete.

Item 6, cont.

The review process has been successfully conducted within the limits of chapter 120, F.S., time clock and has had a positive impact on some of the projects reviewed. On that basis, staff recommends that this process continue.

(See Attachment 6, Pages 1-21)

RECOMMEND APPROVAL

Item 7 City of Tallahassee Conveyance/Johns/Clemons and Chevron/319 Blocks

REQUEST: Consideration of a request to sell approximately 5.14 acres of state-owned non-conservation land in Leon County to the City of Tallahassee.

COUNTY: Leon

APPLICANT: City of Tallahassee (City)

LOCATION: Section 36, Township 01 North, Range 01 West

CONSIDERATION: \$5,850,000 to be deposited into the Internal Improvement Trust Fund

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u> Pallardy <u>(05/25/05)</u>	<u>BUYER'S</u> PURCHASE <u>PRICE</u>	<u>CLOSING</u> <u>DATE</u>
Johns/Clemons	2.65	\$2,950,000		120 days after
Chevron/319	<u>2.49</u>	<u>\$2,900,000</u>		BOT approval
	5.14	\$5,850,000	\$5,850,000	

STAFF REMARKS: The Johns/Clemons Block acquisitions began in 1956 and in 1963 the Johns Building was constructed. In 1967, the Clemons Building was acquired to help with the increasing demand for state office space during this period. The Chevron/319 block acquisitions began in 1975 with the largest acquisition being the Chevron Building in 1980. This facility was used by the Department of Management Services (DMS) as the Facilities Maintenance Paint Shop.

DMS completed an analysis of state-owned property in Tallahassee as 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. The Johns/Clemons and Chevron/319 buildings were among several properties identified as facilities with high operating expenses, primarily due to utility consumption related to antiquated equipment. On March 17, 2005, the Board of Trustees approved, without

Item 7, cont.

objection, the packaging and marketing of the Johns/Clemons and Chevron/319 blocks with direction to staff of Department of Environmental Protection (DEP) and DMS to provide the Board of Trustees with the appraisals for the properties and estimated costs for construction at Southwood. The original appraisal for each parcel was updated and DEP staff has provided copies of the appraisal as requested. In addition, staff obtained the estimated costs for construction at Southwood from DMS. At this meeting, the City advised they were interested in purchasing these two blocks. The City plans on promoting mixed use development on these parcels, which could include uses such as hotel, residential, and retail. This development would be consistent with the City's Gaines Street Revitalization Plan.

Pursuant to section 253.034(6)(f) and section 253.111, F.S., Leon County and the City were noticed of the proposed sale of these two parcels. The City provided the required formal resolution dated May 25, 2005, indicating it will pay the appraised market value for these parcels and costs associated with the purchase. Leon County did not submit a formal resolution within the required 40 days and did not express any interest in purchasing these parcels.

In accordance with section 18-2.019 F.A.C., state agencies were notified of the proposed sale.

Pursuant to section 253.115, F.S., property owners within 500 feet of the subject property were also notified and no objections were received.

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

(See Attachment 7, Pages 1-66)

RECOMMEND APPROVAL

**Item 8 Kessel/Amoroso/Fulton-Jerz Option Agreements/Cayo Costa Florida
Forever Project**

REQUEST: Consideration of three option agreements to acquire 0.90 acre within the Cayo Costa Florida Forever project from Dave Kessel, Cynthia Amoroso, Mary S. Jerz, James B. Jerz, Gary R. Fulton, and Mary Jean Fulton.

COUNTY: Lee

LOCATION: Section 12, Township 44 South, Range 20 East

**Board of Trustees
Agenda - November 22, 2005
Page Sixteen**

Item 8, cont.

CONSIDERATION: \$607,200

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (05/10/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Kessel	0.30	\$240,000	\$240,000	\$160,000*	\$220,000** (92%)	120 days after BOT Approval
<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (05/10/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Amoroso	0.30	\$220,000	\$220,000	\$165,000***	\$193,600**** (88%)	120 days after BOT Approval
<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (05/10/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Fulton-Jerz	0.30	\$220,000	\$220,000	\$5,000*****	\$193,600***** (88%)	120 days after BOT Approval
Total	0.90	\$680,00	\$680,000	\$330,000	\$607,200	

- * Purchased date May 2003
- ** Value based on two residential lots at \$120,000 each (\$733,333 per acre)
- *** Purchased date May 2003
- **** Value based on two residential lots at \$110,000 each (\$645,333 per acre)
- ***** Purchased date June 1981
- ***** Value based on two residential lots at \$110,000 each (\$645,333 per acre)

STAFF REMARKS: The Cayo Costa project is a 90 percent complete project. The project contains 2,090 acres of which 1,954.4 acres have been acquired or under agreement to be acquired. After the Board of Trustees approves these agreements, 134.7 acres, or 6 percent of the project, will remain to be acquired. These parcels will be purchased with Save Our Coast funds.

