

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
AUGUST 14, 2018

Attachments to the items below can be viewed at the following link:

<https://floridadep.gov/cab/cab/content/agendas>

Item 1 Minutes

Submittal of the Board of Trustees' Minutes from the June 13, 2018 Cabinet Meeting.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

(See Attachment 1 at <https://floridadep.gov/cab/cab/content/agendas>)

RECOMMEND APPROVAL

Item 2 Black Creek Marina, LLC, Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for a five-year sovereignty submerged lands lease containing 172,655 square feet, more or less, for a 118-slip commercial docking facility.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Black Creek Marina, LLC
Lease No. 100345622
Application No. ISSL-019-146455-3

LOCATION: Highway 17, Green Cove Springs, FL
Black Creek, Clay County

CONSIDERATION: \$38,146.61, representing (1) \$30,517.29 as the initial annual lease fee computed at the base rate of \$0.176753 per square foot, pursuant to rule 18-21.011(1)(b)1., F.A.C.; and (2) \$7,629.32 as the one-time 25 percent surcharge payment, pursuant to rule 18-21.011(1)(b)3., F.A.C. 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 shall be adjusted based on six percent of the annual income if it proves to be greater than the fee computed at the base rate, 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.

Item 2, cont.

The project is required to demonstrate that it is “not contrary to the public interest,” pursuant to Article X, Section 11 of the Florida Constitution, chapter 253, F.S., and rule 18-21.004(1)(a), F.A.C. The applicant has provided reasonable assurance that the proposal will maintain essentially natural conditions; will not significantly impact fish and wildlife and other natural resources, including public recreation and navigation; is consistent with the local government’s comprehensive plan; and will not interfere with the riparian rights of adjacent property owners. Therefore, the St. Johns River Water Management District (SJRWMD) is of the opinion that the proposal is “not contrary to the public interest” and otherwise meets all applicable requirements for a proprietary authorization to use sovereignty submerged lands.

Background

On September 18, 2012, the Board of Trustees approved a ten-year lease, containing 172,667 square feet, for the construction and use of a 77-slip commercial docking facility to be used in conjunction with a proposed commercial development consisting of a dockmaster’s office, a 300-space dry storage facility, bait and tackle shops, a restaurant and associated parking. However, the docking facility was never constructed, the lease was never executed, and the associated environmental resource permit expired. On March 7, 2017, the applicant acquired title to the property.

Project Detail

The applicant is proposing to construct a 118-slip docking facility to be used in conjunction with a proposed commercial development consisting of a bait and tackle shop, a restaurant, and associated parking. Under this design, the applicant has eliminated the 300-space dry storage facility and increased the number of wet slips from 77 to 118, while maintaining a similar footprint of the docking facility, with a slight reduction in the previously approved preempted area from 172,667 to 172,655 square feet.

Of the proposed 118 slips, 100 slips will be permanent for rent to the general public and the remaining 18 slips will be for temporary mooring associated with the fueling facility (4 slips) and the upland restaurant (14 slips). The docking facility will accommodate recreational vessels with a maximum length of 30 feet with drafts up to 5 feet.

Aquatic Resources

The project site contains approximately 2.7 acres of submerged aquatic vegetation (SAV). The docking facility has been designed to minimize impacts to SAV by: (1) moving the docking facility waterward of SAV; and (2) elevating the access piers and providing ½-inch spacing between dock planks for the portion of the structures that traverse SAV.

Noticing/Interested Parties

The project was noticed to property owners, within a 500-foot radius of the project, and other interested parties, pursuant to section 253.115, F.S., and no objections were received.

Item 2, cont.

