

**AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OCTOBER 2, 2007
Substitute Page**

Item 1 Minutes

Submittal of the Minutes from the July 31, 2007, August 14, 2007 and August 28, 2007 Cabinet Meetings.

(See Attachment 1, Pages 1-51)

RECOMMEND APPROVAL

Substitute Item 2 Nextel South Corp. Lease/E911 Wireless Communication Facility

REQUEST: Consideration of a request for a five-year lease, with four additional five-year renewal terms, for an existing wireless communications tower on 5.44 acres of state-owned land, between the Board of Trustees and Nextel South Corp.

COUNTY: Broward

APPLICANTS: Nextel South Corp. (Nextel) and Department of Management Services (DMS)

LOCATION: Section 02, Township 48 South, Range 38 East

CONSIDERATION: \$34,000 annual lease fee for the first year of the lease, escalated at four percent per annum for the remainder of the lease term and 50 percent of sublease and/or license gross revenues derived from co-locating subleases on the tower, both to be deposited into the Internal Improvement Trust Fund. Total guaranteed income over the term of the lease is \$1,506,582 not including royalties derived from co-locating other service providers.

STAFF REMARKS:

Project Synopsis

Nextel has requested a lease for the installation of communications equipment (generators, antennae support, etc.) for an Emergency 911 (E911) wireless communications system at the existing tower site located at U.S. 27 at the Palm Beach County line. The existing tower site consists of approximately 5.44 acres including a free standing 95-foot high tower. The antenna support structure on the tower will accommodate the co-location of two to three additional antennae for future users, such as other communication carriers. Pursuant to Federal Communications Commission (FCC) regulations, all antennae must carry E911 wireless service.

Background

The Board of Trustees acquired title to the subject parcel by virtue of the Swamp and Overflowed Lands Act of the United States Congress, approved on September 28, 1850.

In 1963, the Board of Trustees approved a 99-year lease to AT&T Company (AT&T) and the Central and Southern Florida Flood Control District (District) for a radio relay station site, together

Substitute Item 2, cont.

with a 40-foot access strip from the site to U.S. Highway 25 in the same section, all within Water Conservation Area No. 3. The proposed lease area is specifically located in Conservation Area No. 3A North, part of the Everglades Restoration Project area and located just south of the Palm Beach County line.

The District, now known as the South Florida Water Management District, held surface easement rights with the underlying fee title being vested in the Board of Trustees. Lease provisions satisfactory to the District were developed subject to the Board of Trustees' approval and a one-time consideration of \$507 was accepted in light of the potential public benefit. Staff considered the installation of the radio relay station to be in the public interest especially in the event of an emergency in such a remote area of Broward County.

In 1991, AT&T assigned the lease to Broward County (County) for the same purpose. In October 2006, the Board of Trustees terminated the County's lease for non-compliance of several lease conditions which left the property without a manager. The County has since vacated the premises and is now working from one of its own tower sites. During the term of the County's lease, it issued Nextel and other wireless companies, license agreements without the Board of Trustees' approval for use of the tower and charged considerable fees for this use. Nextel has been located on this site for several years and has remained onsite since termination of the County lease, along with all of its communications equipment, and with the understanding that DMS and the Department of Environmental Protection (DEP), Division of State Lands (DSL) would be negotiating a lease that would enable them to continue occupying and managing the subject property.

Lease Revenue

Nextel will be required to pay to the Board of Trustees rent in equal quarterly installments paid in advance, with the first year's payment totaling \$34,000 and escalating at four percent per annum for the remaining term of the lease. Nextel will submit to the Board of Trustees as additional payment, a 50 percent share of any gross revenue generated from subleases or licenses to third parties and will pay an increase in rent based upon installation of new equipment. All sublease and co-location payments received by the Board of Trustees as a result of a sublease or license are subject to negotiation by DMS. Nextel will also pay lease fees forward from October 1, 2006, the date it assumed management of the remote tower site.

Public Benefit

The proposed lease will provide the following public benefits:

- prompt delivery of 911 calls to public safety organizations;
- public welfare by promoting safety of life and property;
- continuous service for all existing wireless customers in this remote area;
- facilitate uninterrupted services and enhance the E911 system's public communication efforts throughout the year especially during busy hurricane seasons in Florida; and
- generate considerable recurring revenue for the Board of Trustees over the term of the lease.

Substitute Item 2, cont.

Applicable Statutes/Rules

Section 365.172(12)(f), F.S., and chapter 60H-9, F.A.C., dealing with the implementation of the E911 wireless system, requires DMS to negotiate in the name of the State of Florida, leases for wireless communications facilities that provide access to state-owned property not acquired for transportation purposes. As required by section 60H-9.004, F.A.C., DMS coordinated the use of this tower site with the Board of Trustees, the owner agency. Co-location of more than one antenna per tower is encouraged where there are multiple antennae or structure siting requests for the same location. Pursuant to section 365.172(12)(f), F.S., "leases shall be granted on a space available, first-come, first-served basis." Therefore, neither DMS nor DSL were required to competitively bid this lease. Nextel was the first entity to request continued use of the wireless cell phone tower site at this location.

