

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
DECEMBER 7, 2010

Attachments to the items below can be viewed at the following link:
http://www.dep.state.fl.us/secretary/cab/public_notices.htm

Item 1 Minutes

Submittal of the Minutes from the October 26, 2010 Cabinet Meeting.

(See Attachment 1, Pages 1-6)

RECOMMEND APPROVAL

Item 2 BOT/United States of America/National Park Service/Donation/Conveyance/Big Cypress National Preserve/Big Cypress National Preserve Addition

DEFERRED FROM THE SEPTEMBER 28, 2010 AGENDA

REQUEST: Approval to donate and convey 29,412.88 acres of state-owned land in Big Cypress National Preserve and Big Cypress National Preserve Addition to the United States of America on behalf of the National Park Service, as follows: (1) donate and convey 29,024.98 acres immediately upon Board of Trustees' approval; and (2) donate and convey the remaining 387.9 acres upon the completion by the National Park Service of all due diligence products.

COUNTIES: Collier and Miami-Dade

APPLICANT: The United States of America on behalf of the National Park Service (NPS)

LOCATION: Big Cypress National Preserve (Preserve) and Big Cypress National Preserve Addition (Addition), (collectively, Big Cypress)

CONSIDERATION: \$4,047,456 to be deposited into the Internal Improvement Trust Fund

STAFF REMARKS: Big Cypress was established by the U. S. Congress in 1974 and expanded in 1988 in order to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof.

Legislative History and Requirements

1973 - Section 380.055, F.S., The Big Cypress Conservation Act of 1973 (Act), authorized the Board of Trustees to spend \$40,000,000 for land acquisition in the Preserve and to donate the acquired lands.

October 1974 - U.S. Congress adopted P.L. 93-440 establishing Big Cypress.

December 1974 - Board of Trustees signed an agreement with NPS to donate and convey title to all state-owned lands within Big Cypress to NPS.

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April 1988 - U.S. Congress adopted P.L. 100-301 establishing the Addition which substantially increased the acreage of Big Cypress and provided for the federal government to fund 80 percent of the land acquisition costs and the state to fund 20 percent of the land acquisition costs in the Addition (80/20 cost share). The federal government has agreed to reimburse the State of Florida any acquisition costs paid by the state over 20 percent.

Land Requested to be Conveyed - 29,412.88 total acres of state-owned land to NPS

Pursuant to the aforementioned legislation, NPS is requesting that the Board of Trustees convey 29,412.88 total acres, 113.49 acres located within the Preserve and 29,299.39 acres located within the Addition, to NPS. The land is to be conveyed “as is” and NPS is responsible for funding and completing all due diligence products.

Additionally, the Board of Trustees’ conveyances to NPS will contain five deed encumbrances. These are summarized as follows: (1) Board of Trustees will retain all oil, gas, and mineral rights; (2) Department of State, Bureau of Historical Resources will retain all interests in cultural resources; (3) Board of Trustees will retain right to levy and collect applicable taxes on alcoholic beverages, cigarettes and other tobacco products; (4) title will automatically revert to Board of Trustees in the event NPS ceases to use the land for the purpose of conservation and protection of the natural resources and scenic beauty of Big Cypress; and (5) the conveyances are subject to outstanding easements, reservations, and other interests of record. These five encumbrances are found in prior Board of Trustees’ conveyances to NPS within Big Cypress. Moreover, including these encumbrances is consistent with prior Board of Trustees’ action on October 8, 1980.

113.49 acres in the Preserve - This acreage includes (1) 41.94 acres of land acquired through tax deed sales, and (2) 71.55 acres of former Florida Department of Transportation (FDOT) land located outside the Interstate 75 (I-75) corridor which is being donated to the Board of Trustees. NPS is still pursuing due diligence on the 71.55 acres of FDOT land, and this land will be conveyed upon completion of the due diligence products and acceptance by the Board of Trustees.

29,299.39 acres in the Addition - This acreage includes (1) 3,503.89 acres of land acquired at tax deed sales and state land acquisitions from private parties; (2) 25,479.15 acres of remainder parcels previously acquired by FDOT in connection with the construction of I-75 and subsequently conveyed to the Board of Trustees pursuant to a Joint Participation Agreement with the Department of Natural Resources (DNR), predecessor to the Department of Environmental Protection (DEP); and (3) 316.35 acres which will be conveyed once NPS completes all due diligence products.

Acquisition Expenditures

Preserve Acquisitions - Pursuant to the Act, the state was authorized to spend \$40,000,000 on land acquisitions in the Preserve and donate the land purchased to NPS. The state has satisfied this legislative requirement by spending \$41,533,033 in the Preserve, and the majority of the land has previously been donated to NPS. The Act further stipulated that NPS would spend an amount at least equal to the acquisition cost of the land to be donated by the state. NPS has

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greatly exceeded that legislative requirement by having spent \$180,572,000 in the Preserve to date. The state has completed all of its acquisitions in the Preserve while NPS has 844 acres remaining to be acquired. The Board of Trustees-owned land can be donated and conveyed to NPS because both parties have satisfied the spending requirements.