(See Attachment 2, Pages 1-23)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF \$38,146.61

Item 3 Center Point Terminal J&W, LLC, Lease Modification

REQUEST: Consideration of an application for a modification of a five-year sovereignty submerged lands lease to increase the preempted area from 68,948 square feet to 141,253 square feet, more or less, for an existing one-slip commercial docking facility.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Center Point Terminal J&W, LLC, a Delaware limited liability company
Lease No. 160637482
Application No. 16-0165760-006-EI

LOCATION: 3117 Talleyrand Avenue, Jacksonville, FL
St. Johns River, Duval County

CONSIDERATION: \$28,161.93, representing (1) \$24,966.60 as the initial annual lease fee computed at the base rate of \$0.176753 per square foot, pursuant to rule 18-21.011(1)(b)1., F.A.C.; and (2) \$3,195.03 as the one-time 25 percent surcharge payment for the additional area, pursuant to rule 18-21.011(1)(b)3., F.A.C. Sales tax and county discretionary sales surtax will be assessed, pursuant to sections 212.301 and 212.054, F.S., if applicable.

The project is required to demonstrate that it is “not contrary to the public interest,” pursuant to Article X, Section 11 of the Florida Constitution, chapter 253, F.S., and rule 18-21.004(1)(a), F.A.C. The lessee has provided reasonable assurance that the proposal will maintain essentially natural conditions; will not significantly impact fish and wildlife and other natural resources, including public recreation and navigation; is consistent with the local government’s comprehensive plan; and will not interfere with the riparian rights of adjacent property owners. Therefore, the Department of Environmental Protection (DEP) is of the opinion that the proposal is “not contrary to the public interest” and otherwise meets all applicable requirements for a proprietary authorization to use sovereignty submerged lands.

Background

The lessee’s existing lease authorizes the preemption of 68,948 square feet of sovereignty submerged lands for a one-slip commercial docking facility for unloading of fuel in conjunction with its upland fuel storage and distribution facility.

Item 3, cont.

The lessee routinely performs maintenance dredging every eight months in order to maintain a depth of -37 feet mean low water in the berthing area. The lessee removes approximately 4,000 cubic yards of sovereignty material during each dredging event. The lessee is proposing to install a SedCon Turbo System (System) to reduce the necessity and frequency of these maintenance dredging events.

Due to the increase in size of vessels offloading at the facility, vessels have been preempting area outside of the existing lease. On August 2, 2018, DEP and the lessee entered into a temporary use agreement (TUA) for the unauthorized preemption of 24,765 square feet. TUA required the payment of \$23,847.56 for lease fees in arrears, which were assessed from April 5, 2014 through April 5, 2019.

Project Detail

The lessee is proposing to expand its existing lease area to: (1) install the System, and associated structures, to minimize the need for maintenance dredging; and (2) accommodate larger vessels up to 680-feet long by 125-feet wide with drafts up to 36 feet. The proposed expansion will increase the preempted area from 68,948 square feet to 141,253 feet (an increase of 72,305 square feet).

The System includes four turbo units mounted to support structures just above the river bottom. The System is designed to prevent sedimentation by augmenting existing water currents with underwater turbo units. The turbo units prevent passing sediments from settling in the berthing area by keeping near bottom current velocities above the threshold for sediment deposition. A fully automated computer control system will operate the turbo units in sequence with the natural water flow.

The System will operate two times during each flood and ebb tidal flow (four operational periods each day). This will reduce sedimentation at the berthing area and allow the benthic community to mature rather than be disturbed approximately two times a year with maintenance dredging.

The turbo units are designed with intake and outflow grating that prevent all but the smallest organisms to enter the turbo units. The turbo units will not result in adverse impacts to aquatic wildlife or their habitat.

The lessee included background information regarding the turbo units and their effective operation and utilization in several locations on the east coast of the United States. Turbidity monitoring at locations where the System has been installed have shown no adverse impacts. Compared to conventional maintenance dredging, the System has been shown to be less impactful to water quality, in general, and turbidity, in particular.

Item 3, cont.

The Army Corps of Engineers (ACOE) is also responsible for reviewing and granting permits for System installations. ACOE has been supportive of System installations on the East Coast, granting permits for Systems in New Jersey, North Carolina, South Carolina, and Georgia. ACOE issued a permit for this project on May 1, 2018.

