

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

STATE BOARD OF ADMINISTRATION

DIVISION OF BOND FINANCE

FINANCIAL SERVICES COMMISSION, OFFICE OF
INSURANCE REGULATION

ADMINISTRATION COMMISSION

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Crist
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
September 15, 2009, commencing at 9:10 a.m.

Reported by:

JO LANGSTON

Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.

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APPEARANCES:

Representing the Florida Cabinet:

CHARLIE CRIST
Governor

CHARLES H. BRONSON
Commissioner of Agriculture

BILL McCOLLUM
Attorney General

ALEX SINK
Chief Financial Officer

* * *

1	INDEX		
	STATE BOARD OF ADMINISTRATION		
2	(Presented by ASH WILLIAMS)		
3	ITEM	ACTION	PAGE
	1	Approved	5
4	2	Approved	5
	3	Approved	6
5	4	Approved	6
	5	Approved	7
6	6	Approved	20
	7	Approved	7
7	8	Discussion	7
8	DIVISION OF BOND FINANCE		
	(Presented by BEN WATKINS)		
9	ITEM	ACTION	PAGE
10	1	Approved	21
	2	Approved	21
11	3	Approved	22
	4	Approved	22
12	5	Approved	23
	6	Approved	23
13	7	Approved	24
14			
15	FINANCIAL SERVICES COMMISSION, OFFICE		
	OF INSURANCE REGULATION		
16	(Presented by KEVIN McCARTY)		
17	ITEM	ACTION	PAGE
	1	Approved	26
18	2	For Information	26
19			
	ADMINISTRATION COMMISSION		
20	(Presented by LISA SALIBA)		
21	ITEM	ACTION	PAGE
	1	Approved	44
22	2	Approved	87
23			
24			
25			

ACCURATE STENOGRAPHIC REPORTERS, INC.

1 INDEX (continued)

2 DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
 (Presented by SHERMAN WILHELM)

3	ITEM	ACTION	PAGE
4	1	Approved	88
	2	Approved	88
5	3	Approved	89
	4	Approved	89
6			

7
 8 BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND
 (Presented by MICHAEL SOLE)

9	ITEM	ACTION	PAGE
	1	Approved	90
10	2	Accepted	96

11

12

13

14

15

16	CERTIFICATE OF REPORTER	97
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18

19

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ACCURATE STENOGRAPHIC REPORTERS, INC.

1 P R O C E E D I N G S

2 * * *

3 (Agenda Items Commenced at 9:30 a.m.)

4 GOVERNOR CRIST: Our first agenda item this
5 morning, State Board of Administration, Ash
6 Williams. Good morning, Ash.

7 MR. WILLIAMS: Good morning, Governor,
8 Trustees, members of the Cabinet. Item 1 is a
9 request for approval of the minutes of the September
10 1 meeting.

11 ATTORNEY GENERAL McCOLLUM: I so move.

12 COMMISSIONER BRONSON: Second.

13 GOVERNOR CRIST: Moved and seconded. Show the
14 minutes approved without objection.

15 MR. WILLIAMS: Item 2 is a fiscal sufficiency
16 for the State Board of Education Public Education
17 Capital Outlay Refunding Bonds.

18 GOVERNOR CRIST: Is there a motion on Item 2?

19 CFO SINK: Move it.

20 ATTORNEY GENERAL McCOLLUM: Second.

21 GOVERNOR CRIST: Moved and seconded. Show Item
22 2 approved without objection.

23 MR. WILLIAMS: Item 3 is a fiscal sufficiency
24 for State of Florida, Full Faith and Credit, State
25 Board of Education Public Education Capital Outlay

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1 Bonds.

2 ATTORNEY GENERAL McCOLLUM: I move Item 3.

3 CFO SINK: Second.

4 GOVERNOR CRIST: Moved and seconded. Show it
5 approved without objection.

6 MR. WILLIAMS: Item 4, another fiscal
7 sufficiency for the State of Florida, Board of
8 Governors, Florida International University Parking
9 Facility Revenue Bonds.

10 CFO SINK: Move it.

11 ATTORNEY GENERAL McCOLLUM: Second.

12 GOVERNOR CRIST: Moved and seconded. Show Item
13 4 approved without objection.

14 MR. WILLIAMS: Item 4 (sic), we request
15 approval to file for notice Rule 19-7.002,
16 Investment Policy Guidelines. This is for the Local
17 Government Surplus Funds Trust Fund, and will adopt
18 the investment policy guidelines approved previously
19 by the trustees 28 July 2009.

20 ATTORNEY GENERAL McCOLLUM: I move it.

21 CFO SINK: Second.

22 GOVERNOR CRIST: I think this was Item 5,
23 right, Ash?

24 MR. WILLIAMS: Correct.

25 GOVERNOR CRIST: Okay. Moved and seconded.

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1 Show it approved without objection.

2 MR. WILLIAMS: Item 6, request approval of the
3 appointment of David J. Grain to the Investment
4 Advisory Council.

5 CFO SINK: Move it.

6 COMMISSIONER BRONSON: Second.

7 GOVERNOR CRIST: Moved and seconded. Show it
8 approved without objection.

9 MR. WILLIAMS: Item 7 is the appointment of Mr.
10 Floyd M. Yager as the actuarial representative to
11 the Advisory Council of the Florida Hurricane
12 Catastrophe Fund.

13 CFO SINK: Move it.

14 ATTORNEY GENERAL MCCOLLUM: Second.

15 GOVERNOR CRIST: Moved and seconded. Show it
16 approved without objection.

17 MR. WILLIAMS: Item 8 is the SBA Governance
18 Report. I believe Mr. Cassady is going to handle
19 that item.

20 GOVERNOR CRIST: Morning, Jim. How are you?

21 MR. CASSADY: Good morning, Governor, CFO Sink,
22 General McCollum. And, Commissioner Bronson, happy
23 birthday.

24 COMMISSIONER BRONSON: Thank you. I appreciate
25 it.

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1 MR. CASSADY: Having crossed that milestone
2 myself, I can tell you 60 is the new 30. A lot to
3 look forward to. In May the trustees voted
4 unanimously to name a working group to study
5 industry best practices and governance structures in
6 the pension fund and other public pension funds.
7 The working group was comprised of staff from each
8 of the three trustee offices and staff from the SBA.

9 I do want to take a minute to recognize the
10 staff members for the hard work that they've
11 completed over the last few months. From the
12 Governor's Office, Kathy Mears and Pat Gleason, from
13 the Attorney General Office, Rob Johnson, from the
14 CFO's office, Amber Hughes, Dan Sumner, Meredith
15 Berger and Robert Tornillo. And the SBA staff
16 assisted greatly in the project, with Ash Williams,
17 Director Williams, and Mike McCauley. And I
18 especially want to thank Amber, Meredith and Mike
19 for their hard work in putting this document
20 together.

21 ATTORNEY GENERAL McCOLLUM: I'm going to
22 interrupt you by saying all of us want to thank
23 them. I think it's very important, all the work
24 that you've done and all the work they've done. It
25 really shows up in this report. Thank you.

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1 MR. CASSADY: Thank you, General. So today we
2 present to the Board the SBA Fund Governance Report,
3 with the information compiled by the working group.
4 This report is really a study of best practices and
5 structures and does not include recommendations at
6 this point. The report was delivered to the
7 trustees via electronic format on Thursday.

8 And for those who are interested in reading the
9 report, it will be posted on the website both at
10 Myfloridacfo.com and the SBA website at the
11 conclusion of the Cabinet meeting.

12 The working group focused on three key
13 categories for gathering information in order to
14 outline best governance practices in the industry.
15 We gathered empirical information comparing general
16 pension fund characteristics for 15 other public
17 pension funds. These 15 funds were identified based
18 on assets under management, their location, their
19 structure and other characteristics of the funds.
20 That's the first point.

21 Secondly, Director Williams conducted personal
22 interviews with private sector investment
23 professionals. And, thirdly, the group members
24 conducted interviews with selected trustees of the
25 15 public pension funds that were noted in the

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1 matrix.

2 The governance reform -- or working group
3 studied ten different characteristics in the 15
4 different pension funds selected. This included
5 board composition, pension investment versus other
6 mandates, selection of investment managers, budget
7 approval process and meeting frequency. And the
8 study of these characteristics is actually in a
9 matrix form and it does allow for easy comparison
10 between funds.

11 We found that Florida's primary board is
12 smaller than most other pension systems' governing
13 bodies, with three members. We also found that the
14 size of the boards vary greatly across funds, from a
15 16-member board in Colorado to a sole trustee in
16 North Carolina. However, the majority of the plans
17 studied have more than ten members of their boards.

18 We also found that Florida is similar to other
19 states in that many of them also have other
20 investment mandates than just the pension fund. And
21 the frequency of the meetings for the pension plans
22 vary tremendously across the United States. The
23 report includes a summary and a comparison table of
24 all the governance characteristics that were
25 studied.

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1 Regarding the personal interviews with the
2 private sector, at the direction of the working
3 group, SBA Executive Director Ash Williams conducted
4 personal interviews with a variety of professionals,
5 ranging from best practices in pension funds and
6 endowments and in foundations in the institutional
7 investor market.

8 These individuals included chief investment
9 officers, investment committee members of major
10 endowments and foundations and principals of leading
11 investment and consulting firms, also fiduciary
12 partners of major law firms and the CEOs of
13 investment advisory firms. Both a summary and the
14 full notes of Director Williams' conversations can
15 be found in the report.

16 Let me add that as we were conducting these
17 interviews, we informed on the front end all the
18 interviewees that, of course, Florida is a public
19 records state, and so they were well aware that the
20 notes and their comments would be a public record.

21 Some things that Director Williams found
22 included governance structure in itself is not
23 necessarily the primary determinant of success,
24 depending on how you define success of a fund. It's
25 people and execution that matter the most, which I

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1 think we felt that going in.

2 Training is highly beneficial for trustees and
3 advisory board members, including fiduciary and
4 investment training. And outside commercial audits
5 are certainly preferable and provide a better
6 perception of soundness and transparency; for
7 example, in the areas of compliance and internal
8 controls.

9 We also conducted personal interviews with
10 other pension fund board members. Members of the
11 SBA governance working group interviewed trustees
12 who serve on state pension fund boards across the
13 country. Group members asked questions about best
14 practices, governance and governance success.

15 Again, a summary and full notes of these
16 interviews can be found in the report. But some of
17 the themes that we found were that strong
18 consideration should be given to having more than
19 three trustees on a board, for diversity and for
20 effective governance. It's helpful to have some
21 board members who have diverse experience, for
22 example, investment experience. Having elected
23 representatives of pension fund participants as
24 members of the board informs membership and gives
25 investors a say in the management of the fund.

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1 So in conclusion, I again want to thank the
2 staff from each of the trustee's offices. I want to
3 thank all of you, the trustees, for giving us an
4 opportunity to do this. And I'll be glad to answer
5 any questions.

6 GOVERNOR CRIST: Thank you very much, Jim. Any
7 questions?

8 CFO SINK: I have some comments, Governor.

9 GOVERNOR CRIST: CFO, please, of course.

10 CFO SINK: Again, excellent report. And just
11 all the offices were so cooperative. And I think I
12 would say to Ash and all the people who did the
13 interviews that what I heard was that the people
14 that they reached out to, both in the public and the
15 private sector, were more than willing to talk to
16 us, our team, and give some opinions and some
17 thoughts about best practices at their pension funds
18 and comment on ours.

19 So there's a lot of really good, interesting
20 information in here. And I think that all of us
21 should really dig into the report. We've only had
22 it a couple of days now. But my thinking is that
23 after we've had a chance to really get into some
24 more details on our own in the report, that we would
25 come back at maybe perhaps the next Cabinet meeting

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1 in two weeks and have a conversation among the three
2 of us about what we might, if anything, want to do
3 with the results.

4 And the things that I just picked out, just
5 over my brief review, was this issue of the
6 composition of the board. We have, because the
7 three of us have so many other duties and
8 responsibilities, we do have limited time to spend
9 on the details of managing, from a strategic point
10 and a fiduciary point, a 110-billion-dollar pension
11 fund. And it is the largest financial asset that we
12 have in the State of Florida, and hundreds of
13 thousands of people are depending upon this pension
14 fund, of course, for their retirement.