Addition Acquisitions - Pursuant to P.L. 100-301, the acquisitions in the Addition are to be funded using the 80/20 cost share provision with the state being reimbursed for any acquisition cost exceeding 20 percent of the total acquisition cost. The 80/20 cost share is based on acquisition costs only and does not include amounts spent for administrative and ancillary costs. The state has completed all of its acquisitions in the Addition at a cost of \$19,071,963. While NPS has 1,567 acres left to be acquired, it is estimated that NPS has now spent \$56,050,571 on acquisitions in the Addition. This brings the combined total acquisition cost to date to \$75,122,534. This early conveyance results in the cost share ratio currently being at 75(federal)/25(state) which requires the federal government to reimburse the state \$4,047,456 in order to reach the 80/20 cost share requirement.

The majority of the 1,567 acres that NPS will acquire in the Addition has been forwarded for condemnation proceedings to the U.S. Attorney's Office. Title to the condemnation tracts has not yet passed to NPS nor has compensation been paid, which NPS estimates to be approximately \$5,561,500. However, because NPS has not completed all of the outstanding acquisitions and is requesting the Board of Trustees' early conveyance of the state-owned parcels, NPS cannot include the estimated \$5,561,500 in calculating the 80/20 cost share provision.

NPS is requesting the early conveyance to be able to provide immediate oversight, enforcement, and effective management of the conservation lands within Big Cypress.

Acquisition Cost Reconciliations

Preserve Cost Reconciliation - All state-owned land in the Preserve is to be donated to NPS, and it has been determined that NPS and the state have satisfied their acquisition requirements on the Preserve lands.

Addition Cost Reconciliation - All state-owned land in the Addition is to be donated to NPS, and it has been determined that, due to the requested early conveyance. NPS must reimburse the state pursuant to the 80/20 cost share provision for the purchase of lands in the Addition. The acquisition costs for Addition lands were reconciled to verify the reimbursement amount.

The state's \$19,071,963 in acquisitions in the Addition were conducted over many decades so detailed records of the early acquisitions are not always available to determine a parcel's cost. In addition, a variety of acquisition methods were used so there is no single methodology that could be utilized to calculate the total cost of the acquisitions in the Addition. DEP's Division of State Lands (DSL) coordinated with DEP's Office of Finance and Accounting and DSL's land records inventory system (BTLDS) for all cost and acreage reconciliations. A different cost estimating approach was required to calculate the cost for both types of ownership (tax deed sales and

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FDOT remainder parcels), and the total for each category was then combined to reach \$19,071,963.

Tax Deed Category - For tax deed sale parcels, the cost was stated on the face of the deed. For other deeds included in this category, cost was based on stated cost on the deed when available, or the cost was calculated utilizing the documentary stamp rates in effect on the date of the deed and the amount of documentary stamps indicated on the deed. A sample of documentary stamp estimation was checked against parcels with known cost and no significant deviations were noted. The total cost calculation for the tax deed category is \$1,460,190.

FDOT Remainder Parcels Category - The FDOT remainder parcels are the parcels acquired by FDOT and consist of both condemnation parcels and deeds from individual owners. In 1986, FDOT entered into a Joint Participation Agreement with DNR, predecessor to DEP, regarding land acquisition for I-75 and adjacent environmentally sensitive areas in Collier County. The parcels not needed for road facilities were later transferred to the Board of Trustees by donation via quitclaim deeds. No per parcel cost accounting was recovered for the FDOT parcels, and the deeds to the Board of Trustees contain no cost information. The total cost of parcels taken through condemnation proceedings utilized the final judgment cost where available. The estimated total cost of the remaining condemnation parcels utilized the "Good Faith Estimate of Value" stated in the Orders of Taking. After extensive research, DSL has determined due to lack of parcel transaction records from the 1980s, the Certification of Board Actions are currently considered the best evidence of the actual DNR funds utilized for acquisition of the FDOT remainder parcels. Therefore, the total cost calculation for the FDOT remainder parcels category is \$17,611,773.

Project Approvals

NPS is working in a cooperative effort with DEP and other affected state agencies towards finalizing the management plan for the Addition lands.

Because the conveyance of Big Cypress lands to NPS for continued conservation purposes was legislatively agreed to pursuant to section 380.055, F.S., and 16 U.S.C. §698f(d), the Acquisition and Restoration Council's recommendation was not solicited. A consideration of the status of the local government comprehensive plan was not made for this item. DEP has determined that land conveyances are not subject to the local government planning process.

(See Attachment 2, Pages 1-107)

RECOMMEND APPROVAL

2nd Substitute Item 3 Agency for Persons with Disabilities Sublease/The ARC Jacksonville Inc./ Determination/Competitive Bid Waiver

REQUEST: Consideration of a (1) determination, pursuant to section 18-2.018(1), F.A.C., that the decision to authorize the use of Board of Trustees-owned uplands is not contrary to the public interest; (2) determination, pursuant to section 18-2.018(2)(i), F.A.C., that it is in the public interest to waive the competitive bid requirement, for a sublease between Agency for Persons with Disabilities and The ARC Jacksonville Inc., a Florida nonprofit corporation; and (3) determination, pursuant to section 18-2.018(3)(a)1.a., F.A.C., that it is in the public interest to grant a 99-year lease and sublease.