Noticing

The lease modification request was noticed to property owners within a 500-foot radius of the project, pursuant to rule 18-21.004(1)(m), F.A.C. Two property owners were specifically noticed and no objections were received.

(See Attachment 3, Pages 1-9)

RECOMMEND APPROVAL SUBJECT TO THE PAYMENT OF \$28,161.93

**Item 4 BOT/Greenfield Environmental Multistate Trust, LLC, Exchange Agreement
Kerr-McGee Chemical Corporation Superfund Site)/Determination**

REQUEST: Consideration of (1) a determination, pursuant to Article X, Section 11 of the Florida Constitution and rule 18-21.004(1)(a), F.A.C., that an exchange of approximately 81,066 square feet of sovereignty submerged lands in the St. Johns River is in the public interest; and (2) approval of an exchange agreement to convey the approximately 81,066 square feet of sovereignty submerged lands in exchange for all right, title and interest of approximately 605,900 square feet of privately-owned uplands and submerged lands in Duval County.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTY: Duval

APPLICANT: Greenfield Environmental Multistate Trust, LLC, not individually but solely in its representative capacity as Trustee of the Multistate Environmental Response Trust (the "Multistate Trust" or the "Applicant")

LOCATION: Section 08, Township 02 South, Range 27 East
1611 Talleyrand Avenue, Jacksonville
St. Johns River, Duval County

Item 4, cont.

CONSIDERATION: Parcel for Parcel

<u>PARCEL</u>	<u>SQ. FT</u>	APPRAISED BY Eyrick (7/19/18)	APPROVED <u>VALUE</u>	EXCHANGE <u>VALUE</u>	CLOSING <u>DATE</u>
Greenfield	605,900	\$184,000	\$184,000	\$184,000	120 days after BOT approval
BOT	81,066	\$0	\$0	\$0	

*BOT parcel has no value because of the cost to remedy the contamination.

STAFF REMARKS: The Applicant, the Multistate Trust, was established on February 14, 2011 pursuant to a Consent Decree and Environmental Settlement Agreement and an Environmental Response Trust Agreement with the United States, 20 State beneficiaries (including Florida), and Tronox f/k/a Kerr-McGee Chemical Corporation entered in federal bankruptcy court (the “Settlement Agreement”). The Applicant is responsible for owning, managing, cleaning up, and facilitating the safe reuse of the Kerr-McGee Chemical Corporation Superfund Site located at 1611 Talleyrand Avenue in Jacksonville (the “Site”), which has been designated a federal Superfund Site and placed on the National Priorities List (“NPL”) by the United States Environmental Protection Agency (“EPA”).

The 31-acre Site, located on the St. Johns River, was utilized from 1893 until 1978 for fertilizer and pesticide formulating and distributing operations. The Site property is vacant and fenced, with only building foundations remaining onsite. Historical operations have resulted in contamination of soils, groundwater, surface water, and sediments. Soil and groundwater contamination extends offsite onto the Jacksonville Port Authority property to the north and the CSX property to the south. Sediment and surface water in the St. Johns River and sediment in Deer Creek have been impacted by Site contaminants, which include organochlorine pesticides, metals, and PCBs and a localized area of radionuclide-contaminated soils.

The Site cleanup plan selected by EPA is set forth in the EPA December 12, 2016 Record of Decision (“ROD”) includes containing and capping contaminated sediments in the St. Johns River along the Site shoreline by constructing an environmental bulkhead and placing clean fill in the submerged lands between the bulkhead and shoreline. Installation of the bulkhead and fill requires authorization from the Board of Trustees unless the submerged lands upon which the bulkhead and fill will be placed are owned by the applicant.