15 So I'm going to do some thinking myself about a
16 proposal perhaps for a constitutional amendment to
17 expand the membership of the board to include and
18 require that an expanded membership have people with
19 investment and accounting and auditing backgrounds,
20 as we've seen most of the other firms around the
21 country have.

22 The second thing that I picked up on was over
23 and over again this issue about training in
24 fiduciary duties. And it's -- I think it doesn't
25 hurt us as board members to be reminded on an annual

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1 basis of what our fiduciary responsibilities and
2 duties are in a very public -- in a public way.

3 Thirdly, I was struck by, you know, our fund is
4 not really audited by an outside audit firm like a
5 corporation would be or like many other pension
6 funds would be. We have kind of a mishmash of
7 OPPAGA looks at some things, the auditor general
8 looks at some other things. We've had an outside
9 firm, Clifton Gunderson, looking at compliance
10 issues. And I think we ought to discuss whether or
11 not we engage an outside independent auditing firm
12 to give us, on an annual basis, an opinion about the
13 state of the fund.

14 And the fourth thing that I picked up on,
15 because it came up at our quarterly board meeting,
16 was the use of the Investment Advisory Committee and
17 the fact that each of us appoint these experts in
18 investments. They should be reporting directly to
19 us, and I think we made a good start at our first
20 quarterly board meeting, to hear directly,
21 unfiltered from any staff, from these six people who
22 are in fact pretty expert in investment matters, and
23 just encourage continuing to find a way for us as
24 board members to get that unfiltered and independent
25 information separate and apart from what the staff

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1 gives us.

2 And I don't know about you all, but after we
3 had our last quarterly board meeting the other day,
4 I went back into my office and actually was around
5 and about the state, and I had many people comment
6 about how informative they found it and they
7 appreciated us taking a longer period of time to get
8 more in depth in some of these really important
9 issues about the management of our fund.

10 So that's kind of what my initial early
11 thinking is about what we might talk about going
12 forward.

13 ATTORNEY GENERAL MCCOLLUM: Governor, I'd just
14 like to, first of all, say I agree with the CFO that
15 we need to look seriously at an outside auditor. I
16 think that's one of the things it looks like there's
17 consensus in the report to do. But I'd look forward
18 to discussion of this report next week or the next
19 Cabinet meeting or whenever.

20 But it seems to me that the report itself, in
21 the very beginning of it, sets forth what I think is
22 the key issue here, and that is what is our role.
23 We are a policy board, as opposed to a management
24 board. And many of these boards around the country,
25 I think the report indicates, are management boards.

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1 They do involve professionals, where we don't have
2 one. We use our independent Advisory Council to
3 provide that function. And I looked at the summary
4 of the themes displayed in the interviews that says
5 right at the top, "Governance structure in itself is
6 not a primary determinant of success. It's the
7 people and execution that matter most. Board focus
8 should be on high level policy, with operations
9 delegated to professional staff. Board appoints and
10 sets compensation for an executive who hires staff,
11 staff is responsible," and so on.

12 I would like, myself, to hear from our Advisory
13 Council members on their thoughts about the
14 structure and how they feel it works, because I do
15 think that integral to this system that we have in
16 Florida, which is in our constitution -- and I'm
17 personally reluctant to go tamper with it unless
18 it's absolutely necessary. I'm interested in
19 knowing what the Advisory Council members themselves
20 think.

21 They are, it seems to me, our eyes and ears.
22 They perform a function in Florida that is different
23 than other states, apparently, and other boards like
24 ours where we oversee pension funds. And they have
25 a very important role to play and should be

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1 consulted on the governance structure itself and the
2 uniqueness of our system, which I kind of like
3 myself right now. But I'm interested in improving
4 it and interested in hearing what people say and
5 certainly interested in this report. You did a
6 great job with this report. I want to reiterate
7 that. Y'all just did a great job with it.

8 COMMISSIONER BRONSON: Governor?

9 GOVERNOR CRIST: Commissioner.

10 COMMISSIONER BRONSON: While I am not a member
11 of the Board to vote on these issues, there's a lot
12 of people in the state who think I am, because I
13 hear from a lot of them. When they see the word
14 "Cabinet," they're looking to get their issues in.

15 And as a matter of just information to those of
16 you who sit and vote on these issues, there is a lot
17 of angst out there by a lot of people in law
18 enforcement, firefighters, teachers, others whose
19 lifetime pension is tied up in these funds.

20 And to the person that I talk to, all of them
21 are saying, whatever happens, please make sure that
22 there is going to be the highest regard for the
23 pension plan and that it be above board as far as
24 the critical aspects of those investments. And I
25 think what's happened is enough of their private

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1 investments have taken a hit, along with everybody
2 else's state investment program, because if you were
3 in the market, you took a pretty good hit generally.

4 And I think the fact that they have been hit
5 privately in their own investments and now they've
6 turned to their retirement fund as their only
7 failsafe, they want to be super conservative on and
8 want that message to be delivered to the Board, to
9 be super conservative on how that money is going to
10 be invested, because some of these -- we're living
11 to the ages of up in the seventies, eighties and
12 even longer now. And a lot of them are going to
13 have to rely on those retirements for the rest of
14 their life.

15 And quite frankly, I hear from even some of my
16 former teachers when I was in grade school who are
17 retired on very low income. Those people made very
18 little money back in those days. Even when I was
19 teaching, I was at a 6,900-dollar-a-year salary. So
20 a lot of them, even though they may have had 30, 35
21 years, are living on very short incomes in a very
22 high-priced world today. And I think there's a lot
23 of fear out there.

24 So all I'm doing is relaying to you what has
25 been relayed to me by different groups and

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1 organizations, that they are very concerned about
2 that they have the money to live on throughout their
3 years so they're not a burden on their children.

4 GOVERNOR CRIST: Very good. Good words,
5 Charlie. Thank you. Thank you, Jim. Anything
6 else?

7 MR. CASSADY: No, sir. Thank you, Governor.

8 GOVERNOR CRIST: I need to do a little
9 housekeeping. On Item 6, I think we got a second
10 from the commish. So we -- is there a motion again
11 on Item 6?

12 CFO SINK: I'll move Item 6.

13 ATTORNEY GENERAL McCOLLUM: Second.

14 GOVERNOR CRIST: Moved and seconded. Show it
15 approved without objection. Broadening your
16 jurisdiction.

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1 GOVERNOR CRIST: Division of Bond Finance, Ben
2 Watkins. Good morning, Ben.

3 MR. WATKINS: Good morning, Governor, Cabinet
4 members. Item Number 1 are minutes from the August
5 11th meeting.

6 GOVERNOR CRIST: Is there a motion on the
7 minutes?

8 CFO SINK: Move it.

9 ATTORNEY GENERAL MCCOLLUM: Second.

10 GOVERNOR CRIST: Moved and seconded. Show the
11 minutes approved without objection.

12 MR. WATKINS: Item Number 2 authorizes the
13 issuance and competitive or negotiated sale of up to
14 \$32 million in Parking Facility Revenue Bonds for a
15 parking facility at Florida International
16 University.

17 ATTORNEY GENERAL MCCOLLUM: Move Item 2.

18 COMMISSIONER BRONSON: Second.

19 GOVERNOR CRIST: Moved and seconded. Show it
20 approved without objection.

21 MR. WATKINS: Item Number 3 authorizes the
22 issuance and competitive or negotiated sale of up to
23 155.1 million in Public Education Capital Outlay
24 Bonds for school construction.

25 COMMISSIONER BRONSON: Motion on Item 2.

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1 GOVERNOR CRIST: 3.

2 COMMISSIONER BRONSON: 3.

3 GOVERNOR CRIST: Gee whiz, Charlie, it's
4 slipping fast.

5 COMMISSIONER BRONSON: Just so you know my eyes
6 are working, mine has two 2s on it.

7 GOVERNOR CRIST: There you go. You are
8 excused. Motion on Item 3. Is there a second?

9 ATTORNEY GENERAL MCCOLLUM: Second.

10 GOVERNOR CRIST: Moved and seconded. Show it
11 approved without objection.

12 MR. WATKINS: Item Number 4 authorizes the
13 issuance and the competitive or negotiated sale of
14 up to \$540 million in refunding bonds for Public
15 Education Capital Outlay Program.

16 ATTORNEY GENERAL MCCOLLUM: Move Item 4.

17 CFO SINK: Second.

18 GOVERNOR CRIST: Moved and seconded. Show it
19 approved without objection.

20 MR. WATKINS: Item Number 5 is the report of
21 award on the competitive sale of \$146.8 million in
22 Public Education Capital Outlay Refunding Bonds.
23 The bonds were sold at competitive sale. They were
24 awarded to the low bidder at a true interest cost of
25 approximately 3.17 percent. And the refunding

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1 resulted in debt service savings to the State of
2 approximately \$18.8 million or, on a present value
3 basis, \$15.4 million.

4 GOVERNOR CRIST: Is there a motion on Item 5?

5 CFO SINK: Move it.

6 COMMISSIONER BRONSON: Second.

7 GOVERNOR CRIST: Moved and seconded. Show it
8 approved without objection.

9 MR. WATKINS: Item Number 6 is a report of
10 award on the competitive sale of \$52.9 million of
11 Capital Outlay Bonds for school construction. These
12 bonds were also sold at competitive sale. They were
13 awarded to the low bidder at a true interest cost of
14 approximately 3.29 percent. It was actually a mixed
15 issue of new money as well as a refunding, combined
16 together, and the refunding was approximately
17 39.4 million and resulted in debt service savings to
18 the State of approximately 3.6 million, or on a
19 present value basis, 3.2 million.

20 CFO SINK: Move it.

21 ATTORNEY GENERAL McCOLLUM: Second.

22 GOVERNOR CRIST: Moved and seconded. Show it
23 approved without objection.

24 MR. WATKINS: And lastly, Item 7 is a report of
25 award on the competitive sale of \$165.8 million in

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1 Public Education Capital Outlay Refunding Bonds.
2 These bonds were awarded to -- sold at competitive
3 sale, awarded to the low bidder at a true interest
4 cost of approximately 3.48 percent. And it
5 generated gross debt service savings of
6 approximately \$18.2 million, or \$14.2 million on a
7 present value basis.

8 CFO SINK: Move it.

9 COMMISSIONER BRONSON: Second.

10 GOVERNOR CRIST: Moved and seconded. Show it
11 approved without objection. Thank you, Ben.

12 CFO SINK: Governor.

13 GOVERNOR CRIST: CFO.

14 CFO SINK: Is that the last item?

15 MR. WATKINS: Yes, ma'am.

16 CFO SINK: I just want to make a comment
17 here -- we just kind of ran through here pretty
18 quickly -- that these are very attractive interest
19 rate refundings, 3.1, 3.2, 3.3 percent. We wouldn't
20 get those without our AAA rating.

21 GOVERNOR CRIST: That's a great point.

22 CFO SINK: And I know that Ben and, I believe,
23 Jerry McDaniel went up to New York and worked
24 really, really hard to communicate to the rating
25 agencies the State of Florida's finances and the

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1 fact that we have to have a balanced budget and some
2 of the moves that were made by the Legislature. And
3 they deserve a lot of credit and thanks. I think
4 all these refinancings this year alone has saved
5 almost \$58 million in our taxpayers' money.

6 So my compliments to Ben and his staff and
7 Jerry McDaniel for going up and helping with the
8 rating agency presentation.

9 GOVERNOR CRIST: That's an excellent point.
10 And I want to add my gratitude. You know, since
11 I've been Governor, we've cut this budget by almost
12 \$8 billion. We are in balance. We have the largest
13 tax cut in the history of the state, and we have a
14 AAA bond rating. Now, not many other mega states
15 can say that. And without your work, Ben, and Jerry
16 in our office and the great Legislature that
17 approves all of that, Florida wouldn't be in the
18 good shape that she is. So thank you very, very
19 much from all of us.