COUNTY: Duval

APPLICANT: The ARC Jacksonville Inc., a Florida nonprofit corporation (ARC Jacksonville)

LOCATION: Section 35, Township 02 South, Range 28 East

CONSIDERATION: There is no monetary consideration for the sublease, however the Agency for Persons with Disabilities (APD) will receive in-kind services for developmentally disabled individuals from ARC Jacksonville. In order to allow for the development of the property, the payment of in-kind services would be phased in over a five-year period. The total value of in-kind services delivered must equal, at a minimum, the below annual rental payment schedule:

Sublease Year	In-Kind Rental Payment
Year One (1)	\$50,700
Year Two (2)	\$50,700
Year Three (3)	\$73,200
Year Four (4)	\$93,200
Year Five (5)	\$153,000
Year Six (6) – Year 99	\$150,000

Beginning in year six of the sublease, the annual rental amount shall be \$150,000. On March 1 of Year Eleven and on March 1 every five years thereafter, the annual rental amount shall be adjusted based on the cumulative change over the previous five years in the Consumer Price Index, All Goods. The annual rental amount may go up or down but shall never be less than \$150,000 per year. The in-kind services will include, but not be limited to: health and personal care services, medical devices and supplies, and transportation. The in-kind services will benefit the developmentally disabled individuals in the Jacksonville area.

STAFF REMARKS:

Property History

On March 9, 1970, Lease No. 2409 was granted for a 99-year term by the Board of Trustees to the Department of Health and Rehabilitative Services (DHRS). Lease No. 2409 covered various DHRS centers in Pinellas, Alachua, Leon and Duval Counties. In 1989, the Duval County

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property was assigned a new Lease No. 3706. In 1996, DHRS was reconstructed into two entities: The Department of Health and the Department of Children and Families (DCF). DCF, the successor in interest to Lease No. 3706, became the manager of this land. In 2005, Senate Bill 1280 removed the Developmental Disability Program from DCF and established the Agency for Persons with Disabilities (APD). DCF then assigned Lease No. 3706 to APD.

APD currently leases from the Board of Trustees 50 acres, more or less, under Lease No. 3706. This property was deeded to the Board of Trustees in 1969. The grantors added a deed restriction limiting the use of the property specifically for the benefit of the mentally disabled, or for a similar public purpose. Of the 50 acres, APD currently uses approximately 12 acres for both office space and group homes for the developmentally disabled individuals, both of which meet the existing deed restriction. The remainder of the property is vacant.

Project Description

ARC Jacksonville, serving the developmentally disabled individuals in the Jacksonville area for nearly 50 years, proposes to sublease 32 acres, more or less, to build a community center, recreation facility, homes, and otherwise make use of the vacant acreage for the benefit of individuals with developmental disabilities in the Jacksonville area using U.S. Department of Housing and Urban Development (HUD) affordable housing grants. The purpose of the sublease would be to permit ARC Jacksonville to construct and operate a planned community by creating affordable residential options and services with full inclusion for persons with developmental disabilities being the ultimate goal.

Competitive Bid Waiver Request

Pursuant to section 18-2.018(2)(i), F.A.C., equitable compensation shall be required when the use of uplands will generate income or revenue for private use or will limit or preempt use by the general public. The Board of Trustees shall award authorization for such uses on the basis of competitive bidding rather than negotiation, unless determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use. Relevant factors to be considered in evaluation shall include those specified in section 18-2.018(1), F.A.C., which are:

“... conservation, general environmental and natural resource concerns, wetlands values, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, recreation, aesthetics, economics, public health and safety, relative extent of the public need for the proposed use or activity, reasonable alternative locations and methods to accomplish the objective of the proposed use or activity, potential detrimental effects on the public uses to which the area is otherwise suited, the effect on cultural, scenic and recreational values, and the needs and welfare of the people.”

In order to evaluate how the property could be utilized to best fit the mission of APD, meet the needs of the developmentally disabled citizens in Duval County, and meet the existing deed restrictions, APD Director Jim DeBeaugrine conducted a public forum town hall meeting in Jacksonville, Florida, on October 30, 2009, after noticing the meeting in the *Florida*

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Administrative Weekly. APD held a town hall meeting because APD wanted a wide variety of ideas from the local Jacksonville community on how to develop this property while complying with the deed restriction and centering on the purposes for which APD was created as detailed in section 20.197(3), F.S. The purpose of the town hall meeting was to discuss potential uses for the Board of Trustees' property and to receive feedback from local stakeholders. A total of four proposals were received as a result of the meeting.

APD assembled a Land Review Team to analyze the four proposals concerning the Board of Trustees' property. After evaluation, it was determined that the proposal put forth by ARC Jacksonville provided the most detailed plan, within the parameters of the deed restriction, offering the strongest opportunities and benefits for persons with developmental disabilities in the Duval County area. The proposal is consistent with APD's mission to support persons with developmental disabilities in living, learning, and working in their community. APD's legal counsel has rendered an opinion that the proposal from ARC Jacksonville complies with the grantor's deed restriction limiting the use of the property, specifically for the benefit of the mentally disabled, or for a similar public purpose. The proposal is also consistent with the legislative findings in section 393.062, F.S., which provides:

“The Legislature finds and declares that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to many clients. A redirection in state treatment programs for individuals with developmental disabilities is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, the greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements. This goal cannot be met without ensuring the availability of the community residential opportunities in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who lived in licensed community homes shall have a family living environment comparable to other Floridians and that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home. The Legislature further declares that, in developing community-based programs and services for individuals with developmental disabilities, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preferences in lieu of operation of programs directly by state agencies.”