The Cayo Costa land acquisition project was first approved in the 1970s under the Environmentally Endangered Lands Program, Florida's first large-scale conservation land acquisition effort. Consisting of the islands of Cayo Costa and a portion of North Captiva, the project is located at the mouth of Charlotte Harbor, one of the most productive estuaries in Florida. The primary purpose of the project is to protect the largest barrier islands that remain in a natural condition on the southwest Florida coast. Efforts to acquire the islands have continued under the Conservation and Recreation Lands Program, the Preservation 2000 Program, the Florida Forever Program, and the land acquisition programs of Lee County. Today, Cayo Costa Island State Park contains 2,449.1 acres.

In recent years, acquisition efforts have focused on developable lots in the three subdivisions located in the center of Cayo Costa Island: Cayo Costa, La Costa Isles and Island Grove. Approximately 165 lots, containing 35 acres and representing a combined appraised value of

Item 8, cont.

approximately \$10 million, remain to be acquired in the three subdivisions. An additional 100.6 acres scattered throughout the project remain to be acquired.

Requests for Lee County building permits in the subdivisions have increased rapidly in recent years. Building permits have been approved and houses are currently under construction. As more houses are constructed, management and protection of the state park's natural and cultural resources will become more difficult. Destruction of vegetation and wildlife habitat is occurring from the use of ATVs by residents. Residential water wells and septic systems, which are required because no water or sewage disposal service is available, create impacts on the island's shallow freshwater lens.

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.

Title insurance policies and environmental site evaluations will be provided by the purchasers prior to closing.

A chain of sandy barrier islands, including Cayo Costa and North Captiva, protects the entrance to Charlotte Harbor, one of the largest and most productive estuaries in Florida. Public acquisition of the Cayo Costa Island project will protect the beaches, dunes and hammocks of these islands, the largest barrier island in natural condition in southwest Florida- while giving residents and tourists a beautiful natural shore to enjoy for years to come.

These properties will be managed by DEP's Division of Recreation and Parks as an addition to the Cayo Costa State Park.

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

(See Attachment 8, Pages 1-48)

RECOMMEND APPROVAL

**Board of Trustees
Agenda - November 22, 2005
Substitute Page Eighteen**

**Substitute Item 9 MSKP III, Inc., Purchase Agreement/Managing Agency Designation/
Management Policy Statement Modification and Confirmation/
Direction/Babcock Ranch Florida Forever Project**

**PRELIMINARILY APPROVED ON NOVEMBER 8, 2005
DEFERRED FROM THE OCTOBER 4, 2005 AGENDA**

REQUEST: Consideration of (1) a purchase agreement to acquire approximately 73,476.5 acres within the Babcock Ranch Florida Forever project from MSKP III, Inc.; (2) designation of the Florida Fish and Wildlife Conservation Commission as the managing agency; (3) modification and confirmation of the management policy statement; and (4) direction to Department of Environmental Protection staff to develop legislation for creation of a non-profit corporation to operate the Babcock Ranch.

COUNTIES: Charlotte and Lee

LOCATION: Sections 01 through 36, Township 41 South, Range 26 East; Sections 01 through 36, Township 42 South, Range 26 East; Sections 01 through 07, 09, and 12, Township 43 South, Range 26 East; Sections 19 through 36, Township 41 South, Range 27 East; Sections 01 through 36, Township 42 South, Range 27 East; and Sections 04 through 09, 17 and 18, Township 43 South, Range 27 East

CONSIDERATION: Total of \$350,000,000 in a series of five phases for the five phases as follows:

	Option Term	Purchase Price
Phase I and II	July 2006	\$162,500,000*
Phase III	July 2007	\$ 62,500,000*
Phase IV	July 2008	\$ 62,500,000*
Phase V	July 2009	\$ 62,500,000*

* Amounts are approximate, based on value of the acreage acquired in each Phase.