As trustee, the Multistate Trust has a fiduciary duty to its two Site beneficiaries - EPA and the Florida Department of Environmental Protection (“DEP”) (collectively the “Beneficiaries”). Under the Settlement Agreement, EPA approves the plans and budgets for remediating contamination at the Site in consultation with DEP. Cleanup costs are paid from the ±\$93 million in funds specifically earmarked for the Site. The Beneficiaries must approve any transfer or sale of the Site property. Proceeds from any sale are used to perform additional Site cleanup activities

Item 4, cont.

until such time as the Beneficiaries determine that all environmental actions have been performed at the Site, thereby allowing any surplus funds to be used for the cleanup of other Multistate Trust sites.

Prior to issuance of the ROD, EPA prepared a Community Involvement Plan (“CIP”) for the Site to encourage community engagement and public participation in the cleanup process, including selection of the Site remedy. As part of CIP implementation, EPA: issued fact sheets and letters; hosted stakeholder meetings; held public availability sessions and public meetings; and published formal notices in *The Florida Times-Union*. Major CIP activities associated with EPA’s selection of the preferred cleanup plan for the Site (including installation of an environmental bulkhead to address sediment contamination in the St. Johns River) are described below.

- In September of 2016, EPA issued the final Proposed Plan (“PP”) for Site, and published a formal notice of availability of the PP in *The Florida Times-Union*.
- Beginning on September 12, 2016, EPA provided a sixty (60) day period for the public to review and comment on the PP and participate in the administrative decision-making process for the ROD pursuant to the Administrative Procedure Act, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and other environmental laws.
- On September 14, 2016, the Multistate Trust reviewed the PP with the Eastside Environmental Council (“EEC”) - a non-profit, community-based organization committed to addressing contamination and health impacts in the Jacksonville Eastside area where the Site is located.
- On September 28, 2016, EPA and the Multistate Trust held a public meeting to present the PP to the community and the public and answer questions about the Site, remedial alternatives, and the PP.
- On October 10, 2016, EPA and the Multistate Trust reviewed the PP with representatives from the City of Jacksonville (“COJ”).
- On December 12, 2016, EPA issued the ROD, which included a written response to all comments received during the public comment period.
- The Mayor of the COJ has indicated the City’s support for the project.
- The EEC, which is the community group that has been awarded the EPA Technical Assistance Grant for the Site, has documented its support for the project.

Project Details

Construction of the environmental bulkhead and placement of fill behind the bulkhead will require use of submerged lands adjacent to the Site shoreline. The Applicant currently holds title (by operation of the Butler Act) to 0.949 acre of the submerged lands. A patchwork of state-owned submerged lands makes up the remainder of the lands necessary for the project (\pm 1.9 acres). The Applicant is seeking approval to exchange the rights, title and interest of 605,900 square feet of privately-owned uplands and submerged lands for the remaining 81,066 square feet of sovereignty

Item 4, cont.

submerged lands necessary to construct the environmental bulkhead. The state asserts title to lands below the mean high water line of the St. Johns River. A mean high water survey was not performed since the Board of Trustees will be receiving a special warranty deed for the Applicant's entire deeded area and the cost of the survey would take more funds away from the clean-up efforts of the contaminated parcel. Although there will not be a mean high water survey, there will be a boundary survey which will be performed to determine the exact square footage of the privately-owned uplands and submerged lands the Board of Trustees will be acquiring.

If the Board of Trustees approves the Applicant's request, the Board of Trustees will convey by quitclaim deed to the Applicant all right, title, and interest held in the 81,066 square feet of sovereignty submerged lands in exchange for all right, title, and interest held in the 605,900 square feet of privately-owned uplands and submerged lands.