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APD and ARC Jacksonville would develop a mutually acceptable contract in addition to the sublease of 32 acres, more or less. APD currently has over 19,000 Floridians with disabilities waiting for enrollment into the Home and Community Based Waiver which is APD's principal financing mechanism for critical support and services. ARC Jacksonville's proposal offers an opportunity to directly benefit those individuals on the waiting list in the Jacksonville area. ARC Jacksonville's proposal would have to provide services that would be beneficial in the Jacksonville area to both waiver and waitlist clients of APD. Based on APD's review of the various proposals that resulted from the town hall meeting, and APD's determination that ARC best serves APD's mission of providing community-based services for individuals with developmental disabilities, the Department of Environmental Protection (DEP) is recommending waiver of the competitive bid requirement as it is in the public interest.

Equitable Compensation

ARC Jacksonville will provide in-kind services to developmentally disabled individuals in lieu of monetary payment for the sublease. A recent appraisal estimated that the annual ground rent with the current deed restriction and current zoning/land use would be \$150,000 (\$4,660.42 per acre). In order to allow for the development of the property, the payment of in-kind services would be phased in over a five-year period.

Public Interest-Relevant Factors

Pursuant to section 18-2.018(1), F.A.C., the decision to authorize the use of Board of Trustees-owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity as well as the cumulative effects of those impacts shall be taken into consideration. The relevant factors that were considered are recreation, public need, and public health and safety.

Recreation:

The development of the Board of Trustees' property would further expand recreational opportunities for persons with developmental disabilities in the Jacksonville area. ARC Jacksonville's proposal includes the development of an inclusive cooperative community center accessible to the public with recreational amenities such as a pool, theater, tennis, fitness center, grilling area, and a basketball court. The center would potentially enhance the quality of life and health of persons with developmental disabilities living in the complex as well as living in the Jacksonville area.

Public Need:

Currently in Florida, there are approximately 19,000 adults with developmental disabilities waiting for housing and support services, and this number continues to grow. Many adults with developmental disabilities have limited affordable residential options, or continue to live at home with family when they are unable to get the support they would need to live in a more independent setting. At this time, in APD Area 4 (Baker, Clay, Duval, Nassau, and St. Johns Counties), a total of 1,195 individuals are on an APD waiting list for funding and services. The breakdown by age is:

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- 486 Age 3 to 17
- 589 Age 18 to 39
- 107 Age 40 to 59
- 13 Age 60 and over

The proposed sublease will provide housing options, services and support to those individuals 18 and over who are developmentally disabled individuals. The majority of people with developmental disabilities experience housing problems. Some examples: rent burden; overcrowding; substandard housing; inability to move out of an institutional or residential treatment setting beyond the period of need; and homelessness. The costs to both individuals and the services system are great. The availability of affordable housing alternatives for people with developmental disabilities reduces reliance on expensive institutional alternatives.

Public Health and Safety:

The proposed development by ARC Jacksonville will not only foster social and emotional health and safety for persons with developmental disabilities in Jacksonville, but will also allow for maximum independence and participation in the community at large. The proposed project would provide persons with developmental disabilities with improved access to transportation, affordable housing, medical appointments, shopping, recreation, and social opportunities.

Other Relevant Factors:

ARC Jacksonville's proposal would provide long-term affordable housing options, meaningful services, and recreation opportunities for persons with developmental disabilities. The Board of Trustees' property as a proposed location would support the infrastructure requirements of a successful planned community. The proposed location abuts a Target-anchored retail center and has multiple transportation offerings. Additionally, APD believes the development of this property would comply with the intended purpose of the original conveyance expressed in the deed restriction. The methods to develop the community are in the public interest as it will be funded through private donations and giving opportunities. Some examples: ARC Jacksonville Board of Directors' commitment of \$1,000,000 by way of a resolution, corporate support, naming opportunities, gifts-in-kind, and individual donors.

Current Requests

APD and ARC Jacksonville are requesting a 99-year sublease which will allow ARC Jacksonville to apply for and receive HUD grants. In order to receive a HUD affordable housing grant, and to meet HUD requirements, ARC Jacksonville is required to have a minimum 75-year term for its sublease. ARC Jacksonville will apply to HUD to secure low income housing with rental assistance for many of the residents. Since ARC will be making application over a period of up to 10 years, ARC of Jacksonville is requesting a 99-year sublease term. ARC Jacksonville currently owns and operates HUD 202 and 811 housing programs. Pursuant to section 18-2.018(3)(a)1., F.A.C., a lease or sublease shall not exceed a maximum term of 50 years unless the Board of Trustees determines that a longer term is in the public interest. Prior to 1978, leases were granted for a term of 99 years. At that time, lease terms were reduced to 50 years to reflect the amortized life of most improvements. Since that time, there have been a limited number of

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instances where the Board of Trustees has approved a lease term longer than the standard 50 years; however, three of those were approved in order to meet HUD requirements for grants. Lease No. 3706 will be amended to be coterminous with the proposed sublease agreement after Board of Trustees' approval. The amendment to Lease No. 3706 and the proposed sublease will be executed simultaneously. DEP is recommending that the Board of Trustees determine waiving the competitive bid requirement and providing a 99-year lease between the Board of Trustees and APD and a 99-year sublease between APD and ARC Jacksonville for HUD funding purposes are in the public interest.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan according to a letter received from the Planning and Development Department of the City of Jacksonville.