Section 60H-9.005(4)(c), F.A.C., states that DMS "shall negotiate reasonable fees for leasing State-owned property that reflect the market rate for the type of facility or geographic location of the property." Pursuant to chapter 60H-9, F.A.C., DMS is requesting Board of Trustees' approval for the proposed lease. Negotiated lease fees were based largely on similar leases in the area as well as a previous Nextel lease.

Comprehensive Plan

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

(See Attachment 2, Pages 1-35)

RECOMMEND WITHDRAWAL

Item 3 BOT/SJRWMD Acquisition and Ownership Agreement/Turkey Creek Property/Econ - St. Johns Ecosystem Florida Forever Project

REQUEST: Authority to enter into an acquisition and ownership agreement with the St. Johns River Water Management District for the property known as Turkey Creek property, owned by Lee Ranch, Inc. in the Econ-St. Johns Ecosystem Florida Forever project.

COUNTY: Seminole

LOCATION: A portion of Sections 19 and 20, and 29 through 31, Township 21 South, Range 33 East

Item 3, cont.

STAFF REMARKS: The Econ-St. Johns Ecosystem project is an “A” group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 28, 2007. The project contains 28,274 acres, of which 13,768 acres have been acquired, or are under agreement to be acquired. After the proposed acquisition covered by this Agreement, approximately 9,294 acres will remain within the project area.

Project Summary

This proposed Acquisition and Ownership Agreement (Agreement) is for the Econ-St. Johns Ecosystem Florida Forever project with the St. Johns River Water Management District (District). The parcel that is covered in the Agreement is known as Turkey Creek, owned by Lee Ranch, Inc. Per the Agreement, parcels covered, Exhibit “A”, may be amended to add, delete, or reprioritize parcels. The agreement may be modified or amended with mutual consent of the parties. It also states the Board of Trustees delegates its authority to the Secretary of the Department of Environmental Protection (DEP), who then can delegate authority to the Director of the Division of State Lands (DSL).

A purchase agreement was executed on August 8, 2007 between the District and Lee Ranch, Inc. for approximately 5,212 acres at a total purchase price of \$45,000,000. The closing date for that acquisition will be on or before December 31, 2007.

Project Description

To facilitate the acquisition of this project, the District has taken the lead in the acquisition of the Turkey Creek property (approximately 5,212 acres). DEP staff has prepared an agreement that would allow the District to acquire the Turkey Creek parcel within the Econ-St. Johns Ecosystem Florida Forever project in accordance with section 259.041(17), F.S., utilizing the procedures set out in section 373.139, F.S. On September 13, 1994, the Board of Trustees approved the use of the District’s procedures to allow the District to acquire lands to be held jointly by the Board of Trustees and the District. Pursuant to section 373.139, F.S., the District has identified these parcels as needed for water management, water supply, and the conservation and protection of water resources.

Under the terms of this Agreement, the Board of Trustees will contribute a total of \$14,500,000 toward the purchase price of the property, with an additional amount up to \$500,000 to be expended to cover the Board of Trustees’ share of pre-acquisition and closing costs. In exchange for this, the Board of Trustees will receive an undivided interest in approximately 1,645 acres located in the northwestern corner of the property. DSL will order and obtain preliminary title work for the 1,645 acres in which the Board of Trustees will have an interest. Preliminary title work for the remainder of the property will be obtained by the District. If the appraised value of the approximately 1,645 acres in which the Board of Trustees will gain an interest is less than \$14,500,000, the Board of Trustees will obtain an interest in more acreage. The Board of Trustees will disburse \$5,000,000 toward the purchase price at the December 2007 closing, with the remaining \$9,500,000 being paid by the District. At that time, the Board of Trustees will gain an interest in the 1,645 acre parcel equal to its pro-rata payment of \$5,000,000. The Board

Item 3, cont.

of Trustees will then pay the District \$9,500,000 in July of 2008, as the balance due of the Board of Trustees' purchase price. When the Board of Trustees pays that remaining balance, it will receive the remaining interest due relative to its contribution, so that its total proportionate undivided interest in the property will be equal to its \$14,500,000 contribution.

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

Pursuant to the proposed Agreement, District staff has obtained and reviewed appraisals for the entire 5,212 acre property, has negotiated a purchase contract, and has secured the approval of its Governing Board. DSL is currently appraising the 1,645-acre area in which the Board of Trustees is gaining an interest. Those appraisals are estimated to be completed in October 2007. Pre-Acquisition and closing costs are to be paid by DSL and the District in proportion to their relative ownership interests. The District will provide DSL with its Governing Board's resolution requesting reimbursement of the Board of Trustees' share of the purchase price.