Funding Sources: \$200M BOT Florida Forever, \$100M General Revenue (proposed), \$10M FWC, \$40M Lee County (subject to Lee County vote of approval)

PARCEL	ACRES	APPRAISED BY		APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE
		Holden (09/17/05)	Boyd (09/08/05)			
MSKP III, Inc	73,476.5	\$394,695,000	\$390,150,000	\$394,695,000	TBA*	\$350,000,000 (89%)

*Seller entered into a merger agreement in July 2005, with closing scheduled for April 2006. The Babcock family bought the property in pieces over time beginning in early 1900's. Purchase price unknown.

Additional value through donations by seller over term of the contracts:

Donation of proposed conservation easement = \$1.1M

The proposed conservation easement area is roughly 294 acres. This area is valued as agricultural land at \$5,000 per acre. The proposed easement is very restrictive and does not allow agricultural or timber activity; any subdivision; construction of buildings or other structures; creation of roads or jeep trails; exploration for and extraction of oil, gas or minerals; commercial water wells; and other prohibited uses as listed in Article IV of the proposed Deed of Conservation

**Board of Trustees
Agenda - November 22, 2005
Substitute Page Nineteen**

Substitute Item 9, cont.

Easement. Due to the severe restrictions, the price for the conservation easement is projected at 75% of the fee simple value, giving a total price of approximately \$1,100,000 (\$5,000 per acre times 75% of fee value times 294 acres). This is not based on a specific appraisal of the easement.

Donation of Personal Property: \$5 M+

At the end of the 10-year management agreement, the Manager is donating all of the cattle, ranch equipment, and any other personal property on the ranch. The cattle today are worth approximately \$5 M (They maintain a herd of about 5000 and in today's market they run about \$1000 a head). Today's equipment value is not known.

STAFF REMARKS: The Babcock Ranch is an "A" group project on the Florida Forever Full Fee Project Interim List approved by the Board of Trustees on August 23, 2005. After the Board of Trustees approves this agreement, the project will be complete.

The Department of Environmental Protection (DEP) was notified on July 20, 2005, by Mr. Sydney Kitson of Kitson & Partners, LLC (Kitson&Partners), that MSKP III, Inc. had entered into an agreement to merge into the Babcock Florida Company and was interested in selling a major portion of the real estate assets known as Babcock Ranch to the state if the state was still interested. Since that time, Kitson&Partners and DEP's Division of State Lands (DSL) have been working with representatives of Charlotte and Lee Counties and a myriad of state, regional and local interests to put together a plan to provide for the purchase of approximately 81 percent of the land associated with Babcock Ranch, preservation of the natural and cultural resources that come with the property, and creation of a unique management regime that will support what has been a successful commercial ranch.

Lee County approved the purchase agreement on November 15, 2005, and is scheduled to vote on the Interlocal Agreement on November 29, 2005. Charlotte County is scheduled to vote on the Interlocal Agreement on November 21, 2005.

Details of the Purchase Agreement

Pursuant to section 259.041(9)(a) F.S., a purchase agreement is being utilized for this acquisition. Patterned after the successful Board of Trustees' acquisition of the Guana Tract in the mid 1980's, the purchase agreement is designed to provide for approval today of five separate closings contingent on future appropriations of funding by the Florida Legislature and from our funding partners. DSL proposes to make the purchases starting on the eastern boundary and working to the west. The first closing will occur no later than July 31, 2006, with each subsequent closing occurring no later than the following July 31st, and the final closing no later than July 31, 2009. The contract has been amended to address five situations: (1) in the event the Interlocal Agreement and the Charlotte County Overlay have not been completed but can be, the seller has 60 days from July 31, 2006 to satisfy those conditions or DSL has the ability to terminate the agreement; (2) in the event those conditions can not be met, the seller shall notify DSL of its intent to waive the conditions or terminate the agreement by July 31, 2006, or DSL has the discretion to terminate this agreement; (3) the Board of Trustees may accelerate the closing for all or a portion of contiguous lands in the immediately succeeding phase or phases provided that funding is available; (4) the Board of Trustees has

Substitute Item 9, cont.

sole discretion to select the lead managing agency; and (5) on or before each takedown, the lease between the Town & Country Utility Company (Utility) and Babcock Corporation will be terminated with respect to the applicable takedown parcel.