(See Attachment 3, Pages 1-51)

RECOMMEND APPROVAL

Item 4 Tetra Tech EC, Inc./Mitigation Services PBC, LLC/BOT Final Order/Lemon Grove

REQUEST: Consideration of a proposed Final Order in the matter of Tetra Tech EC, Inc., v. Mitigation Services PBC, LLC, and Board of Trustees of the Internal Improvement Trust Fund.

COUNTY: Palm Beach

LOCATION: Section 33, Township 40 South, Range 40 East

STAFF REMARKS: This matter is before the Board of Trustees for entry of a Final Order in the referenced matter. Tetra Tech EC, Inc. (Tetra Tech) filed an Amended Petition for Formal Administrative Hearing charging that the Board of Trustees failed to comply with the requirements of rule 18-2.018(2)(i), F.A.C., by failing to consider any of the required factors to determine that the grant of a sole source contract for mitigation banking services to Mitigation Services PBC, LLC (Mitigation Services) was in the public interest.

On November 13, 2002, the Board of Trustees approved the acquisition of approximately 2,000 acres from Palm Beach County, including 263 acres commonly known as the Lemon Grove property. Palm Beach County previously had entered into a ten-year mitigation agreement with the John D. and Katherine T. MacArthur Foundation (Foundation) allowing the Foundation to conduct certain activities on the Lemon Grove property. At closing, the Foundation retained its rights under the agreement, and the value of the Lemon Grove property was appropriately reduced as a result of that reservation. In 2003, the Foundation assigned certain of its rights

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under the mitigation agreement to Mitigation Services. Mitigation Services applied to the South Florida Water Management District for a mitigation bank permit for the Lemon Grove property. The Department of Environmental Protection (DEP), on behalf of the Board of Trustees as owner of the property, took the position that the mitigation agreement did not provide for the operation of a mitigation bank on the Lemon Grove property.

On October 28, 2008, Mitigation Services asked the Board of Trustees to extend the term of the mitigation agreement that would expire in March, 2009. DEP took the position the agreement could not be extended because it was not a right the state acquired at closing, having been reserved by the Foundation, and that the mitigation agreement did not provide for the operation of a mitigation bank on the property. The Board of Trustees directed DEP to negotiate a lease with Mitigation Services.

On March 10, 2009, the Board of Trustees considered a request to allow Mitigation Services to operate a mitigation bank on the Lemon Grove property. The Board of Trustees authorized DEP to negotiate a contract pursuant to terms laid out in the March 10, 2009 agenda item to allow Mitigation Services to establish a mitigation bank. The Board of Trustees also determined it was in the public interest to waive the competitive bid requirements of its rule 18-2.018(2)(i), F.A.C. Tetra Tech challenged this determination, and the matter was referred to the Division of Administrative Hearings for fact finding.

The final hearing on Tetra Tech's petition was held on August 25, 2010 in Tallahassee, Florida. The Administrative Law Judge recommended entry of "a final order authorizing the use of the Lemon Grove property by Mitigation Services under the terms identified in the Board's action taken on March 10, 2009." Each of the parties filed exceptions to certain of the judge's findings and conclusions. The proposed Final Order includes an explicit ruling on each exception, and adopts the ultimate recommendation of the Administrative Law Judge.

(See Attachment 4, Pages 1-69)

RECOMMEND APPROVAL AND ADOPTION OF THE PROPOSED FINAL ORDER

Substitute Item 5 **Kiwi Partners, LLC Recommended Consolidated Intent/ Lease/ Authorization**

REQUEST: Consideration of an application for (1) a five-year sovereignty submerged lands lease containing 9,762 square feet, more or less, for a proposed 12-slip private residential multi-family docking facility and commercial docking facility; and (2) authorization to exceed the preempted area to shoreline ratio.

APPLICANT: Kiwi Partners, LLC
Lease No. 560345496
Application No. 091021-16

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LOCATION: 1240 Seaway Drive
Ft. Pierce, St. Lucie County
Section 01, Township 35 South, Range 40 East
Aquatic Preserve: No
Waterbody/Classification: Fort Pierce Inlet, Class III
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Slow speed year-round

CONSIDERATION: \$1,870.41, representing: (1) \$1,496.33 as the initial annual lease fee computed at the base rate of \$0.153281 per square foot; and (2) \$374.08 as the 25 percent surcharge payment for the initial area. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to rule 18-21.011(1)(a)1, F.A.C.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

Background

On December 22, 2009, the South Florida Water Management District (District) issued Permit No. 56-03046-P authorizing construction of a seawall and surface water management system servicing a 0.77-acre residential development, including a 6-unit residential condominium, management office, associated parking, and surface water management system.