Constitutional and Rule Requirements

Pursuant to Article X, section 11 of the Florida Constitution and rule 18-21.004(l)(a), F.A.C., the Board of Trustees may convey sovereignty submerged lands if the Board of Trustees determine the conveyance is in the public interest. DEP offers the following to assist the Board of Trustees in making an affirmative determination that the proposed exchange of lands is in the public interest:

- The exchange will permit the Applicant to implement the remedy for addressing contaminated sediments set forth in the EPA-issued ROD, which has been approved by DEP and will directly benefit the Beneficiaries of the Multistate Trust.
- Implementation of the Site remedy will benefit the citizens of Florida and protect public health and the environment by preventing further migration of Site contaminants into the sediments of the St. Johns River and containing within the bulkhead the contaminated sediments currently located on the River bottom.
- Local and State economies will benefit from Site remediation, which is required to make the property available for industrial, waterfront reuse. Proceeds from the sale of Site property will be used to pay for future cleanup activities.
- Implementation of the EPA-selected remedy for the Site will generate new state and local taxes and create new jobs, including temporary jobs associated with Site cleanup and permanent jobs associated with Site redevelopment.
- In exchange for 81,066 square feet of contaminated River bottom, the Board of Trustees will receive all rights, title and interest of 605,900 square feet of privately-owned uplands and submerged lands located within Duval County.

Item 4, cont.

- The Applicant-owned submerged lands at the Site contain a patchwork of sovereignty submerged land holdings. Consolidation of private and public submerged lands at the Site will enhance the State's management and the Applicant's use of its respective submerged lands. Compliance, revenue, and enforcement issues will be greatly simplified with a clear division between State and private submerged lands.

Noticing

Property owners within a 500-foot radius of the proposed exchange were specifically noticed and no objections were received.

Comprehensive Plan

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

(See Attachment 4, Pages 1-24)

RECOMMEND APPROVAL

Item 5 Florida Department of Transportation Conveyance/Determinations

REQUEST: Consideration of (1) a determination, pursuant to section 253.0341(1), F.S., that an approximately 2.36-acre parcel of Board of Trustees' owned, non-conservation land in Escambia County is surplus and no longer needed; (2) a determination, pursuant to section 18-2.018(3)(b)1.c., F.A.C., that the conveyance of the approximately 2.36-acre parcel of Board of Trustees' owned, non-conservation land to the Florida Department of Transportation provides a greater benefit to the public than its retention in Board of Trustees' ownership; and (3) approval of the conveyance of the approximately 2.36-acre parcel of Board of Trustees' owned, non-conservation land to the Florida Department of Transportation.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTY: Escambia

APPLICANT: Florida Department of Transportation (FDOT)

LOCATION: Section 8, Township 2 South, Range 29 West

Item 5, cont.

CONSIDERATION: \$2,799,000 (\$2,043,814 to the Florida Fish and Wildlife Conservation Commission (FWC), pursuant to Chapter 2018-9, Laws of Florida, Specific Appropriation 1759A and \$755,186 for the acquisition of conservation land to be titled to the Board of Trustees.)

APPRAISED BY: Florida Department of Transportation
REVIEWED BY: Division of State Lands, Bureau of Appraisal

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED</u> <u>(7/18/2018)</u>	<u>CLOSING</u> <u>DATE</u>
BOT	2.36	\$2,799,000	Upon FWC's receipt of funds and BOT acceptance of lands

STAFF REMARKS: The Department of Environmental Protection's (DEP), Division of State Lands (DSL), received a request from FDOT to purchase the 2.36-acre parcel for use as a public road right-of-way and associated improvements. The purpose of the request is to construct a round-about at US 98 (Gregory Street) and SR 196 (Bayfront Parkway) at 17th Avenue in Pensacola to improve the overall safety conditions for vehicular and multi-modal traffic, emergency evacuation, and traffic operations at the intersection.

The 2.36-acre parcel is currently under lease (Lease No. 3392) to FWC for its Pensacola Field Office. The Board of Trustees received the 2.36-acre parcel from the State Department of Public Safety on October 3, 1968, pursuant to Chapters 67-269 and 67-2236, Laws of Florida, both Acts of 1967 (section 253.03(6), F.S.).

FWC proposes, and has received the initial legislative support through approved spending authority, to relocate and construct a new Pensacola Field Office facility on a 29.55-acre parcel of Board of Trustees' owned, non-conservation land in Walton County. This will enable FWC to consolidate its current Pensacola and Panama City field operation facilities to one centralized location. The 29.55-acre parcel is currently under lease (Lease No. 4237) to FDOT. FDOT currently subleases (Sublease No. 4237-001) 5 acres to Walton County for a fire station and emergency response facility.