20 MR. WATKINS: Thank you, Governor.

21 GOVERNOR CRIST: We're not the IOU state, and
22 that's a good thing.

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1 GOVERNOR CRIST: Insurance Regulation. Kevin
2 McCarty, Commissioner.

3 MR. McCARTY: Good morning, Governor --

4 GOVERNOR CRIST: Good morning.

5 MR. McCARTY: -- members of the Commission.

6 Our first agenda item is the minutes of the
7 Financial Services Commission on July 28, 2009.

8 CFO SINK: Move it.

9 COMMISSIONER BRONSON: Second.

10 GOVERNOR CRIST: Moved and seconded. Show the
11 minutes approved without objection.

12 MR. McCARTY: The second agenda item is an
13 update on the property market, particularly as it
14 relates to the 29 newly admitted companies as of
15 2006. Those companies currently are reporting
16 747,000 policies in force in Florida as of the
17 reporting date June 30, 2009. In addition, those
18 same companies reported policyholder surplus
19 increase from initial capitalization of \$607 million
20 to about \$625 million.

21 However, 21 of the companies that have shown
22 that they're writing policies during the reporting
23 period, only six of them have experienced an
24 underwriting gain during the first six months of the
25 year, while 15 have reported underwriting losses.

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1 It's important to note that it is generally
2 consistent with the other companies that are writing
3 business in Florida and other companies that are
4 writing around the nation.

5 I'll give you an example. Of the 210 writers
6 in Florida that have a significant presence in our
7 residential marketplace, 150 have shown increases in
8 their policyholder surplus, while 60 companies have
9 reported declines during the first six months of
10 this year. Of that same 210 companies, 84 have
11 posted underwriting gains, while 102 of those
12 companies have posted underwriting losses based on
13 the second quarter financial reports to the National
14 Association of Insurance Commissioners. That
15 doesn't total 210. Twenty-four of those companies
16 are in intercompany pooling arrangements and they
17 don't report.

18 Although the analysis features our 210 writers,
19 these are national results, which are indications on
20 their consolidated financial statements, and I
21 provided those 210 company reports to your staff
22 yesterday.

23 It should be noted that new companies of any
24 kind, including insurance companies, in general
25 experience losses in their first few years of

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1 business, which is certainly evident by the
2 financial statements of our 27 -- 29 newly admitted
3 companies. This is due in large part just to the
4 start-up expenses, the organization of an agent
5 force, the cost of overhead and general expenses of
6 starting up a business.

7 We have met and corresponded directly or
8 indirectly with any of our companies that have
9 reported significant surplus loss, because that's of
10 course a deep concern of ours. And these companies
11 are experiencing problems that are endemic across
12 the nation. But we've met with companies that are
13 making money and not making money and just asked
14 them to give us a general overview of some of their
15 cost concerns that are in the marketplace.

16 We've identified the five following areas.
17 Number one is the premium reductions as the result
18 of mitigation credits. Many companies did not
19 anticipate that the mitigation credits would
20 generate as much savings to the policyholders.
21 Savings to the policyholders mean less premiums to
22 the company, so they don't have the necessary
23 premiums to pay expected losses and administrative
24 costs and agent commissions.

25 Number two, and it was somewhat related with

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1 the first, is an uptick in the number of fraud cases
2 and the concern about the expansion of fraud. Fraud
3 as it relates to the mitigation discounts is that
4 the mitigation discounts in some cases are so
5 significant, particularly in parts of Florida that
6 are coastal, where much of the premium is for
7 hurricane, there's an incentive to generate a
8 fraudulent discount for those areas. This, again,
9 is what the companies are reporting to us.

10 Number three, and interesting, even though we
11 haven't had any hurricane losses in the last few
12 years, thank the Lord, reinsurance costs are still
13 going up in the area of about 15 percent. So that
14 also is contributing to the cost of the system.

15 Fourth is replacement cost methodology. After
16 hurricane season 2004 the Legislature enacted
17 changes due to consumer complaints that they were
18 not getting enough money for them to effectuate
19 repairs on their homes. And so the Legislature
20 enacted legislation for replacement cost on
21 structure and contents. And in many cases the
22 companies believe that this is a cost driving the
23 system and may need to be addressed.

24 And lastly is reported sinkhole claims.
25 Although the Legislature has worked on this very

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1 hard to address this issue, as they have on a number
2 of the issues that are cost drivers in our systems,
3 companies assert that the -- just the allegation
4 that there may be a sinkhole, cracks in the
5 foundation, cracks in the walls, et cetera, it's not
6 only the cost of fixing the claims, but it's the
7 cost of investigating those claims, and they're very
8 substantial and a concern and financial burden to
9 the insurance companies and their administrative
10 costs.

11 All of the companies also indicated that in
12 addition to these problems, they're exacerbated by
13 our current economic conditions. The Office has
14 taken action with regard to those companies that
15 have declined in their policyholder surplus. That
16 includes working with them on a corrective action
17 plan. Some of them are in confidential supervision,
18 and if necessary, they'll be referred to the
19 Division of Rehab and Liquidation if necessary.

20 The obstacles we face in our marketplace today
21 is very different than the reinsurance -- spiraling
22 reinsurance costs we saw in 2006. That was largely
23 addressed by House Bill 1A by lowering the
24 reinsurance cost. An underlying factor in the
25 current economic environment is the decline in our

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1 housing market. If current trends and conditions
2 continue and we have increased foreclosures and
3 vacant homes, I think we can expect to continue to
4 have some challenges in our property market
5 irrespective of any hurricane losses.

6 We will continue to be vigilant to monitor the
7 financial conditions of our companies, including our
8 colleagues around the country who have domiciled
9 companies in their states doing business in ours, so
10 that we maintain a marketplace. Thank you.

11 CFO SINK: Governor, can I --

12 GOVERNOR CRIST: Yes, of course.

13 CFO SINK: Thank you, Kevin. This is a really
14 good report, and thank you for getting it to us so
15 we could look at it. I was really interested in
16 your response about -- the companies have named
17 these five factors that you described. What do you
18 as the insurance commissioner think about what
19 they've told you the reasons for some of their
20 losses are?

21 We need to keep a competitive and healthy and
22 sound financial environment for the insurance
23 companies writing here, so I'm really more
24 interested in what you as the insurance commissioner
25 are thinking about with regard to these underwriting

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1 losses.

2 MR. McCARTY: Well, that's a very good question
3 because with the underwriting losses, there are only
4 two alternatives, increasing rates, which is really
5 just addressing the symptom, or looking back at the
6 core problems and what can be done.

7 And I want to commend the Legislature because
8 all of these have been issues that have been there
9 before. We certainly have concern about the
10 mitigation discounts. There is currently a loss
11 methodology commission. The Hurricane Loss
12 Methodology Commission is conducting an evaluation
13 to ensure that those relativities that have been
14 developed in the past are appropriate in terms of
15 the credits and discounts that are available for
16 mitigation.

17 Having said that, I think a number of companies
18 have identified their own internal problems in terms
19 of applying those discounts and may be applying
20 those discounts on top of discounts that are
21 similar. For instance, a new home discount in
22 addition to a mitigation discount actually is giving
23 duplication.

24 So we're working with the companies to ensure
25 that the implementation of their discounts is

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1 appropriate and also doing an evaluation, the state
2 evaluation of the discounts themselves.

3 Fraud of course is -- continues to be a vexing
4 problem in our state. And we certainly, I think,
5 continually look for ways that we can augment our
6 fraud investigation, as well as looking at
7 potentially ways of addressing particularly the
8 fraud as it relates to the mitigation discounts and
9 probably strengthening the requirements with regard
10 to doing that, perhaps requiring an affidavit, to
11 say there's a penalty of a felony conviction for
12 fraud.

13 In our interest of getting consumers to
14 mitigate their homes, we perhaps have made an
15 opening for those few fraudsters and hucksters that
16 are out there that want to take advantage of our
17 system. So we're going to work to identify areas to
18 ratchet down that fraud as well.

19 The increased reinsurance cost unfortunately is
20 outside my jurisdiction. I wish that there were
21 ways for us to do that. As we've seen in the past,
22 it's a volatile marketplace. We have had no storms
23 in Florida, but they've had catastrophic events
24 globally, and that's going to affect the cost of
25 reinsurance.

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1 And I think the fact that we have a Florida
2 catastrophe fund that provides a sizable amount of
3 catastrophe coverage in our state is one of the more
4 stabilizing things that we could have done in
5 providing stability for our domestic as well as
6 foreign market.

7 With regard to replacement cost methodology, I
8 think there's a number of things that can be done.
9 I think we need to be concerned about the consumer
10 who is not able to fix their roof. On the other
11 hand, we've got to make sure, if you get replacement
12 cost on something, that that money is used to
13 replace that.

14 So we're going to work with the insurance
15 industry to ensure that we strike some kind of
16 appropriate balance to ensure that in a catastrophe,
17 that the policyholder gets the money to effectuate
18 the repair of the roof. But in other areas, we may
19 look at returning to actual cash value, where it
20 seems more prudent in terms of cost containment.

21 And, lastly with the report, in regard to
22 sinkhole coverage, again, the Legislature has made
23 herculean efforts to try to provide consumers with
24 options, whether to take the coverage or not take
25 the coverage. We're seeing a considerable number of

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1 policyholders, and this is asserted by the industry,
2 that are having very expensive inspections and
3 evaluations that need to be done for cracks in the
4 walls, et cetera.

5 We're looking at some alternative to --
6 companies are certainly willing to pay for
7 catastrophic losses, ground collapse, you know. But
8 many of the cases that they're seeing is really a
9 matter of settlement, ground settlement and
10 something that you see fairly consistently around
11 the state that is not directly related to sinkhole
12 activity. And that is not so much the claims paying
13 as it is the frictional costs, the cost of
14 investigating those claims, which can be tens of
15 thousands of dollars, even with no claim.

16 And, again, what we're seeing in Florida is
17 again exacerbated by the economy. And obviously,
18 with a recovering economy, we're cautiously
19 optimistic that we'll benefit. But the things that
20 we're looking at here are really Florida-specific
21 and I think will require not only our administrative
22 attention but legislative attention as well.

23 ATTORNEY GENERAL McCOLLUM: Governor?

24 GOVERNOR CRIST: Yes, General.

25 ATTORNEY GENERAL McCOLLUM: Of all those items

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1 you've listed to us as reasons for the price or cost
2 of insurance going up, the rates and whatever, the
3 pressures on it, I had the impression before you
4 presented, and I want to know if it's correct, that
5 the single biggest item remains the question about
6 the reinsurance in a catastrophe.

7 In other words, we have a catastrophe fund, but
8 these private insurers who insure homes and do
9 windstorm still have to go out and seek some, if not
10 in some cases all of their reinsurance from outside
11 that fund, and it costs them a lot, and they want to
12 pass that on, obviously. Is that not true?

13 MR. McCARTY: Without question, without
14 question. You know, we talked about it. The
15 overriding concern always in Florida is the risk of
16 ruin. Companies go into business every hurricane
17 season with the fact that they could have all of
18 their assets wiped out by a catastrophic event in
19 Florida. And we rely very heavily in our state on
20 global reinsurance, particularly Bermuda and
21 Lloyd's. There's a lot of volatility in that
22 marketplace.

23 Some companies that I've individually spoken
24 to, even just the remove of the temporary tickle
25 layer that was dialed down a little bit this year,

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1 that wasn't their biggest cost. Their biggest cost
2 was their underlying coverage for their attachment
3 point to the Cat Fund, which was substantially
4 higher than it was last year.

5 So we are continuing to be pressed by the
6 increasing cost in the reinsurance industry. And
7 it's important to note that this is happening
8 without a storm. And so if we have a storm of
9 anything like we've seen in 2004 or '5, on top of
10 it, you're going to see increased pressure on
11 reinsurance. That's the variable that we're not
12 able to address.

13 ATTORNEY GENERAL MCCOLLUM: So the absence of
14 real competition or as much competition as we'd like
15 in the reinsurance market, the threat of the big
16 super storms, et cetera, still loom as the single
17 biggest driver in pressure on homeowners' insurance.