The site contains an existing, previously unauthorized 12-slip docking facility. On December 14, 2009, the Department of Environmental Protection (DEP) and the applicant entered into a temporary use agreement (TUA) for the unauthorized docking facility. The TUA required payment of \$9,484.38 as fees in arrears, which were assessed from May 20, 2003 through May 20, 2010. On December 18, 2009, DEP and the applicant executed a consent order which required payment of \$500 for costs and expenses. All fees are current through May 21, 2011.

Project Details

The applicant proposes to remove the existing 12-slip docking facility and reconstruct a 12-slip docking facility to be used in conjunction with an upland 6-unit residential condominium. The proposed docking facility will accommodate recreational vessels ranging from 30 to 57 feet in length with drafts up to 4.2 feet.

The docking facility will be operated as a mixed use docking facility. The applicant proposes to preempt: (1) 3,275 square feet for 6 commercial boat slips available for rent to the general public on a first-come, first-serve basis pursuant to rule 18-21.003(27), F.A.C.; and (2) 6,487

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square feet for 6 private boats slips available for the condominium residents. The total proposed preempted area is 9,762 square feet.

There are seagrasses present within the project area. The proposed 6 public slips and associated structure are within an area of approximately 1 percent cover of *Halophila decipiens* and *Halophila johnsonii*. The access pier crosses over higher density zones (up to 80 percent cover) of the same species. The structure will be built five feet above mean high water. Grated decking, with at least 43 percent light transmission, will be used for the access pier and finger piers where the structure overlaps submerged resources, which is approximately 120 feet waterward from the mean high water line. Handrails and no mooring signs will also be installed along the access pier.

Impacts to submerged resources have been minimized by the best practices described above. Additionally, the proposed structure has been modified to remove slips and dock structure from areas of greater than 1 percent seagrass cover, with exception of the access pier.

The proposed project will be located within the 25-foot setback area on the west side and a letter of concurrence has been obtained from the affected adjacent property owner.

Based on the project site's 120.71 linear feet of riparian shoreline adjacent to sovereignty submerged lands, rule 18-21.004(4)(b)2, F.A.C. (40:1 rule), limits the docking facility's preempted area to 4,828 square feet to be leased, rented, or otherwise used by entities having an ownership interest in any residential condominium unit. The applicant proposes to preempt a total of 6,487 square feet for residential use which exceeds the 40:1 rule by 1,659 square feet. However, it has been determined that there is a potential 610-square-foot Butler Act claim in the submerged lands adjacent to the property. This area is landward of the proposed structure. Approximately 90 square feet of the potential Butler Act claim overlaps with the preempted area for the proposed docking facility. Subtracting this 90 square feet, the private residential multi-family portion of the facility exceeds the 40:1 rule by 1,569 square feet.

Pursuant to rule 18-21.004(4)(g), F.A.C., a proprietary conservation easement will be granted to the Board of Trustees for the entire 120.71 linear feet of riparian shoreline to prohibit future construction of additional docks in association with the upland residential development. This has been included as a special approval condition. If the Board of Trustees approves this five-year sovereignty submerged lands lease, the recorded conservation easement will be referenced in, and attached to, the lease.

Net Positive Public Benefit

The docking facility exceeds the 40:1 rule; therefore, the applicant is required to provide net positive public benefit (NPPB). As NPPB, the applicant is proposing to:

- (1) provide 6 slips for rent to the general public on a first-come, first-serve basis pursuant to rule 18-21.003(28), F.A.C.;
- (2) remove derelict vessel no. 29 from the Indian River Lagoon in St. Lucie County; and

Substitute Item 5, cont.

- (3) quitclaim, to the Board of Trustees, all lands lying below the mean high water line adjacent to its riparian uplands, which includes the 610-square-foot potential Butler Act claim.

Noticing

The proposed project was noticed pursuant to section 253.115, F.S., and rule 18-21.005(3), F.A.C., and no objections were received.

Permit Summary

The District's environmental resource permit does not authorize sewage pumpout facilities and prohibits liveboards and fueling facilities. The applicant has indicated that all vessels docked at this facility will be required to use the public sewage pumpout at the Pelican Yacht Club, which is located 0.25 mile away.

Commenting Agency

The recommendations of the Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. The protection and mitigation of seagrasses have been addressed in the permit. St. Lucie County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated the proposed project is consistent with the MPP.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan is in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City of Fort Pierce.

(See Attachment 5, Pages 1-36)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$1,870.41**

**2nd Substitute Item 6 TNC Option Agreement/Conservation Easement/Bombing Range
Ridge Florida Forever Project**

REQUEST: Consideration of (1) an option agreement to acquire a perpetual conservation easement over 2,848 acres within the Bombing Range Ridge Florida Forever Project from The Nature Conservancy; and (2) authorization from the Board of Trustees to amend the option agreement and all related exhibits in order to reflect a proposed reduction in initial acreage covered by the conservation easement by approximately 204 acres which fall outside of the area where The Nature Conservancy has consolidated the most lots, along with provisions to allow for the future inclusion of additional acreage if The Nature Conservancy is successful in

2nd Substitute Item 6, cont.

acquiring such acreage within the target area of more consolidated ownership, so long as the total purchase price does not exceed \$5,696,000; and (3) designation of Department of Environmental Protection, Office of Environmental Services as the monitoring agency.