Because we are in the middle of the 6th year of the Florida Forever Program and only have four more years of funding to go, staff has recommended the Legislature fund a portion of this purchase with General Revenue in the amount of \$100 million. If appropriated during the 2006 Legislative Session, the \$100 million General Revenue will enable DSL to close on the first two phases simultaneously. Lee County has also committed to participating in the acquisition to protect the lands that are within that county. Pursuant to Lee County's funding source, Lee County Conservation 2020 Land Program, Lee County will take title to the property in Lee County to the extent of its contribution to the purchase price. On March 17, 2005, the Board of Trustees approved a similar Lee County acquisition, the Boomer Tract located in the Estero Bay Florida Forever Project area. The property owned by both Lee County and the Board of Trustees will be managed together as one piece. The Florida Fish and Wildlife Conservation Commission (FWC) will also be a funding partner with \$10 million of that agency's Inholdings and Additions funding.

The following unique attributes of this acquisition prevent it from establishing a precedent for future purchases:

1. The Board of Trustees has never before had a project with an existing, fully certified private water utility under the rules and statutes of the Public Service Commission (PSC). The Utility authorized as the sole provider of water across the entire parcel of land proposed for purchase and authorized to distribute water commercially offsite, provided the utility secures the necessary consumptive use permits (CUPs) from the South Florida Water Management District. The Utility has been in existence since 1999 and currently provides over 450 wells across the 91,000 acres for potable and non-potable agricultural needs. Thirty-one wells are potable. The Utility and the Babcock Corporation-Florida entered into a lease arrangement across the entirety of the property to provide the Utility with access for the wells and easements for pipelines that might be needed in the future. The Utility pays the Babcock Corporation \$0.20 per 1,000 gallons per day from the wells on the property under the terms of the lease. On or before each takedown, the lease will be terminated with respect to the applicable takedown parcel.
2. Lee and Charlotte counties intervened in the certification process before the PSC and the outcome was two separate stipulations between the Utility and the counties. Lee County's stipulation requires the Utility to evaluate its ability to deliver water to the county and the county has the choice to receive the service. Charlotte County's agreement addresses the operations of the Utility, as it relates to protecting the integrity of the ecosystem of Telegraph Cypress Swamp.

Substitute Item 9, cont.

3. In order to facilitate the sale to the Board of Trustees, the seller has to also be able to secure a specific number of development units from Lee and Charlotte counties for the portion of the ranch it is retaining (19,500 acres). The seller may use the Rural Lands Stewardship Program (RLSP) under chapter 163, F.S., as the means for providing those credits and working with each county to secure those credits. .

Additionally, the Purchase and Sale Agreement is specifically based upon the seller's ability to apply for participation in the RLSP under section 163.3177, F.S. However, if the seller chooses to apply RLSP credits to lands the state is acquiring, and in so doing the property is determined to have diminished in value prior to takedown, the seller has only one of two choices: provide additional acreage or accept the lesser price. The seller does not have the option to cancel this contract for this specific diminution in value.

Appraisals

Appraisals of the entire Babcock Ranch, containing approximately 91,361 acres, were conducted in August 2004 by David W. Boyd, MAI and in July 2004 by Philip M. Holden, MAI. Updates to the appraisals were conducted as of September 2005. The updated appraisals are of a 73,471-acre portion of the total ranch that is included in this transaction. An additional revision was made in October 2005 as a result of a change in the configuration of the boundaries. The acreage of this transaction changed slightly to approximately 73,476.5 acres. With the new configuration, roughly 2,552 acres north of Curry Lake are to be retained by MSKP III, Inc., and an equivalent amount toward the southern boundary are to be included in this transaction. The shifted boundary results in additional acreage in this transaction in a higher value area as projected by the appraisers. However, there is no change in the purchase price as a result of the boundary change.

The appraised values do not include the value of any business currently in operation on the ranch such as the utility company, tenant farming, cattle, timber, eco tours or any other business operation. The appraisals value the fee simple interest. Any title exceptions not already considered will be examined by the appraisers and adjustments will be made to the values if appropriate. Also, there is potential that portions of the property may be used as part of the RLSP. If this happens, the affect on value would be considered prior to closing.