The spending authority for FWC to construct the new facilities in Walton County has been approved in Chapter 2018-9, Laws of Florida, Specific Appropriation 1759A. After construction costs of \$2,043,814 are provided to FWC, the appraised value remaining is \$755,186, which will be used by FDOT to purchase conservation lands from the Florida Forever Priority List or parcels identified by state conservation agencies as "additions and/or in-holdings" in the Northwest Florida Region. Once the funds are received by FWC for construction, and the conservation land is received and accepted by DEP, on behalf of the Board of Trustees, the 2.36-acre parcel will be conveyed to FDOT for the construction of the round-about and associated improvements. FDOT will release its lease on the 29.55-acre parcel and FWC will lease 24.55 acres for its field office facilities and Walton County will lease the remaining 5 acres for its fire station and emergency response facility.

Item 5, cont.

FDOT, FWC, and the Board of Trustees have executed a Memorandum of Understanding as a guideline for facilitating the conveyance, construction, and purchase of lands pending formal Board of Trustees' approval.

Statutory and Rule Requirements

Pursuant to section 253.0341(1), F.S., to surplus non-conservation land, the Board of Trustees must determine that the land is no longer needed. Pursuant to rule 18-2.018(3)(b)1.c., F.A.C., the Board of Trustees may sell and convey Board of Trustees' owned property if the Board of Trustees determine the sale results in a greater benefit to the public than its retention in Board of Trustees ownership. Pursuant to section 253.0341(4), F.S., non-conservation lands shall be reviewed by DSL for recommendation as to whether such lands should be retained in public ownership or disposed of by the Board of Trustees. DEP offers the following to assist the Board of Trustees in making an affirmative determination that the 2.36-acre parcel is no longer needed and conveyance of the 2.36-acre parcel results in a greater benefit to the public than its retention in Board of Trustees' ownership:

FDOT's proposed roundabout with improvements will:

- Enhance continuous traffic flow to and from the Pensacola Bay Bridge;
- Eliminate existing dangerous and congested traffic conditions;
- Improve and assist in localized evacuations; and
- Reduce collisions resulting in injury.

FWC's facility being relocated in Walton County will:

- Consolidate two field offices for efficiency;
- Provide a more centralized location for the Northwest Regional Office;
- Provide better access to the interstate and highway systems in Northwest Florida;
- Provide reduced response time; and
- Provide a more direct access to boat ramps and regulated areas.

Noticing

Noticing pursuant to section 253.115, F.S., is not required for conveyances less than 5 acres in size.

Comprehensive Plan

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

(See Attachment 5, Pages 1-16)

RECOMMEND APPROVAL

Item 6 Trustees of the Yolanda F. Wood Trust Option Agreement/Florida Keys Ecosystem Florida Forever Project/Survey Waiver

REQUEST: Consideration of (1) an option agreement to acquire 38.41 acres within the Florida Keys Ecosystem Florida Forever project from Edward P. Wood, Jr. and Elizabeth J. Wood, as Trustees of the Yolanda F. Wood Trust; and (2) the authority to waive the survey requirement, pursuant to rule 18-1.005, F.A.C.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

COUNTY: Monroe

LOCATION: Section 17, Township 66 South, Range 29 East

CONSIDERATION: \$520,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (05/10/18)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Wood Trust	38.41	\$650,000	\$650,000	*	\$520,000** (80%)	120 days after BOT Approval

*Sellers inherited the property from their parents. Property has been in the family since prior to 7/17/74.

**\$13,538 per acre. Property is estimated to have 11 development rights, however, clearing limitations would only allow 2 residential units.