COUNTY: Polk

LOCATION: Sections 32 and 33, Township 29 South, Range 30 East; Sections 04, 05, 09, 15, 16, 20-22, 28-30, Township 30 South, Range 30 East

CONSIDERATION: \$5,696,000 (Initial Purchase Price is \$5,288,000, which is \$2,000 per acre for 2,644 acres. The proposed changes to the option agreement would allow The Nature Conservancy to attempt to acquire additional acreage within the area where its ownership is more consolidated at a price of \$2,000 per acre, up to a total potential purchase price not to exceed \$5,696,000).

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>MAXIMUM</u>	<u>SELLER'S</u>	<u>TRUSTEES'</u>	<u>OPTION</u>
		<u>Catlett</u>	<u>Goodman</u>	<u>APPROVED</u>	<u>PURCHASE</u>	<u>PURCHASE</u>	<u>DATE</u>
		<u>(02/16/10)</u>	<u>02/16/10)</u>	<u>VALUE</u>	<u>PRICE</u>	<u>PRICE</u>	
TNC	2,848*	\$5,477,000	\$5,600,000	\$5,980,000*	\$ **	<u>\$5,696,000***</u> (95%)	270 days after BOT approval

* Originally, the appraisers valued a conservation easement covering 2,671.5 acres at maximum approved value \$5,600,000. An administrative appraisal review was performed when the acreage increased to 2,848, and the additional acreage brought the total approved value for the conservation easement up to \$5,980,000.

** Seller assembled the property from various owners over a period of several years.

*** \$2,000 per acre; Fee value is \$13,100,800; Conservation Easement Purchase Price is 43.5% of the fee value. Under the proposed changes to the option agreement, the Trustees' Purchase Price will be \$5,288,000 for 2,644 acres, with the potential for additional acreage at \$2,000 per acre up to \$5,696,000.

STAFF REMARKS: The parcel is located within the Bombing Range Ridge Florida Forever project, ranked third in the Florida Forever Critical Natural Lands project category, approved by the Board of Trustees on September 28, 2010. The project contains 45,474 acres, of which 10,731 acres have been acquired, protected by a conservation easement, or are under agreement to be acquired. If the Board of Trustees approves this agreement, 31,895 acres or 70 percent of the project will remain to be acquired.

Project Description

The primary goals of management of the Bombing Range Ridge project are: to conserve and protect critical habitat for rare, endangered and threatened species; to conserve, protect, manage, or restore important ecosystems, landscapes, and forests in order to enhance or protect significant surface water, recreational, timber, fish or wildlife resources which local or state regulatory programs cannot adequately protect; to provide areas, including recreational trails, for natural-resource-based recreation; and to preserve significant archaeological or historical sites.

For many years, The Nature Conservancy (TNC) has been actively pursuing properties in the area for conservation purposes, in partnership with the Department of Environmental

2nd Substitute Item 6, cont.

Protection's (DEP) Division of State Lands (DSL). Over time, TNC has obtained fee ownership to approximately 2,848 acres within the Bombing Range Ridge project boundary. Under the revised terms of this agreement, the Board of Trustees will acquire an option to purchase a perpetual conservation easement over approximately 2,644 acres of TNC's ownership. The remaining 204 acres owned by TNC will be removed from the initial option agreement because they lie outside the area wherein TNC has been able to consolidate the majority of its ownership. Under the terms of the proposed revision, TNC will work to acquire acreage within the more consolidated area. Any acreage that TNC is able to successfully acquire within that area will be added to the conservation easement at a price of \$2,000 per acre, with the total purchase price not to exceed \$5,696,000. The option period will run for 270 days. During that time, TNC will market the property in an effort to find a third party to purchase the underlying fee interest, with the understanding that TNC will grant the conservation easement in favor of the Board of Trustees simultaneously with the fee interest transfer to the new owner(s). If TNC is unable to find a third party to purchase the fee interest, the option will terminate unless TNC waives the termination.

Public acquisition of this project would conserve and protect significant habitat for native species and endangered and threatened species. Additionally, public acquisition would provide areas, including recreational trails, for natural-resource based recreation.

Prohibited Uses

The property will be restricted in perpetuity by the provisions of the Easement, a summary of which includes, but is not limited to the following prohibited uses:

- dumping of non-biodegradable, toxic or hazardous substances, soil, and liquid, unsightly or offensive materials, trash, garbage, wastes, abandoned vehicles, appliances, machinery, or similar material is prohibited;
- exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand, and similar substances will be prohibited, except as reasonably necessary to combat erosion or flooding, or except as necessary and lawfully allowed for the conduct of allowed activities;
- activities that will affect the hydrology of the land or be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation will be prohibited, unless otherwise provided for in this Easement;
- acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portions of the property having historical or archaeological significance will be prohibited;
- timber harvesting shall be prohibited, however Grantor may, as necessary and with prior written approval from Grantee, cut and remove timber damaged by natural disaster, fire, infestation or the like;
- removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation, including but not limited to cypress trees, will be prohibited except as specifically provided for in the Easement;
- there shall be no cutting of cypress trees anywhere on the Property;