Management

The Econ-St. Johns Ecosystem Lee Ranch property will be managed by the Department of Agriculture and Consumer Services' Division of Forestry under a multiple-use management regime consistent with the State Forest system.

Comprehensive Plan

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

(See Attachment 3, Pages 1-9)

RECOMMEND APPROVAL

2nd Substitute Item 4 DEP Conservation Lands Funding Discussion

REQUEST: Discussion of innovative and prudent ways to acquire additional conservation lands.

LOCATION: State-wide

2nd Substitute Item 4, cont.

STAFF REMARKS: At the August 28, 2007 Cabinet Meeting, the Governor and Cabinet directed the Department of Environmental Protection (DEP) staff to explore innovative and creative ways to fund acquisition of additional conservation lands. Many real estate markets around the state have experienced a recent down-turn, resulting in more affordable acquisition opportunities. However, DEP's Florida Forever funding through the program's sunset in Fiscal Year 2009-2010 is currently allocated for targeted conservation land acquisitions.

In keeping with the direction from the Governor and Cabinet, DEP staff recommends the following items for discussion:

- Propose minor legislative changes to allow for accelerated bonding under the existing program:

Request that the legislature provide an additional \$200 Million appropriation to supplement the \$105 Million current annual appropriation for the Division of State Lands (DSL). This additional funding would allow the state to take advantage of the current, favorable real estate market. DEP staff currently has \$98.4 Million in approved commitments, fully utilizing the standard appropriation through Fiscal Year 2007-2008. The DSL has another \$621 Million in potential acquisitions, which could be pursued with this additional appropriation through Fiscal Year 2009-2010. This appropriation would require proviso language in the budget.

The Florida Forever program is funded with a combination of bond proceeds and cash. In order to minimize the cash balance in the Florida Forever Trust Fund, bonds are sold on a cash-needs basis to support projected expenditures. Florida Forever funds are spent on a first-in, first-out basis; all cash and proceeds are spent before selling bonds.

An additional \$200 Million appropriation could be authorized through the sale of bonds, which would require a minimal first year debt service appropriation to authorize the series. Based on current spending trends, including all entities, the Fiscal Year 2007-2008 authorized bonds would be sold first. Florida Forever bonds are rarely sold the fiscal year they are appropriated. This is partially due to cash appropriations, but is largely related to the rate of expenditures by each of the receiving entities. It is possible that the additional \$200 Million in bonds would not be sold until Fiscal Year 2009-2010. Only two sales have provided proceeds during the year they were authorized. Bond funding could be accomplished utilizing the \$3 Billion bonding authority of the Florida Forever program to provide all \$3 Billion in proceeds as contemplated by legislature;

- Explore a legislative change to Florida Statutes to allow for Murphy Act land sales' proceeds to be used for purchasing conservation lands within the Florida Forever boundary;

2nd Substitute Item 4, cont.

- Explore the use of a structured-sale annuity to lower the purchase price of conservation lands. This would involve directing purchase proceeds to a third party assignment company (assignor), if so directed by a seller, to enable the seller to spread receipt of payments over time and to enable the state to enjoy a discounted purchase price for the annuity. The state would stipulate that it would have no obligation to make up any difference in purchase price due to performance of the annuity. No change in the law is required to accomplish this. DEP staff and the Board of Trustees would not endorse any company that was in this line of business;
- The DSL will proactively work with the Acquisition and Restoration Council and managing agencies, to identify parcels that are no longer needed for conservation purposes, due to land management impediments and low resource values. These properties could be utilized for exchanges to acquire in-holdings and parcels that would enhance property manageability;
- Amend the Florida Statutes to allow local governments to hold sole title, with a transfer clause, to conservation lands acquired in part with state funding. This would focus on both large conservation land purchases, which may require multiple partners and funding sources, and smaller sites, not normally encompassed by other land conservation programs, with unique environmental, historic or archaeological resources. This will leverage conservation dollars and restore cooperative relationships with local governments. The state would work with local governments to acquire properties with the state contribution, not to exceed 50 percent of the purchase price. This would stretch state dollars for targeted conservation lands. If the property is not managed as stipulated, the property would transfer to the state. Monitoring mechanisms would need to be developed;

Coordinate with local governments and the Department of Community Affairs through Sector Plans, Rural Land Stewardship proposals, and other options to protect Florida Forever conservation lands;

- Encourage private acquisition and private ownership of conservation lands within Florida Forever project areas for uses such as: mitigation projects and potential carbon sequestration; and
- Encourage applicants who need private easements over state lands to acquire conservation lands rather than paying fees.

(See Attachment 4, Pages 1-8)

RECOMMEND DEFERRAL