Management Agreement

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate FWC as the managing agency for this site. FWC will receive management money for hunting and wildlife management. The management of the working ranch will continue under a Management Agreement (MA) among the Board of Trustees, Lee County, FWC, and Babcock Ranch Management, LLC, that will incorporate the management plan as adopted by the Board of Trustees and continue the predecessor's successful management of the property. It also directs the Ranch Manager to cooperate with FWC in the management of wildlife and game species on the property. Under the proposed MA, the management entity will manage the

**Board of Trustees
Agenda - November 22, 2005
Substitute Page Twenty-two**

Substitute Item 9, cont.

property for five years, commencing on the closing date of the first phase, with an option to extend management for an additional five years. For the purposes of this acquisition, the managing agencies are FWC and Babcock Ranch Management, LLC, until such time as the management agreement terminates.

Pursuant to sections 259.032(9)(d) and (e), F.S., the Board of Trustees has sole discretion to select the lead managing agency. The MA provides for the following: (1) the manager will be responsible for the traditional activities associated with the business operation of the ranch; (2) continuation of the existing silviculture, cattle and equine operation, in accordance with the Natural Resources Conservation Service, local soil and water district and/or State of Florida Department of Agriculture and Consumer Services' Best Management Practices while researching improved ways to ranch and farm to better protect environmental resources and water quality; (3) the manager may establish a nursery to propagate native species for commercial sale and for use by the Board of Trustees and seller; (4) the manager shall establish a Research and Education Center, in cooperation with the Florida Gulf Coast University, on the property; (5) off highway vehicles, as defined in section 317.0003(1), F.S., shall not be allowed on the property except for maintenance activities; (6) pastures currently improved for cattle and equine operations may continue to be used as improved pasture; (7) the manager may exercise the rights to wildlife viewing and nature study on or related to the property during the term of the MA; (8) the manager shall operate and manage the Cypress Lodge until the management plan is in place, and shall cooperate with the Board of Trustees to develop and place a camping and cottage system within the area as provided for in the future management plan of the property; (9) the manager, in concert with the lead managing agency, may develop a comprehensive greenway system for the use of the public; and (10) in addition, the manager shall continue to manage and operate the ecosystem tour program currently in operation on the property, while working with the Board of Trustees (or its designees) to improve the quality of the experience.

The management agreement also provides that in the event the approved management plan makes changes to the operations of the ranch that causes it to operate at a loss, then the managing agency will make up for the loss of net revenue so the ranch operations break even, subject to a legislative appropriation for the purpose.

The management agreement has been amended to clarify that FWC is the entity responsible for managing hunting on the property. It was also amended to clarify that for addressing financial matters under this agreement with the manager, with respect to revenues, the measurements will be on a net revenue basis.

Donation of Conservation Easement

Kitson&Partners agreed to donate a conservation easement to the state to allow for an ecological connection between Curry Lake on the western boundary of the property and Telegraph Cypress Swamp. The conservation easement provides for public access across the

Substitute Item 9, cont.

easement for hiking and birdwatching, based on the results of the management plan, and Kitson&Partners will be able to build a road through the easement and will elevate it if necessary to protect the ecological attributes of the property.

Gopher Tortoise Mitigation Park

FWC has funds to establish a Gopher Tortoise Mitigation Park (GTMP) at Babcock Ranch provided the habitat is conducive to do so. Staff will work with the manager to perform the necessary studies to determine appropriate sites and if it's determined that there is adequate habitat and acreage to accommodate a GTMP at Babcock Ranch and if the seller agrees, FWC will be able to offset some of the land acquisition costs for Florida Forever (\$5,000/acre) for up to \$10 million.

Proposal for Creation of A Non-Profit Corporation to Operate Babcock Ranch

The 73,476.5-acre parcel the Board of Trustees is acquiring has many complex activities associated with it. For example, there is cattle ranching, timbering, and an ecotourism business. The traditional plans for public use add their own complexities: hunting, hiking, bicycling, horse stable with trail rides, various types of camping, state park-type cabins, etc. The local community (at-large) has embraced the opportunities provided by this acquisition of Babcock Ranch with their own contributions for increasing value. For example, Florida Gulf Coast University wants to establish educational opportunities both on the property the Board of Trustees will buy and within the proposed development for a number of its programs. These programs include the university's Hospitality, Bio-Technology, Environmental Education, and Urban Planning Programs. The area's environmental organizations want to be involved in environmental education, science, and other efforts on the ranch.