18 Let me ask you, Kevin, about something
19 unrelated but something that you and I discussed, I
20 think, that ought to at least be laid on the table.
21 I heard for the first time in the last few days
22 something I wasn't very familiar with, and that is
23 that there is a problem with the liability insurance
24 for above-ground and below-ground storage tanks for
25 petroleum in our state.

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1 Historically, I understand that there has been
2 insurance for this. The market, however, appears to
3 be either drying up or the insurers that are here,
4 the few are indicating they're going to drop these
5 coverages. Can you tell us about this? Is this a
6 problem for the mom and pop convenience stores and
7 for others who have these storage tanks, and can you
8 describe that for us?

9 MR. McCARTY: Yeah, absolutely, and I think
10 you've really set the background for that. Prior to
11 1999 Florida had a trust fund that was set up to
12 deal with seepage or pollution liability or
13 pollution exposure for underground and above-ground
14 storage tanks. We transitioned to an insurance
15 model in 1999. There was only a handful of carriers
16 that had been in this business, which is not unusual
17 because it's a very specialized business and it's a
18 very specialized coverage.

19 As we get closer to the time when we need to
20 move from the single layer to the double layer and
21 all of those tanks need to be removed, we're talking
22 about a number of mom and pops. These are not
23 generally the big chains. These are mom and pop,
24 and they are transitioning to that. They are having
25 difficulty having their policies renewed, and there

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1 is a real shortage in that marketplace.

2 And we are working with Secretary Sole because
3 this is an issue, obviously, important to his
4 agency, to provide coverage and alternatives in this
5 market.

6 ATTORNEY GENERAL MCCOLLUM: My understanding is
7 there are only like two companies in the whole state
8 right now, and both of them indicated they're going
9 to drop these policies, or a good portion of them
10 that are doing business; is that right?

11 MR. McCARTY: One of them is dropping and one
12 is not taking any new policies and only renewing.
13 So, yeah, that is a big problem.

14 ATTORNEY GENERAL MCCOLLUM: And you don't have
15 many buyers, or many new companies that want to come
16 in here, but you do have one or two under
17 consideration?

18 MR. McCARTY: Yes, we do. We have one company
19 that has made application that has done this
20 business very successfully, it appears, in Iowa.
21 And we're in the process of working with them on a
22 consent order for us to provide coverage. There's
23 like 3,000 companies out there that still have a
24 potential for exposure due to the changing of the
25 tanks, and they're looking at doing about a thousand

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1 of those, so --

2 ATTORNEY GENERAL MCCOLLUM: And there are a
3 thousand or more mom and pop shops in Florida,
4 stores or people who own these storage tanks that
5 need the coverage and don't right now have it; is
6 that right?

7 MR. McCARTY: That's correct.

8 ATTORNEY GENERAL MCCOLLUM: Thank you. It's a
9 tough issue, too. May not be as broadly affecting
10 everyone, but it certainly affects small business in
11 our state, and I thought we should at least be aware
12 of it as a group. Thank you.

13 MR. McCARTY: Thank you, General.

14 CFO SINK: Governor, could I just --

15 GOVERNOR CRIST: CFO.

16 CFO SINK: -- bring up one more thing? In
17 terms of the new companies that have come, Kevin, to
18 bring capital and write insurance -- and, again, I
19 appreciate your providing the additional detail.
20 But, you know, we have this looming State Farm
21 departure that we're looking at over the course of
22 the next, well, 18 months or so. What's your
23 feeling now about the ability of this -- of these
24 new companies to absorb numbers of these policies
25 that State Farm is going to be leaving? Because

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1 it's almost a million policies, I gather.

2 And as you provided the details on the 29 new
3 companies, some of the prospects don't seem too
4 bright for some of the companies in terms of
5 capabilities of writing a lot of more new policies.

6 MR. McCARTY: Yes. State Farm in their
7 withdrawal plan is looking at 770,000 policies that
8 are subject to their nonrenewal. They're attempting
9 to withdraw, as you know. The Florida law provides
10 that we can accept the withdrawal plan, providing it
11 is not hazardous to its policyholders or hazardous
12 to the people of the state of Florida.

13 We have set conditions on that withdrawal,
14 which we think are prudent, to provide for an avenue
15 for those agents to place them with the voluntary
16 market and not house them in Citizens and to have an
17 orderly withdrawal.

18 Right now we are -- we have not agreed. They
19 have contested our conditional withdrawal provision.
20 And they will not be nonrenewing during the course
21 of this. So at the current moment, those policies
22 will be staying with State Farm until we have a
23 resolution of how they will exit from the
24 marketplace.

25 I think it's important to -- most of the

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1 companies that have expressed an interest in taking
2 blocks of State Farm business, and there have been a
3 number of companies that have, are not in the 29 new
4 companies. They were companies that had been doing
5 business, organically-grown companies, Florida
6 companies that had been doing business in Florida,
7 many of them since the late 1990s. They are
8 companies that have probably superior ability to
9 negotiate reinsurance contracts due to their track
10 record and their business record and their success
11 in terms of making money in Florida.

12 There have been over 30 -- about 30 companies
13 that have contacted our office and State Farm about
14 taking those policies on. It would appear that
15 there would be sufficient capital in those
16 companies, but we would certainly be better served
17 if State Farm, even if they didn't stay with the
18 full complement of their 770,000 policies, if they
19 stayed with some policies in the state of Florida,
20 recognizing that they're overexposed and they have
21 to do some strategy of increasing revenue, which
22 they have taken steps to do so by eliminating some
23 of their discounts and credits, their voluntary
24 discounts and credits, which is helping their bottom
25 line.

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1 So hopefully with our continued negotiations
2 will become a settlement that is agreeable to the
3 policyholders of State Farm and a benefit to the
4 people of Florida.

5 CFO SINK: Okay. Thank you.

6 MR. McCARTY: Thank you.

7 GOVERNOR CRIST: Thank you. Great report,
8 Commissioner. Thank you very much.

9 MR. McCARTY: Thank you very much, Governor.

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1 GOVERNOR CRIST: Administration Commission,
2 Lisa Saliba.

3 MS. SALIBA: Good morning, Governor and
4 Commission members.

5 GOVERNOR CRIST: Good morning.

6 MS. SALIBA: We have two items today. The
7 first item is the approval of the minutes from the
8 July 28, 2009 meeting.

9 ATTORNEY GENERAL MCCOLLUM: I move the approval
10 of Item 1.

11 COMMISSIONER BRONSON: Second.

12 GOVERNOR CRIST: Moved and seconded. Show the
13 minutes approved without objection.

14 MS. SALIBA: Item Number 2 relates to a land
15 use -- future land use amendment. The item comes to
16 the Commission for final action. At issue is
17 whether an amendment to the Marion County Future
18 Land Use Map is in compliance. The Department of
19 Community Affairs issued a determination of
20 noncompliance based upon the lack of demonstrated
21 need.

22 Let me very quickly on this issue go through
23 the procedure. I will give a short overview of the
24 case. It will be followed by presentations from the
25 parties. Those parties are Mr. Ralf Brookes,

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1 representing the petitioner; Susan Woods, who is a
2 petitioner; Secretary Pelham with the Department of
3 Community Affairs; Commissioner Barbara Fitos with
4 Marion County; Linda Shelley representing Austin
5 International, Castro Realty Holdings and Halcyon
6 Hills; Terri Keogh, representing Castro Realty
7 Holdings. And then from the public is Charles
8 Pattison with 1000 Friends of Florida, and Manley
9 Fuller, Florida Wildlife Federation.

10 If I may, I wanted to give you a short overview
11 of the case. Again, the issue pertains to a future
12 land use amendment adopted by Marion County
13 Ordinance 07-31. The amendment changed the FLUM
14 designation on 378 acres of urban reserve and 17.83
15 acres of rural land to medium density residential.
16 The effect is that the density would increase from
17 one dwelling per ten acres to two dwellings per
18 unit -- two dwelling units per acre.

19 DCA initially published a notice of intent to
20 find the amendment in compliance. Citizen
21 Petitioner Susan Woods and Karen Lynn Recio
22 challenged DCA's decision and filed for an
23 administrative hearing. Their challenge focuses
24 mainly on the lack of demonstrated need as required
25 by the Marion County comprehensive plan, state law

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1 and rule.

2 During the course of discovery and preparation
3 for the hearing, DCA determined they had made an
4 error in their finding of in compliance. DCA
5 informed all parties prior to the hearing and
6 subsequently supported the petitioner's contention
7 that the County had not demonstrated need for the
8 FLUM amendment.

9 The administrative law judge entered a
10 recommended order finding the petitioners had proved
11 beyond fair debate that the FLUM amendment was not
12 based on professionally acceptable demonstration of
13 need. He found that the County based its decision
14 on an analysis that allocated enough land for
15 residential use for approximately 45 years. DCA
16 issued its determination that the amendment is not
17 in compliance, consistent with the administrative
18 law judge's recommended order.

19 Before you today will be the decision. Right
20 now we will go into the speakers. The first speaker
21 that we invite to speak is Ralf Brookes representing
22 the petitioner.

23 GOVERNOR CRIST: Good morning.

24 MR. BROOKES: Thank you for taking the time to
25 read and understand the administrative law judge's

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1 ruling in this case and thank you for your service
2 as Governor and Cabinet in fulfilling the awesome
3 responsibility you have in providing a sustainable
4 future for this generation and future generations of
5 Floridians and also for your service as part of the
6 process, ensuring that there's a full and fair
7 hearing for all citizens of the state of Florida.

8 This case shows that the system is working.
9 The system was designed to give Florida's citizens
10 input into the agency decision-making process. It's
11 a long and arduous administrative hearing process
12 that involves discovery and depositions and many
13 weeks, if not years in this case, of preparation.

14 We support the amended draft final order
15 prepared by your staff. We object to the
16 applicant's request that the plan amendment be
17 shelved and put on a shelf based on an approach that
18 was deemed to be not credible and did not pass even
19 the most generous fairly debatable standard.

20 The County is examining and considering
21 appropriate professional acceptable methodologies
22 for need, and placing this plan amendment would only
23 hinder that process. It's important to remember
24 that this is an applicant-generated plan amendment,
25 dealing with only 378 acres within the entirety of

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1 Marion County.

2 The administrative law judge found, quote, the
3 result of the approach was to allocate enough land
4 for residential use to meet the countywide projected
5 incremental need for additional residential land use
6 for approximately 45 years, which is five times the
7 calculated incremental need for 2015.

8 The administrative law judge, after hearing all
9 the evidence and testimony, also found that Marion
10 County has an available supply of 7,572 medium
11 density residential dwelling units in this Planning
12 District Number 5. So the question is do they need
13 another 800 units in this Planning District Number
14 5, the way the comprehensive plan of Marion County
15 is currently set up.

16 To shelve this plan amendment on this 378 acres
17 would put the cart before the horse. I'd suggest to
18 you that it even puts the horse upon the rider.
19 Marion County is undertaking an extremely complex
20 process now of determining what their population
21 projections are, what their need is going to be, how
22 much has already been allocated.

23 And once they determine the amount of how much
24 growth they're going to have, then they'll sit down
25 and they'll plan where to put this growth in

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1 appropriate areas. And to put this plan above all
2 other property owners and all other property in the
3 county simply wouldn't be fair.

4 We thank you for your service at this final
5 step in a long process representing two years of
6 sacrifice by two incredible citizens, Lynn Recio and
7 Susan Woods. And I'd like to introduce you to Susan
8 Woods, who will say a few words. Thank you.

9 MS. SALIBA: Susan Woods, the petitioner.

10 GOVERNOR CRIST: Good morning.

11 MS. WOODS: Good morning, Governor Crist,
12 Agriculture Commissioner Bronson, CFO Sink and
13 Attorney General McCollum. It is with great
14 appreciation that I stand here today after our
15 two-and-a-half-year-long hearing process. What I
16 have learned is that it really is true that a group
17 of concerned citizens can be heard, thanks in no
18 small part to each of you and to a state government
19 that is committed to citizen participation in that
20 state's future.

21 I'm sorry that I could not be joined today by
22 my co-petitioner, Lynn Recio. She and her husband
23 Bill are in Kentucky at the fall sale of young
24 thoroughbred horses because their lives and
25 profession revolve around one of Marion County's

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1 oldest treasures, what we refer to as the horse
2 business.