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- planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council or its successor will be prohibited;
- commercial or industrial activity, or ingress, egress or other passage across or upon the property in conjunction with any commercial or industrial activity including but not limited to swine, dairy and poultry operations and confined animal feed lot operations will be prohibited;
- animal feeding operations as defined in 40 CFR 122.23(b)(1) will be prohibited;
- new construction or placing of temporary or permanent buildings, mobile homes or other structures in, on or above the ground of the property except as may be necessary by grantor for maintenance or normal operations of the property or during emergency situations will be prohibited or as may otherwise be specifically provided for in the Easement;
- construction or creation of new roads or jeep trails, will be prohibited, except for such activities as may be allowed under the existing easements for ingress and egress attached to the Easement as Exhibit “B”;
- motorized vehicles will be prohibited except on established trails and roads unless necessary: (i) to carry out the agricultural and silvicultural activities specifically allowed herein, (ii) for emergency purposes, and (iii) to retrieve game that has been hunted legally;
- actions or activities that may reasonably be expected to adversely affect threatened or endangered species shall be prohibited;
- any subdivision of the land except as expressly allowed in Article V.K. of the Easement shall be prohibited;
- no signs, billboards, or outdoor advertising of any kind erected or displayed on the property, except that grantee may erect and maintain signs designating the property as land under the protection of grantee will be prohibited; and
- there shall be no mitigation bank established under the provisions of sections 373.4135 et seq. F.S., or its successor, on the Property.

Owner’s Rights

The proposed Easement will allow the owner to retain certain rights. The summary of owner’s rights includes, but is not limited to, the following:

- the right to observe, maintain, photograph, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding; the right to own the hunting and fishing rights on the property and grantor may lease and sell privileges of such rights;
- the right to conduct controlled or prescribed burning on the property; provided, however, that owner shall obtain and comply with a prescribed fire authorization from the local and state regulatory agencies having jurisdiction over controlled or prescribed burning;
- the right to mortgage the property; provided, however, that the mortgagee’s lien shall be inferior to and lower in priority than this Easement;
- the right to contest tax appraisals, assessments, taxes, and other charges on the property;
- the right to continue to use, maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings, barns, dog pens, outbuildings, roads, ponds, drainage ditches, and such other facilities on the property as depicted in the Baseline Documentation;

2nd Substitute Item 6, cont.

- the right to exclusive use of the improvements depicted in the Baseline Documentation or provided for in this Easement;
- the right to continue native range cattle grazing practices on the Property on those areas identified as subject to such use in the Baseline Documentation. Native range grazing is the practice of grazing in natural grasslands, scrublands and savannas for forage at low density stocking rates. The native range grazing practices shall not adversely affect the native plant communities in terms of species composition and community structure as determined in the Baseline Documentation;
- the right to continue cattle grazing on those areas of the Property identified as improved pasture in the Baseline Documentation. Cattle management on the improved pasture shall be conducted in accordance with Best Management Practices adopted by DACS, as amended from time to time, provided such use does not significantly impair the Conservation Values;
- subject to restrictions and limitations contained in the Easement, Grantor may use commonly accepted fertilizers, pesticides and herbicides on the Property in limited quantities in strict conformance with manufacturer's instructions and in accordance with agricultural Best Management Practices as may be adopted from time to time by DACS;
- except as provided in the Easement, the right to participate in, and retain any income received from, any current or future programs with state or federal agencies or private entities intended to provide incentive or compensation for the restoration or relocation of rare, imperiled, threatened, or endangered species or communities on the Property in a manner designed to restore historic natural systems, or for other environmental preservation or enhancement efforts. Under no circumstances may Grantor engage in mitigation banking as regulated under the provisions of sections 373.4135 et seq. F.S., on the Property;
- the right to sell, devise or otherwise transfer ownership of the Property to a third party subject to the restrictions on subdivision contained in Article V.K. of the Easement; and
- the right to install and maintain fencing on the Property for agricultural purposes, provided such fencing does not impair the Conservation Values.

Public Access

The grantor grants to members of the public the limited right to conduct scientific studies and environmental education programs on the Property as provided under the terms of the Easement. The grantor shall make a good faith effort to allow bona fide public, private and chartered schools or other bona fide educational organizations the ability to conduct educational programs or tours on the Property up to 12 times in a calendar year.

Mortgages and Liens/Encumbrances

All mortgages and liens will be satisfied or subordinated at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

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Closing Information

A title insurance commitment, environmental site assessment, baseline documentation report, and, if necessary, a survey will be obtained by the Board of Trustees prior to closing.

Management

As an Easement, or less-than-fee interest, the project will be managed by the private landowner with restrictions. The purchase of the development rights, the prohibition of the further conversion of existing natural areas to more intensive uses, and limited public access is the primary focus of the Easement.

Pursuant to section 259.032(9)(e), F.S., DEP recommends that the Board of Trustees designate DSL's Office of Environmental Services as the Easement monitor for this site.

Comprehensive Plan

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

(See Attachment 6, Pages 1-127)

RECOMMEND APPROVAL

Additional Item 7 Deepwater Horizon Oil Spill Incident Status Update/BP/Gulf of Mexico

Status update of the efforts to protect Florida's shoreline from the Deepwater Horizon oil spill incident in the Gulf of Mexico.

RECOMMEND INFORMATIONAL