The Babcock Ranch is currently managed with a staff of 75 employees: ranch hands, office staff, field crews, tour guides, etc. Most of these employees have been with the Babcock Corporation over a long period of time and have a good working knowledge of both the land and the operations of the ranch. Many live on the ranch and their housing is factored in as part of their compensation package.

The manager states that it intends to keep the current 75 employees on the payroll. The manager also states that it intends that the area businesses that have depended on the ranch for their livelihood will continue to have that business relationship; and with the addition of the public recreational uses, the surrounding area will receive the additional economic benefits attendant with money spent on bird watching, camping, hunting, and recreating on state recreational lands. Taking into account the varied interests, complex issues, and desire on everyone's part to see Babcock Ranch continue to be run as a successful ranch, but adding a wide variety of public recreational activities as well, DSL staff has prepared a unique proposal for the overall management of this fabulous state/regional resource. After consulting with FWC staff, DEP is recommending that a legislatively created non-profit corporation be

Substitute Item 9, cont.

established to operate the Babcock Ranch. An appointed Board of Directors with a wide range of backgrounds, such as business administration, agribusiness, timber management, environmental engineering, etc., that benefit the ranch operations would help ensure a successful business with any profits going back into the operation of the ranch. Additionally, these profits would provide the means for the Babcock Ranch operation to fund itself, as well as, provide additional funds to benefit scientific studies and wildlife management on these lands and the adjacent public lands to the west (Fred C. Babcock-Cecil M. Webb Wildlife Management Area) by enhancing the long-term viability and protection of significant wildlife populations and their habitats. Currently, FWC does not receive management dollars for the management of the Fred C. Babcock-Cecil M. Webb Wildlife Management Area.

Development of the Management Plan

Legislative establishment of the non-profit corporation in 2006 would allow the non-profit board to begin initial work with the seller and the state and local governments as the management plan and business plan are developed, even though the non-profit won't take control until termination of the MA. The management plan alone will take at least 18-24 months to prepare and is subject to Board of Trustees' approval.

As with all of the Board of Trustees' conservation lands, the Babcock Ranch property will require the preparation of a management plan. Even the least complex management plans have taken about a year to develop. These are done with a lot of public input, with staff holding workshops and working with stakeholder groups on a variety of issues. Again, the complexity of issues involved with this property and running a ranch add to the time and effort required to draft, workshop, finalize, and implement this management plan. The four-year take down schedule with ongoing management, by Babcock Ranch Management LLC, will give staff and all interested parties adequate time to map out a strategy for accommodating a variety of public recreational opportunities, while protecting the wildlife and natural areas and providing for restoration in those areas where it's desired.

Development of Business Plan for the Ranch Operations

The state has never acquired an operating ranch before, and certainly not one that the community at large desired to continue to run as a business. This will require that we prepare a business plan for the ranch. Mr. Kitson has agreed to assist the state/non-profit corporation in the preparation of that plan as he learns from his experience as the CEO for the Babcock Florida Company. Clearly, this is one of the most important benefits of having a private board of directors to oversee the operations of the ranch once the manager turns over operation of the ranch to the state at the end of the MA period.

Substitute Item 9, cont.

Water Facilities

The Utility holds Florida's Public Service Commission Certificate No. 613-W as the exclusive water service provider for the Babcock property. The Utility is the lessee under the provisions of a lease for well sites and access thereto granted by The Babcock Corporation. The Utility is also the lessee under the provisions of a lease for well sites and access thereto granted by Babcock.

Under the terms of the purchase agreement, the seller shall cause the Utility's Public Service Commission Certificate to be released and terminated with respect to the property as applied to each takedown parcel acquired by the purchaser as soon as practicable after closing thereon. On or before each takedown, the seller shall amend those lease agreements dated October 5, 1998, and May 17, 1999, as amended between Babcock Florida Company and the Utility, so that such leases will be terminated with respect to and no longer encumber the applicable takedown parcel. Prior to the closing of each takedown parcel that has a surface control structure, the parties shall agree upon the following, working in conjunction with the South Florida Water Management District: (1) the range of seasonal control elevations for surface water on such takedown parcel; and (2) the party responsible for the operation, management and maintenance of such structure in order to protect natural areas and for the purposes of flood control on the property and on seller's retained property.