3 Luckily for all of us horse people, we are
4 fortunate to live in one of only three areas in the
5 world, Marion County, Lexington, Kentucky, and
6 Chantilly, France, that can claim the finest soil
7 and environmental conditions possible for raising
8 strong, healthy horses. It is the work of many
9 small horse farm neighbors, not just me, that has
10 brought this case to this point today.

11 We thank you for being part of the open
12 governmental process that honors the rights of all
13 Florida citizens to be heard. Today, on behalf of
14 all my neighbors, I thank you for your fair, honest
15 and appropriate decision.

16 MS. SALIBA: Next is Secretary Pelham
17 representing the Department of Community Affairs.

18 MR. PELHAM: Governor and members of the
19 Cabinet, good morning. The Department is here to
20 support the staff recommendation and to call your
21 attention to several issues of statewide importance
22 that are presented in this case. But first let me
23 say just a word about the Department's role in this
24 matter.

25 The Department staff received this amendment,

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1 as they do many, many, many others, reviewed it and
2 found it in compliance. Subsequently, as you have
3 heard, two Marion County citizens challenged the
4 Department's decision, as they have the statutory
5 right to do under our Growth Management Act. Indeed
6 the enforcement of our Growth Management Act depends
7 primarily upon citizen participation and enforcement
8 through exercising their standing to challenge
9 decisions which they think are inappropriate.

10 At some point my staff came to me and said, we
11 need to brief you on a Marion County plan amendment.
12 They explained the background. They explained that
13 two citizens had challenged the amendment and that
14 after careful evaluation of the citizens' complaint,
15 they had determined that the citizens were correct
16 and that the Department erred in overlooking this
17 very important issue. It wasn't that the Department
18 analyzed it in a certain way. It's simply that the
19 Department overlooked it altogether in this
20 situation.

21 And their question to me was, "If we're asked
22 to go down and testify in this hearing, what are we
23 to do?" And I said, "Well, the answer to that is
24 very simple. You are to tell the truth. You have a
25 legal and an ethical obligation as professional

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1 planners to tell the truth."

2 Subsequently, they were subpoenaed by the
3 petitioners to the hearing before a DOAH
4 administrative law judge. And I'm confident that
5 under oath and subject to cross-examination they
6 told the truth.

7 Now, the Department has been criticized for
8 this, much to my astonishment. I hope that we have
9 not reached the point where it is considered
10 inappropriate for a governmental agency to tell the
11 truth and admit that it made a mistake.

12 Now, out of this case, there are three issues
13 that I would like to bring to your attention and
14 discuss. And the first is the role of citizen
15 participation and citizen standing. As I've pointed
16 out, our system depends upon that. It provides,
17 pursuant to the instruction of the Legislature, that
18 we shall have broad public participation in these
19 processes, so that citizens can protect their own
20 property and make sure that their local government
21 is following the plan that they have adopted.

22 In this case, these two citizens did challenge
23 our decision. They challenged it to protect their
24 livelihood, to protect their horse farms and, more
25 broadly speaking, to protect the equestrian industry

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1 in Marion County, which is important to the County's
2 economy and the economy of Florida. They have been
3 engaged in this effort for numerous years in trying
4 to protect horse country from the continuing
5 encroachment of urban development into these areas.

6 In this case these two citizens, without a
7 lawyer and faced with the extremely difficult
8 "fairly debatable rule" standard of proof, which
9 makes it virtually impossible to ever win, they won.
10 Now some development interests, some of whom did not
11 even participate in the case below, are urging you
12 to reject the administrative law judge's decision
13 and take away from these two great ladies their
14 hard-earned victory.

15 I respectfully suggest that to do that would
16 send a terrible message to the citizens of this
17 state. The message would be, don't bother. You can
18 participate all you want at the local level, but up
19 the line, the system is not going to protect your
20 rights. And in sending such a message, I suggest to
21 you that we would simply pour more fuel on the fires
22 of hometown democracy.

23 The second issue that I would like to point out
24 is the requirement that a local government must
25 comply with its own adopted plan. Much has been

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1 made about the Department's role and state laws, but
2 at bottom this case involves local law and Marion
3 County's adoption of its own comprehensive plan.
4 And that comprehensive plan contains Marion County's
5 own special requirements regarding a demonstration
6 of need for new plan amendments which add still more
7 residential development to a county that is already
8 hugely allocated with residential development
9 rights.

10 The local comprehensive plan is for the
11 protection of all citizens and their property,
12 including these two petitioners and their horse
13 farms. The administrative law judge correctly
14 determined that the County violated its own plan
15 when it adopted this plan amendment.

16 And I note that the County's own planning staff
17 recommended to its commission that it deny the plan
18 amendment and that there was a demonstration of
19 need. And at the administrative hearing in this
20 case, the County presented no evidence to support
21 its plan amendment decision.

22 If you should now reject the administrative law
23 judge's decision or to allow this amendment to
24 survive, as is being suggested now, it will send
25 another message, this one to local governments. You

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1 need not follow your own plan because the system
2 will not do anything about it if you don't.

3 And then finally, a third issue, a critically
4 important issue under our Growth Management Act, the
5 issue of need. The issue that says that if you are
6 going to substantially increase amounts of
7 development over what you've already done in your
8 plan, you need to demonstrate that there's a need
9 for it, because after all, what the Legislature is
10 asking you to do under the Growth Management Act is
11 to plan for your projected needs.

12 What do you project for your jurisdiction and
13 how are you going to accommodate that growth? How
14 are you going to provide for it? How are you going
15 to provide the infrastructure, the water and the
16 schools? To plan without regard for your projected
17 needs is to not plan at all.

18 These requirements have been in the Growth
19 Management Act from the very beginning, for more
20 than 20 years. They're in Chapter 163. They're in
21 Chapter 9J-5, the administrative law rule that
22 applies here. It is not a new policy. It has been
23 here from the beginning. Those statutes and rules
24 have been applied in numerous cases involving
25 individual plan amendments. There are numerous

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1 precedents in the decisions of this own commission
2 in the past that apply those rules in the same way
3 that they have been applied in this case.

4 Despite what has been contended by some people,
5 some who are not even parties to this case, the
6 Department is not doing anything differently in this
7 case. The administrative law judge is not doing
8 anything differently in this case that has not been
9 done in numerous other cases.

10 The need criterion is more important now than
11 it has ever been, for this reason. The hometown
12 democracy movement is prompting landowners all over
13 the state to submit plan amendments to the
14 Department, greatly increasing development rights on
15 property so that they can beat hometown democracy
16 should the voters of this state adopt a
17 constitutional amendment in November of 2010 that
18 requires a public referendum. In fact, this case
19 has become a stalking horse for much bigger projects
20 waiting in the wings that are in the pipeline.

21 We have at the Department now plan amendments
22 proposing enormous amounts of new development. We
23 have received proposals for amendments that want
24 30,000 residential units, 60,000, even 100,000
25 residential units in the case of one county. If you

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1 should yield to the urgings of those who would now
2 like to remove or weaken the demonstration of needs
3 requirement, we will be sending the worst message of
4 all to the people of this state. That is, the
5 system will not enforce even the most fundamental
6 growth management requirements in our statutes and
7 rules.

8 I would urge you to support your staff's
9 recommended order. I think it is appropriate. We
10 have gone through an administrative hearing before
11 an administrative law judge, where people testify
12 under oath and subject to cross-examination. There
13 is absolutely nothing unusual about this
14 administrative law judge's decision.

15 And I think in most circumstances it would be
16 very easy to deal with it. But because of other
17 issues that are being injected into this case,
18 including the effort to undermine the most
19 fundamental requirement of our growth management
20 laws, it gives special significance and importance
21 to this case, and I would urge you to follow your
22 usual practice and uphold the administrative law
23 judge's decision and the recommended remedial
24 action.

25 I'll reserve a few minutes for any rebuttal

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1 should it be necessary and will be happy to answer
2 any questions, but thank you for your time and
3 attention.

4 GOVERNOR CRIST: Thank you, Secretary.

5 MS. SALIBA: Commissioner Barbara Fitos, Marion
6 County.

7 GOVERNOR CRIST: Morning, Commissioner.

8 MS. FITOS: Good morning, Governor Crist,
9 Commissioner Bronson, CFO Sink and Attorney General
10 McCollum. My thanks for your consideration of this
11 crucial growth management issue for Marion County.
12 My own stated goal in seeking this office of county
13 commissioner was sustainability, both economically,
14 environmentally and in terms of quality of life.

15 Nothing, both from my personal perspective and
16 in my official capacity, will have a greater impact
17 on sustainability than appropriate comprehensive
18 growth management, crafting policies in partnership
19 with our community stakeholders in envisioning how
20 we grow.

21 In the past three years since my election,
22 tremendous strides have been made, not only in
23 advancing and formalizing our own strategic vision
24 in Marion County, but in seeking new levels of
25 cooperation and collaboration with all of our

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1 partners, including DCA, toward this goal of
2 sustainable community.

3 As a retired banking executive in human
4 resources, I have had a tremendous learning curve in
5 dealing with the complex issues relating to
6 sustainable growth, both at the local level and on a
7 statewide basis, as we deal with land use, public
8 works, infrastructure and most especially our
9 precious water resources.

10 I am not an attorney nor an urban planner. But
11 as a 30-year resident of Marion County whose love of
12 this community is why I do what I do, it just makes
13 sense to me that we have adopted a proprietary
14 economic model designed by WilsonMiller to measure
15 the economic impact of growth. We are updating our
16 EAR and comprehensive plan to include a defined
17 urban service boundary in lieu of an untenable urban
18 reserve designation that incorporates all of the
19 individual corridor studies completed over the last
20 several years in Marion County.

21 We are rebalancing the equation between
22 commercial and residential growth that is crucial to
23 job creation, which is an imperative in these
24 perilous economic times, especially in Marion
25 County, with a current unemployment rate approaching

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1 14 percent.

2 From my perspective, we have also forged a new,
3 more open communication and dialogue with DCA. And
4 again from my perspective, this 07 amendment in
5 question encouraged clustered, contiguous
6 development, and not only included a key transfer of
7 development rights option, but by its very proposed
8 design and densities, which were included in a
9 comprehensive developer's agreement, would allow for
10 significant green spaces, would mitigate key
11 drainage issues, would allow for central water and
12 sewer connections, was largely compatible with a
13 defined corridor study and created an appropriate
14 buffer for preservation of rural, agricultural and
15 equine lands beyond. In short, it was that kind of
16 exemplary planned growth that would position the
17 County well as we moved forward.

18 Any true planning with respect to need must
19 also incorporate those platted vested lots that
20 exist not only in Marion County but statewide. I
21 look forward to that conversation to address what in
22 many cases are unsustainable plats in a way that
23 preserves property rights but offers a vehicle to
24 effectively incorporate these platted lots into our
25 plans for sustainable growth.

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1 I fully appreciate and respect the position of
2 DCA regarding need and also have tremendous respect
3 for the legitimacy of the pro se filed by Ms. Woods
4 and Ms. Recio. I am not asking for an exception to
5 be made with respect to this 07 amendment. Rather,
6 as we move forward cooperatively in partnership with
7 DCA in formulating a revised planning horizon well
8 beyond 2010 and incorporate a DCA-accepted needs
9 methodology, that this amendment be required to meet
10 those revised standards.

11 Treating this amendment comprehensively rather
12 than isolating it in this piecemeal fashion or tying
13 it to a nonviable planning horizon will foster these
14 goals of sustainable growth management.

15 I respectfully request that no sanctions be
16 imposed against Marion County if this amendment
17 should be found to be consistent with these updated
18 planning provisions that are in process now and
19 which will be adopted according to DCA's prescribed
20 time lines. Thank you again for your time and
21 consideration.

22 GOVERNOR CRIST: Thank you.

23 MS. SALIBA: Next is Linda Shelley,
24 representing Austin International, Castro Realty
25 Holdings and Halcyon Hills.

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1 MS. SHELLEY: Good morning, Governor and
2 members of the Commission.