Pursuant to chapters 253 and 259, F.S., and 18-2, F.A.C., the Board of Trustees may grant proprietary authorization for the use of state-owned lands provided that the proposed use is compatible with and consistent with the purpose for which the lands were acquired. At such a time as Charlotte County has demonstrated the need and demand for a public water supply beyond its current capacity to the satisfaction of the regulatory agency with jurisdiction to allocate and permit the withdrawal of water and it has obtained a consumptive use permit for such a purpose, it may apply for the use of the property for the location of well sites, the installation of necessary pipelines and the installation of electrical utilities for the withdrawal up to 10 MGD from the underlying Floridan Aquifer. Charlotte County is authorized access to the Property solely for the purpose of applying for the consumptive use permit and conducting studies associated with the same. DSL shall consider an application from Charlotte County for the use of the property for such purposes. Any such application shall provide that: (1) no such well site shall be provided on any portion of the property lying within Lee County; (2) the use of the property for withdrawal of water by Charlotte County shall be solely for public water supply purposes and not for wholesale or retail sale outside of Charlotte County; and (3) any pipeline proposed to be used for transferring water across Telegraph Swamp shall be co-located along the existing water control structures or immediately adjacent thereto, if co-location is not practically feasible. Well sites and any easements for water pipelines and electrical utilities necessary to transport the water withdrawn from the property shall be located along existing roads and in previously impacted areas or designed in such a way as to create

Substitute Item 9, cont.

the least environmental impact. In no event will any well site or easements for water transport be located in wetlands or environmentally sensitive areas, including but not limited to Telegraph Swamp.

At the request of the water management districts, a provision was added to make it abundantly clear that approval of this contract by the Board of Trustees can not be construed as granting any proprietary authorization by the Board of Trustees, the Florida Land and Water Adjudicatory Commission, or DEP, under chapter 373, F.S., including authorization or approvals of the consumptive use of water under Part II, well construction or operation under Part III, and activities under Part IV. The language goes on to state that nothing in the contract can be construed to affect the regulatory authority of the South Florida Water Management District under chapter 373, F.S.

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. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy and phase survey will be provided by the purchaser prior to each closing. The seller will provide a perimeter survey of the entire property and environmental site evaluation or site assessment for each closing, for which purchaser will reimburse seller 50 percent prorated at each closing.

The mixture of old-growth forests and mesic (wet) flatwoods in the Babcock Ranch area not only provides habitat for endangered species, but it also provides a vitally needed water-recharge area for the Southwest Florida area. As demand for water increases across the state, protection and management of ground water recharge areas will have to increase so that both natural systems and the citizens of the state have sufficient quantities of water. This project also provides significant natural habitat for the Florida panther, the black bear, the red-cockaded woodpecker, and for many other species of concern. Protecting the Babcock Ranch uplands and wetlands would also contribute to a large landscape-sized protection area of more than 400,000 acres, strategically closing the gap between conservation land projects that now extend from Charlotte Harbor east to Lake Okeechobee. Acquisition of the Babcock Ranch project would meet Florida Forever goals of ensuring sufficient quantities of water for Southwest Florida, and increasing protection of Florida's biodiversity of species. Varied public recreational uses could include camping, picnicking, nature appreciation, hiking, biking and horseback riding. This would depend on how the project is acquired, and what management plan is adopted.

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

Substitute Item 9, cont.

this project was included in the 2005 Florida Forever Interim Report adopted by the Board of Trustees on August 23, 2005. At the time the project was put on the list, staff did not anticipate the strong desire to continue the operation of Babcock Ranch. So at this point, staff recommends that the Board of Trustees confirm the management policy statement as modified:

Babcock ranch is proposed eventually to be managed by a legislatively created non-profit corporation consisting of an appointed board of directors with a range of backgrounds such as business administration, agribusiness, forest management, ecotourism, and environmental engineering in cooperation with Florida Fish and Wildlife Conservation Commission. Initially Seller's entity will manage the ranch until such time that the non-profit corporation assumes on-site management responsibilities. Management activities will enhance the operations of the existing working ranch and help ensure the conservation, protection, and restoration of environmentally unique native habitats, important ecosystems, landscapes, forests, water resources, and the protection of threatened or endangered species. The tract will also be managed to provide public recreational opportunities as well, such as hunting, camping, hiking, horseback riding, environmental and cultural resource education and interpretation, ecotourism, and other natural resource-based activities.

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 1-231 submitted with the November 8, 2005 Agenda)

RECOMMEND APPROVAL

(THIS PAGE INTENTIONALLY LEFT BLANK)