3 GOVERNOR CRIST: Good morning.

4 MS. SHELLEY: Linda Shelley from Fowler, White,
5 Boggs here in Tallahassee and very pleased to
6 represent the intervenors, applicants, property
7 owners in this amendment process.

8 As much as the editorials and the press would
9 like to make it so, this is not a case of good
10 versus evil, saints versus sinners, greed. It is
11 not a result of a David and Goliath fight. What it
12 is is a case of a family that has owned property in
13 Marion County for decades and that wishes to build a
14 high quality community because they intend to be
15 involved in this community for many years to come.

16 It is also not a case in which this property
17 owner applicant is asking you to overturn the
18 findings of fact and conclusions of law and the
19 recommended order. As your staff, as the
20 petitioners, as the Department of Community Affairs
21 have urged you to do so, this applicant has no
22 objection to a final order that adopts the
23 recommended order and upholds and validates the
24 issues that the petitioners and the Department have
25 brought to bear in this matter.

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1 We are asking instead to be judged on the
2 revised methodology that is in the process of being
3 adopted by the County and that Commissioner Fitos
4 referred to. That has a fairly long time line. I
5 believe that won't be completed until the end of
6 next year. But there is no harm done in leaving
7 this amendment pending. It will not go into effect.
8 It will not get an advantage over other amendments.

9 This litigation was about a variety of issues,
10 none of which were sustained by the administrative
11 law judge, except for the issue of need. And need
12 is not about this amendment. It doesn't change any
13 of the stormwater protections or the density. It
14 doesn't change the water, sewer, transportation
15 mitigation. So a remedial measure that you would
16 normally see that says change the comp plan
17 amendment in a certain way or add new data and
18 analysis in a certain way is not applicable here.
19 Your staff has said just rescind this amendment.

20 And we're asking you to not do that because we
21 believe that a more equitable result and one that
22 provides the result that the secretary has so
23 eloquently argued in favor of, sustaining and
24 validating the Department's position and the
25 petitioner's position on the need issue but still

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1 lets this amendment survive to be judged against the
2 new methodology that will be approved by the County,
3 with the help of their consultant, and will be
4 judged by the Department of Community Affairs.

5 And then we have said also, once the County has
6 that new methodology and they make a judgment, make
7 sure the Department agrees that they are correct.
8 And even further we have asked that if all of that
9 happens, then ask the Department of Community
10 Affairs to issue a new notice of intent so that if
11 anybody disagrees with the outcome, such as occurred
12 in this case, that they would have a challenge
13 opportunity.

14 Some people have said, well, what's the
15 difference? Maybe -- why wouldn't it turn out the
16 same? One of the key issues in this case was the
17 planning horizon. It's a 2007 amendment with a 2010
18 plan. The issue was whether or not one needed to
19 prove need during that limited planning horizon.
20 The analysis prepared by the applicant's consultant
21 went out to 2015. That was determined by the ALJ to
22 be unprofessional and unacceptable.

23 The new plan will have a longer planning
24 horizon. I don't know how long it will be. Will it
25 be 2020, 2030? The needs methodology is a

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1 mathematical equation. And when you change the
2 projections, you change the time line, you change
3 the population projections, you may change the
4 districts, you may change the density of different
5 properties. So we do not know whether or not we
6 will comply with the new needs methodology being
7 determined by the County. But we want to be judged
8 against it, and we believe that it is fair.

9 For that reason, we have requested, instead of
10 staff recommendation, that you impose a remedial
11 measure of testing what we refer to as the Castro
12 amendment against the new adopted needs methodology,
13 the new plan that will come forward next year and
14 that you make sure the Department agrees with it and
15 that, if possible, this amendment will be able to
16 deliver the high quality community that it was
17 intended to all the time.

18 It is my pleasure to introduce Terri Keogh, a
19 member of the family that has owned this property
20 for so long, to make a few remarks.

21 GOVERNOR CRIST: Good morning.

22 MS. KEOGH: Good morning. Thank you, Governor
23 and members of the Cabinet. My family has owned
24 this property, as was mentioned, since the 1950s,
25 and we have been community-minded ever since. We

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1 have roots there. I grew up less than a mile from
2 the property, went to school there. And my mother
3 spends a large part of her years still there next to
4 the property in Golden Hills Community.

5 We intend to stay there and to care about the
6 future of the community, and we also want to be
7 proud of what we helped create there. So it's with
8 this reason that we began the process by speaking
9 with our neighbors, you know, several years ago.
10 And we heard their concerns then, and there were
11 many. And actually that dialogue helped us get the
12 better community planned that we had come forward
13 with.

14 They had issues of density, and we mitigated
15 from four units to two units per acre, being in the
16 urban reserve and contiguous to medium density
17 residential. They had issues with flooding, so we
18 agreed to hold all of our water on site, thereby
19 alleviating some of the local flooding problems.
20 They had issues with the road not having the
21 capacity for additional traffic, so we obligated
22 ourselves to improve Northwest 90th Avenue. They
23 didn't want to see the development from the road,
24 and we respected that and agreed to put conservation
25 easement natural buffers, maintaining what was there

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1 around the perimeter of the property, so that the
2 viewshed from Northwest 90th Avenue would not
3 change.

4 We also agreed to put additional land in
5 conservation easement both on the site and off the
6 site on Highway 27, more community-minded, again,
7 for everybody that passes on Highway 27, an 80-acre
8 parcel. We also agreed to bring transfer
9 development rights from another 375 acres,
10 preserving that onto the property. We committed to
11 all the best management practices for water
12 conservation.

13 So as you can see, we've gone to a great deal
14 of effort and expense to make this development a
15 standard setter for Marion County and for the future
16 developments that go on there. We went to DCA
17 during the process and heard their concerns after
18 the ORC report was filed and worked through their
19 concerns. We tried hard to comply with their
20 comments regarding need by hiring a consultant to do
21 a study on the needs issue.

22 Our amendment was then adopted and we were
23 found in compliance. As it turns out, DCA
24 discovered they had issues with the way the study
25 was done. And make no mistake, we are in agreement

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1 that there should be an obligation to demonstrate
2 need as an applicant. So we are not looking to get
3 around that requirement. We're simply asking you
4 now to give us a chance to comply with whatever
5 needs methodology is developed by Marion County and
6 approved by the DCA. And if we can't make the
7 grade, we'll live with the consequences, whatever
8 they may be.

9 Back in 2007 there were two other cases that
10 added residential density in our planning district,
11 and they were found in compliance. And we're asking
12 not to be singled out, to have to start the plan
13 amendment process all over again, as it is
14 time-consuming, expensive. And since the only issue
15 we have left remaining is need, we feel it is
16 unnecessary. Thank you very much for your time.

17 MS. SALIBA: Before the representatives from
18 the public, Secretary Pelham has asked for a few
19 more minutes.

20 MR. PELHAM: It is absolutely true that Marion
21 County has sought to develop a better, more positive
22 relationship with the Department. Recently the
23 chairman of the Marion County Commission and some of
24 the county staff came up to meet with me and our
25 staff, and their message was very clear. We know we

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1 have problems in Marion County. We know that we
2 haven't been doing everything the right way. We'd
3 like to work with you to come up with a better
4 planning system. We'd like to work with you to
5 improve our planning.

6 For the past four years what has been happening
7 with the County is that on a regular basis every
8 year they've been sending up dozens of new plan
9 amendments covering thousands and thousands of acres
10 and authorizing more and more residential
11 development, into the thousands. They recognize
12 that they could not continue to operate in that
13 year -- in that manner.

14 And for that reason, we have been working
15 closely with them to update their plan, something
16 that will take a considerable amount of time, but
17 both the County and our staff are working very
18 closely together. I do not think that in any way
19 justifies an action that would let this amendment
20 that has been found by the administrative law judge
21 not to be in compliance to stand.

22 Let's focus for a moment on what they're asking
23 here. Rather than to take the normal course of
24 action, which would be to say to the County, either
25 rescind the amendment or we retain jurisdiction for

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1 60 days to consider whether or not, in the event you
2 don't rescind, any sanctions will be imposed, and in
3 almost every case where that's ever happened, the
4 local government does rescind and that's the end of
5 the matter.

6 They now want this commission to depart from
7 your well established practice. They want something
8 that's contrary to the statute. Our Growth
9 Management Act does not provide for what they are
10 now asking for.

11 But there's something else here that I have to
12 point out seems just a little bit cynical. If you
13 had lost the ball game, would you not like to stave
14 off the ultimate defeat and go back and change the
15 rules that would be more favorable to you so that
16 you could meet them and then snatch victory from the
17 jaws of defeat? That's what they're asking for
18 here. We know we don't comply with the existing
19 law, but let's give us time to go back to Marion
20 County and change the rules after the fact and then
21 measure us by the new rules, not by the existing
22 rules. There's no assurance whatsoever that that
23 will ever happen. I would urge you that there
24 simply is no reason here to depart from your
25 well-established precedence.

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1 If the County, in fact, is going to engage in
2 an updated comprehensive reevaluation of its plan,
3 this landowner can participate in it just like the
4 petitioners can. They can all participate in it
5 together. And who knows, they may work out
6 something that everybody can live with. But that
7 belongs down in Marion County. It should take place
8 because that's what Marion County and its citizens
9 want to do, not because this commission imposes this
10 new unprecedented action that they are requesting
11 for it.

12 So in conclusion, once again, we would urge you
13 to support your staff's well-considered recommended
14 order. Thank you very much.

15 ATTORNEY GENERAL MCCOLLUM: Could I ask the
16 secretary a question, if I could? Is there -- you
17 said there's no precedent for this, for us to take
18 that action. What's happening in Marion County now
19 with all these other -- there are other matters like
20 this, I guess, that have been up here. You just
21 described some. Are there any that are on the
22 shelf, the word that somebody used a while ago,
23 waiting for the change to occur down the road, or is
24 this the only one? They sound like they're being --
25 they're saying they're being singled out. That's

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1 why I'm trying to understand if there is some other
2 numbers of properties that are being handled
3 differently.

4 MR. PELHAM: I appreciate your giving me the
5 opportunity to clarify that. There is no other case
6 in Marion County that's in the posture of this case.
7 This case has gone through an administrative law
8 hearing. It was challenged by citizens who took it
9 through an administrative law hearing.

10 That has not happened in any other Marion
11 County amendments that we're dealing with. None of
12 them have been challenged by citizens. None of them
13 have gone to hearings before administrative law
14 judges. Rather, after finding them not in
15 compliance, we have delayed holding the
16 administrative hearing to give the county staff and
17 our staffs time to assess the situation and see
18 where we're going. But there's been no decision
19 made that those cases will not go to an
20 administrative hearing. So they're not being
21 singled out at all.

22 I'd like to point out, too, that the argument
23 they're making, which I think they called the
24 fairness argument, if accepted, would defeat in
25 every case, virtually, a citizen's right to

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1 challenge, because every time a citizen challenges
2 one of these amendments, it's usually part of a much
3 bigger package. And the one who is challenged by a
4 citizen will claim, well, this is not fair. Those
5 other amendments are getting to go forward. They
6 weren't challenged by citizens and ours was. But we
7 should be -- we shouldn't be treated differently.

8 There are two sets of cases. And if a
9 citizen's right to challenge is going to mean
10 anything, that citizen has to be able to get relief
11 regarding that amendment. And saying that it would
12 be unfair to handle it that way, if that were
13 accepted as the defense, would simply deprive every
14 citizen of an opportunity to get the relief which
15 the law affords them.

16 ATTORNEY GENERAL MCCOLLUM: I agree with you,
17 Secretary. I have one other question, though. Are
18 there other situations in Marion County where
19 there's no relief, if you will, being given but
20 where because of the land use plan change that's
21 anticipated, there are, if you will, amendments just
22 sort of sitting and waiting for that to happen,
23 waiting for the land use plan change to occur in
24 2010 or whenever?

25 MR. PELHAM: I do not think that's an accurate

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1 description. I know that rumor has been floated
2 around. There has been no decision made by the
3 Department to leave amendments hanging indefinitely
4 while the County goes through some prolonged update
5 process.

6 ATTORNEY GENERAL MCCOLLUM: That's what I was
7 asking.

8 MR. PELHAM: That's the situation.

9 ATTORNEY GENERAL MCCOLLUM: Thank you.

10 GOVERNOR CRIST: Commissioner.

11 COMMISSIONER BRONSON: Thank you, Governor.

12 I've got a question, and then I've got a statement I
13 need to make to this board. First of all, assuming
14 that we vote the way the law judge has recommended
15 and so forth, which we generally do when these
16 issues come before a full scrutiny, but in the
17 future, with the future designation or the future of
18 Marion County according to the planners and the
19 County Commission, does this negate the landowner
20 from coming back under the new overview of the
21 planning council for the County and the County
22 Commission to re-petition down the road at some
23 point should -- and I'll tell you why I'm getting to
24 this question. Because I saw what happened in
25 Osceola County. I mean, we were a rural county.

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1 Everybody there either grew citrus trees or had
2 cattle. But eventually Disney moved in and things
3 really began to change. And downtown Kissimmee was
4 almost no more downtown Kissimmee. Everything moved
5 out to 192. And those types of things are going to
6 happen as development and time takes place.

7 I just want to know, should those things move
8 in Marion County that way, does this not give the
9 landowner a chance to come back and have their
10 request reviewed?

11 MS. SALIBA: The short answer, Commissioner
12 Bronson, is this would not preclude them from filing
13 a future land use amendment. Secretary Pelham has
14 asked to respond, and then following Secretary
15 Pelham, Ms. Shelley is asking to speak.

16 MR. PELHAM: Commissioner Bronson, there's
17 absolutely nothing to prevent this landowner or any
18 other landowner from coming back into the future,
19 reapplying again for the same amendment, some
20 different amendment. There's nothing to keep this
21 landowner from participating. In fact, they would
22 be encouraged to participate in Marion County's
23 initiative to do a comprehensive reevaluation of
24 their plan. So this is not set in stone. It simply
25 says at this point in time this amendment, as

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1 presented, based on the evidence that was given,
2 this plan amendment is not in compliance with
3 existing law.

4 MS. SHELLEY: Commissioner, that's the same
5 answer I was going to give, and that is actually the
6 result that I think we can avoid, if you would
7 follow my reasoning on that. This does not
8 interfere -- leaving this amendment pending does not
9 interfere with the County's revision of its plan.

10 There were ten other residential amendments in
11 2007. All of them have been approved without regard
12 to the need issue. There are eight or nine other
13 residential amendments pending in the 2008 cycle.
14 And the secretary has indicated that he has made no
15 decision about whether they will be pushed through a
16 trial or whether they will be allowed to be pending
17 while this revision is done.

18 The issue for us is why should this
19 applicant -- if it doesn't have anything to do with
20 the substance of the amendment, not the stormwater,
21 the drainage, the transportation, et cetera, why
22 should this applicant have to reapply at great
23 expense and time, hearings, et cetera, instead of
24 just remaining pending. That's our argument.

25 ATTORNEY GENERAL MCCOLLUM: Ms. Shelley --

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1 GOVERNOR CRIST: General.

2 ATTORNEY GENERAL McCOLLUM: -- would you tell
3 us what kind of costs are involved in reapplying. I
4 mean, are we talking about --

5 MS. SHELLEY: In addition to just regular
6 filing fees, which are the minimal issue,
7 consultants, presentations, time for attorneys and
8 the professional reviewers, time for the County, of
9 course, to go through the amendment cycle again.

10 The County, I understand, has agreed with the
11 Department not to process any more residential
12 amendments until this revision is undertaken. So we
13 wouldn't be -- we wouldn't be accepted until the
14 following year. I'm sorry. It's not a minor fee.
15 The filing fee is \$50,000.

16 ATTORNEY GENERAL McCOLLUM: Thank you.

17 MS. SALIBA: Mr. Ralf Brookes wanted to offer
18 some brief comments.

19 MR. BROOKES: I just wanted to say on this
20 particular issue, some of you are lawyers, this plan
21 amendment should be considered under the law that
22 exists at this time, not some future law. And it is
23 simple to apply for a plan amendment in the future.
24 It happens all the time. And at that time you could
25 look again at need and see if there is a

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1 demonstrated need for a plan amendment that would
2 increase density on this property from agriculture
3 to medium or low density residential.

4 And it probably would affect the density in
5 this plan amendment. You probably wouldn't be able
6 to demonstrate a need for this many units on this
7 particular parcel in this particular part of Marion
8 County, at least at this moment in time. If the
9 economy gets better, the market improves, the need
10 may be there in ten years. Maybe it's there in 15
11 years. Maybe it's there in 20 years.

12 Just like Kissimmee grew, I'm sure Ocala and
13 Marion will grow in the future again, and there will
14 be a need and a projected demonstrated
15 professionally accepted methodology for allocating
16 that need. Thanks.

17 COMMISSIONER BRONSON: Governor.

18 GOVERNOR CRIST: Commissioner.

19 COMMISSIONER BRONSON: Well, I think we see the
20 future of Florida before us today. There's no doubt
21 in my mind. The petitioners -- you know, for the
22 landowner who is trying to get some future plan in
23 place, I understand that. For those who have
24 petitioned not to have this go through, I understand
25 their position, too. If I woke up in the morning

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1 and saw my horses out in the pasture and the next
2 morning woke up and there's 790 houses sitting out
3 there, that's a different view. And we're going to
4 have these clashes from now on. This is just the
5 first shot across the bow of these clashes.

6 But I think what should be talked about here is
7 something that I've brought up many times before.
8 You've got counties, Marion being a bigger county,
9 but you've got a lot of small counties who are
10 really in trouble, really in trouble right now.
11 They're trying to come up with plans to grow the
12 county so that monies coming in to pay for all their
13 county issues, unless the State is going to be
14 willing to pay for those, which in the last couple
15 of years, as we've seen, the State hasn't had the
16 money to help the counties out too much.

17 So counties all over this state are in trouble.
18 You have almost 50 percent of this state off the tax
19 rolls. Fifty percent almost of this state is off
20 the tax rolls. No gross domestic product being
21 produced, no jobs being produced. And these
22 counties are hurting, and they're going to hurt from
23 now and into the future because of it.

24 How this growth management plan is going to
25 go -- and I believe you have to have a plan.

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1 There's no doubt about it. You have to have some
2 common sense growth patterns. And it could be that
3 the area that this property is in at some point in
4 time may be the big growth area for the county, who
5 knows what's going to happen, which is going to put
6 pressure on land owners in those areas and I'm sure
7 are not going to be happy about it. But sometimes
8 that's the way it's going to -- it's going to work
9 out.

10 But this is what's going to happen from now on.
11 I won't be on this Cabinet while some of that
12 discussion is going on, but I can tell you factually
13 it's happened. It's here now. And the only reason
14 why this probably has fallen through in the past two
15 years, I think I heard that this has been going on,
16 is because the economy has taken a hit. There are
17 many houses up now that weren't available two years
18 ago when this plan was being looked at.

19 But I don't think we need to kid ourselves
20 here. With that many -- that much land off the tax
21 rolls, with no gross domestic product being
22 produced, they've got to somehow -- business has to
23 come into these counties to keep the counties going
24 and the jobs that would be brought with it, and
25 that's not happening right now.

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1 So while this started while things were still
2 good in the county, you're going to see more
3 counties wanting to move to do more development to
4 bring in business. And this is the type of thing
5 that's going to happen. So I think we need to be
6 honest with ourselves.

7 I can't say that I could vote to totally turn
8 down what the law judge has indicated, now that I
9 know it can be brought back up. The other thing,
10 Governor and Cabinet members, I don't believe
11 penalizing the County Commission, who was making a
12 decision that they thought was the right thing to
13 do, is the right thing for us to do, number one.

14 And number two, those cases will come before
15 this board as they pop up and are challenged. And
16 I'm sure we're going to have to make those
17 determinations. But I don't think the County
18 Commission should be penalized in any way, because
19 they're trying to improve the potential economic
20 condition of the county, over this issue, even
21 though the DCA and others may disagree with them
22 under the current terms. I just don't believe
23 that's something that this board should do.

24 MS. SALIBA: One point of clarification.
25 Secretary Pelham has asked to talk about the timing

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1 and reentry of amendments, very briefly.

2 MR. PELHAM: First I want to make it clear that
3 the Department certainly is not here seeking
4 imposition of sanctions against the County.
5 Secondly, if the County itself believes in this
6 amendment or in some form of it, as it goes through
7 its ongoing comprehensive plan update, which it says
8 it thinks will take a couple of years, if it truly
9 supports this amendment, it can include it in its
10 comprehensive plan update.

11 Nothing is required of the applicant. They
12 don't have to charge this applicant a new
13 application fee. The County on its own can include
14 this in its plan for consideration. That's what you
15 do in a comprehensive update of the plan. They're
16 not going to be penalized in any way.

17 MS. SALIBA: Now, very briefly, we will invite
18 Charles Pattison with 1000 Friends to make some
19 remarks.

20 MR. PATTISON: Morning Governor, General
21 McCollum, CFO Sink and Commissioner Bronson. I will
22 be very brief. We are here today in support of this
23 draft recommended final order that's before you and
24 just want to make two points. The first is to
25 recognize, as Secretary Pelham said, this is about

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1 implementing the Marion County plan and state law as
2 it relates to demonstrating need for a project
3 before it gets approved. That's nothing new.
4 That's not being reinterpreted. That's the same
5 before I worked at DCA and has been ever since.

6 The other piece of this is that each amendment
7 does need to be evaluated for need. If you don't do
8 that, you subvert and undermine the very reason that
9 you had a needs assessment when the original plan
10 came before the local government.

11 The second point is to recognize again how
12 critically important it is for our citizens to be
13 involved in this process. The two ladies that
14 brought this challenge overcame major obstacles.
15 They followed every rule. They even convinced DCA
16 and an administrative law judge that they were
17 correct in suggesting that this amendment was not in
18 compliance. Theirs is a success story. It
19 demonstrates how the public involvement with our
20 growth management process can and should work.

21 We urge you then to support DCA, Judge
22 Johnston, Ms. Woods and Ms. Recio in upholding the
23 draft recommended order before you. Thank you.

24 MS. SALIBA: The final speaker is Manley Fuller
25 with the Florida Wildlife Federation.

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1 MR. FULLER: Good morning, Governor and Cabinet
2 members. Florida Wildlife Federation supports the
3 position of the administrative law judge, the
4 Department of Community Affairs and the citizens who
5 petitioned, and we urge adoption of the staff's
6 final recommended order. Thank you.

7 GOVERNOR CRIST: Thank you, Manley. Any other
8 speakers, Lisa?

9 MS. SALIBA: No, sir. That concludes our
10 speakers. Just to recap for you the staff
11 recommendation, we recommend entering the amended
12 final draft order, which adopts the administrative
13 law judge's findings of fact and conclusions of law,
14 with one exception. We adopt the recommended
15 rulings on exceptions as set forth in the DCA
16 determination of noncompliance, and as a remedial
17 action, we direct Marion County to rescind the
18 amendment that they previously approved.

19 And in terms of sanctions, we retain
20 jurisdiction for 60 days to ensure that the
21 ordinance is rescinded. And that is the extent of
22 our staff recommendation.

23 GOVERNOR CRIST: Thank you. Commissioner.

24 COMMISSIONER BRONSON: Question on that. Let's
25 say the County decides -- I think they probably

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1 will, but what if they decided they didn't want to
2 rescind their agreement? What is then the position,
3 since it's a duly appointed constitutional county
4 commission, what would be their recourse should they
5 decide to do that and DCA or the State decides to
6 fine them or put them under some punitive program?
7 What do we do then?

8 MS. SALIBA: The recourse would be by the
9 Commission. In the event that they do not rescind,
10 the Commission can then decide if they would like to
11 impose sanctions. The statute provides that they
12 may, the Commission may impose sanctions, which
13 could include some amount of the revenue sharing and
14 other items as identified in the sanctions statute.
15 It can be monetary, nonmonetary. It is up to the
16 discretion of the Commission.

17 GOVERNOR CRIST: Thank you. In order to put us
18 in a good posture, I'm going to go ahead and make a
19 motion that does follow the staff recommendation,
20 the administrative law judge's findings and the
21 recommendation of Secretary Pelham.

22 And I want to commend the citizen involvement
23 in this case and thank you for your tenacity and
24 your hard work and your candor. And I'll ask for a
25 second.

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1 CFO SINK: Second.

2 GOVERNOR CRIST: Any discussion?

3 ATTORNEY GENERAL MCCOLLUM: I would only
4 discuss it to say that it sounds to me, from what
5 Secretary Pelham has described, that there's no
6 precedent for us to do what has been requested in
7 this case, and it would set a precedent, which
8 probably would not be good, Governor.

9 But I think there is some sympathy for the
10 applicant who -- the petitioner, however we're
11 putting this, I'm probably putting it the wrong
12 way -- the property holder, who may be positioned
13 differently because this case has come along the way
14 it has from others who are apparently being given
15 the opportunity in Marion County to hold their
16 amendment for a period of time.

17 Now, I don't know how that's going to get
18 resolved. But there is that sort of sense of
19 unfairness in that. But I don't think we have any
20 choice, nor do I think we should set the wrong
21 precedent here because it sends the wrong message.
22 It's just an unfortunate situation for the property
23 holder in this position and Marion County who has
24 got to go back and correct this problem.

25 So I will support the amendment, or the motion

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1 you've made.

2 GOVERNOR CRIST: Thank you. All in favor
3 signify by saying aye. Aye.

4 COMMISSIONER BRONSON: Aye.

5 CFO SINK: Aye.

6 ATTORNEY GENERAL MCCOLLUM: Aye.

7 GOVERNOR CRIST: Opposed, like sign. Show it
8 passing unanimously. Thank you.

9 MS. SALIBA: Thank you.

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1 GOVERNOR CRIST: Next agenda, Board of
2 Trustees, Department of Agriculture and Consumer
3 Services, Sherman Wilhelm. Good morning, Sherman.

4 MR. WILHELM: Good morning, Governor and
5 Cabinet members.

6 GOVERNOR CRIST: Sherman.

7 MR. WILHELM: Thank you, sir. Item Number 1 is
8 approval of the minutes from the July 28th, 2009,
9 Cabinet meeting.

10 GOVERNOR CRIST: Is there a motion to approve
11 the minutes?

12 CFO SINK: Move it.

13 COMMISSIONER BRONSON: Second.

14 GOVERNOR CRIST: Moved and seconded. Show the
15 minutes approved without objection.

16 MR. WILHELM: Item Number 2, staff is
17 requesting authorization to issue to Mr. Gary Lavine
18 a one-acre, ten-year sovereignty submerged
19 aquaculture land lease in Monroe County for the
20 purpose of culturing live rock.

21 CFO SINK: Move it.

22 COMMISSIONER BRONSON: Second.

23 GOVERNOR CRIST: Moved and seconded. Show it
24 approved without objection. This is one of your
25 favorite issues, Commissioner. Good one. Thank

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1 you.

2 MR. WILHELM: Item Number 3, staff is
3 requesting authorization to issue to the University
4 of Florida a one-acre, ten-year sovereignty
5 submerged land management agreement in Monroe County
6 for the purpose of culturing live rock and corals
7 for experimental, research and demonstration
8 purposes, and permission to waive the associated
9 fees.

10 ATTORNEY GENERAL MCCOLLUM: I move Item 3.

11 COMMISSIONER BRONSON: Second.

12 GOVERNOR CRIST: Moved and seconded. Show it
13 approved without objection.

14 MR. WILHELM: And Item Number 4 is staff is
15 requesting authorization to issue to Mr. Curtis
16 Hemmel and Mr. Kyle Brinkley each a four-acre,
17 ten-year sovereignty submerged land lease for the
18 purpose -- in Manatee County for the purpose of
19 producing shellfish.

20 CFO SINK: Move it.

21 COMMISSIONER BRONSON: Second.

22 GOVERNOR CRIST: Moved and seconded. Show it
23 approved without objection. Thank you.

24 MR. WILHELM: Thank you very much.

25

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1 GOVERNOR CRIST: Board of Trustees, Secretary
2 Sole.

3 MR. SOLE: Good morning, Governor, Cabinet
4 members.

5 GOVERNOR CRIST: Good morning.

6 MR. SOLE: Item Number 1, submittal of the
7 minutes for the July 28, 2009, Cabinet meeting.

8 ATTORNEY GENERAL MCCOLLUM: Is there a motion?

9 CFO SINK: Move it.

10 COMMISSIONER BRONSON: Second.

11 ATTORNEY GENERAL MCCOLLUM: Show it approved
12 without objection.

13 MR. SOLE: Thank you. Item Number 2 is request
14 consideration of the Department of Environmental
15 Protection's performance report for 2008-2009, as
16 well as our performance measures for 2009-2010. I
17 can tell you that without question I'm very proud of
18 the performance of the Department in implementing
19 direction of the Board of Trustees as well as trying
20 to strive for excellence on behalf of the people of
21 the state of Florida.

22 We had some 21 measures that we reported on. I
23 just want to highlight a few very briefly. Number
24 one, I think it's worth noting that the Florida Park
25 Service has set yet another record for visitation in

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1 the state of Florida. We had 21 million people come
2 and visit one of our 160 state parks. This is a
3 phenomenal record and it's helped contribute some,
4 just under a billion dollars to, I think, Florida's
5 economy. So this is tremendous. Without question,
6 our state parks are a phenomenal recreational value
7 for the people and visitors.

8 Also note that in addition to the
9 record-setting attendance, we also had more
10 volunteer hours that were donated basically to our
11 state park system than ever before. 1.2 million
12 hours of volunteer service were provided to our
13 State Park Service. And this is equivalent to some
14 581 full-time-equivalent employees.

15 And I will tell you, General, CFO and
16 Commissioner, without these volunteer hours, we
17 couldn't do what we do for the people of Florida.
18 So if you do go to a state park and you see a
19 nametag with the word "volunteer" on it, please take
20 a moment and thank them. It's tremendous assistance
21 they provide us.

22 In addition to visitor and recreational
23 services, we did also report on some of our
24 management and performance issues. As you're aware,
25 we are responsible for leases on behalf of the Board

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1 of Trustees. We inspected some 66 commercial
2 leases. That's 100 percent of the commercial leases
3 that are out there. Compliance was, on this issue,
4 94 percent, which was good. We still had four
5 noncompliance issues that we need to solve.
6 Actually, most of them relating to hunt camps and
7 making sure that we get our lease fees in
8 relationship to those.

9 For our sovereign submerged land leases, again,
10 we have some 2,700 sovereign submerged land leases
11 throughout the state of Florida. We are on an
12 inspection interval of basically once every five
13 years we go out and inspect.

14 Unfortunately, our compliance rate is not as
15 high as I'd like it to be. We did roughly 399
16 inspections. We had an 85 percent compliance rate.
17 So 15 percent of those inspected were deemed out of
18 compliance. Most of those are in relationship to
19 boats moored outside of the lease area or some
20 additional infrastructure that was built not in
21 conformance with the lease.

22 Without question -- CFO, you've raised this,
23 and we need to do a better job at trying to ensure
24 compliance of these leases. We're out there
25 aggressively moving forward. We're actually

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1 updating our databases so that we can track it
2 better and also try and be very aggressive with
3 respect to ensuring we get our lease fees and lease
4 fees in arrears. So I'm grateful for that
5 direction.

6 I'm going to move to Florida Forever. Florida
7 Forever, we had hoped to be able to acquire some
8 46,000 acres. I think the Governor and Cabinet are
9 very familiar with our funding challenges that we
10 had last year and current year. We were only able
11 to acquire 37 percent of that goal. But the good
12 news is we are still on track, moving forward with
13 the additional bonding of \$250 million that Ben and
14 I have been working on. We hope to have that
15 initiated by the end of this fall to move forward
16 and get some critical acquisitions that have already
17 been approved by the Board of Trustees.

18 Finally, I want to talk a little bit about
19 managing our resources. We also report on how many
20 acres of property that we've burned for fire ecology
21 as well as our invasive management, invasive plant
22 management work. We've amended these goals to be a
23 little bit more reflective of a true performance
24 versus just an outcome. In prior years we would
25 just report how many acres we burned. Well, that

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1 was nice, but what I asked staff, and they were
2 great to work on this, is what's our ecological burn
3 goals, how many acres should we be burning each year
4 to attain our ecological benefit for good fire
5 ecology.

6 So we've identified that in these measures, and
7 it identifies roughly 77,000 acres per year should
8 be burned on average for our DEP-managed facilities.
9 Roughly we're burning about 41-, 40,000 acres. So
10 this is an area that, with resources, we can improve
11 on. But it is a resource-driven issue. And without
12 the resources, we're able to get roughly 40,000,
13 which is a little over 60 percent, burned.

14 Same thing holds true for invasive plant
15 management. We would tell you how many acres we
16 treated. Well, the true reflection of how we're
17 doing in Florida is how much of Florida, of our
18 lands are under a maintenance control program. And
19 we've identified that -- and this is a good story, I
20 think. Eighty-one percent of the lands that we
21 manage are under a maintenance control program,
22 meaning they don't have invasives or we're managing
23 them effectively so that they are not actually
24 spreading. But without question, we need to do more
25 because we still have 19 percent that we need to get

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1 at. And, again, this is also a resource issue.

2 With that, I'd be glad to answer any questions
3 if there are any.

4 GOVERNOR CRIST: Any questions? Commissioner?

5 COMMISSIONER BRONSON: One. Mike, how many of
6 the invasive species have y'all identified? I mean,
7 I'm sure you've got a record of them. Do you know
8 or remember how many that are here in the state and
9 how many acres? I know at one time Brazilian pepper
10 was estimated at over 800,000 acres of Brazilian
11 pepper in this state.

12 So I -- and the only reason why I'm bringing
13 this up, as we've seen with the boas and the pythons
14 and all that, this is becoming a real huge issue for
15 Florida, not only for state roads, state lands, but
16 private landowners are spending a fortune trying to
17 fight these invasive species as well.

18 MR. SOLE: The number of species I don't know
19 off the top of my head. We use the invasive plant
20 management's listing of invasive exotics which they
21 report on. We always had the top three of
22 Australian pine, Brazilian pepper, Melaleuca from
23 the plant side of the house. But obviously old
24 world climbing fern has just been devastating to
25 South Florida.

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1 You know, one of the things that's relevant to
2 your point, Commissioner, is we calculated roughly
3 how much it costs per acre to control invasives.
4 And it's not inexpensive. It was roughly -- and,
5 again, it depends on the area and the infestation --
6 about \$350 per acre to really get your arms around
7 some of these invasives and get them under control.

8 So it is something that I'm proud that we're
9 able to kind of hold the line on our state lands
10 right now, and we are. I think we're doing a good
11 job on the state-managed lands. But without
12 question, roadways, private lands is an area that we
13 continue to see more and more infestation. And
14 unfortunately it makes it even harder for us to
15 manage our lands because of that seed source.

16 GOVERNOR CRIST: Didn't we have a record
17 turnout at state parks this past year?

18 MR. SOLE: Yes, sir. Twenty-one million
19 visitors came to our state, one of our 160 state
20 parks. Tremendous result. What a great
21 recreational value that we provide for the people of
22 Florida and the visitors to this state, Governor.

23 GOVERNOR CRIST: That's great. Thank you very
24 much, Secretary. Anything else? Thank you.

25 (Whereupon, the meeting was concluded at 11:22 a.m.)

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CERTIFICATE OF REPORTER

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4 STATE OF FLORIDA)

5 COUNTY OF LEON)

6

Reporter,

7 I, Jo Langston, Registered Professional

8 do hereby certify that the foregoing pages 5 through 96,

9 both inclusive, comprise a true and correct transcript of

10 the proceeding; that said proceeding was taken by me

11 stenographically and transcribed by me as it now appears;

counsel

12 that I am not a relative or employee or attorney or

13 of the parties, or a relative or employee of such attorney

14 or counsel, nor am I interested in this proceeding or its

15 outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand

17 this 30th day of September 2009.

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JO LANGSTON

23

Registered Professional Reporter

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