STAFF REMARKS: The subject parcel is located within the Florida Keys Ecosystem Florida Forever project, ranked number 1 in the Florida Forever Climate Change Lands project category, which was approved by the Board of Trustees on June 13, 2018. The project contains 12,754 acres, of which 6,617 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 6,137 acres, or 48 percent of the project, will remain to be acquired.

Project Description

The unique hardwood hammocks of the Florida Keys, forests of West Indian plants that shelter several extremely rare animals, are being lost to the rapid development of these islands. Public acquisition of property in the Florida Keys Ecosystem project will protect all the significant unprotected hardwood hammocks left in the Keys, and many rare plants and animals. Acquisitions in this project will also help protect the Outstanding Florida Waters of the Keys, the recreational and commercial fisheries, and the reefs around the islands, and give residents and visitors more areas for enjoying the natural beauty of the Keys.

The proposed acquisition will be an addition to the Florida Keys Wildlife and Environmental Area (FKWEA) and has long been considered by Florida Fish and Wildlife Conservation Commission as a high priority for acquisition because of its pristine condition and location on sparsely settled Middle Torch Key. The adjacent 30-acre parcel to the south is existing FKWEA conservation land

Item 6, cont.

consisting of similar habitat and combined with the subject parcel, it would protect one of the largest contiguous tracts of globally imperiled rockland hammock (also known as tropical hardwood hammock) remaining in the Lower Keys. The subject parcel also contains freshwater ponds and wetlands critical to a variety of wildlife including many rare and listed species dependent on a year-round source of fresh water such as the Lower Keys marsh rabbit, Florida Key Deer, Lower Keys striped mud turtle, Lower Keys ribbon snake and numerous other indigenous species. Many local bird species such as the white-crowned pigeon are also dependent on larger intact hammocks for a source of food and nesting areas. In addition, native fruiting trees and shrubs that occur in the hammocks provide a critical source of food and shelter for great numbers of migratory birds that stopover in the Keys for fuel and water to gain the body mass and energy required for the long flights south in the fall to the Caribbean, Central America and South America and to regain energy in the spring before returning to their nesting grounds throughout North America. The acquisition of the subject parcel is important for protecting and maintaining the few remaining larger tracts of the unique ecosystems and wildlife found only in the Lower Keys.

In addition to the proposed acquisition being beneficial to avian community, it will expand the FKWEA boundary for passive recreation.

Area of Critical State Concern

The Florida Keys Ecosystem project is located in an area designated as an Area of Critical State Concern, pursuant to section 380.0552, F.S. This designation requires state and local governments to focus on the protection of resources and public facilities of major statewide significance. Part of the Legislative intent for this designation was to ensure that the population of the Florida Keys be safely evacuated before a hurricane storm event. The acquisition of the subject parcel will prevent future development and help continue efforts to sustain hurricane evacuations to under 24 hours. These natural areas also provide a buffer to the developed areas from wind and storm surge.

Florida Keys Stewardship Act

Pursuant to the Florida Keys Stewardship Act (Act), it emphasizes the importance of land acquisition and water quality projects as critical to the Florida Keys' nearshore waters and lands that are critical to the delicate ecosystem. The Act also recognizes the importance of collaboration, with Monroe County, in prioritizing Florida Forever acquisition parcels in the Keys and encourages the partnership between State and County.

Memorandum of Agreement

Pursuant to a Memorandum of Agreement (MOA) dated August 16, 2017, between the Department of Environmental Protection (DEP) and Monroe County, both parties agree to pursue and acquire parcels in Monroe County. The MOA specifies the terms and conditions under which the County, and its agent the Monroe County Land Authority, can assist DEP in the acquisition of land in the

Item 6, cont.

Florida Keys. Expenses incurred from products ordered will be reimbursed by DEP to Monroe County. This MOA has been extended until June 30, 2020.

Mortgages and Liens

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

Survey Waiver

It is the opinion of DEP's Bureau of Survey and Mapping that the available boundary information is sufficient to protect the public's interest, and any additional benefit derived from a survey is minimal relative to cost. Therefore, a waiver of the requirement for a survey of the subject parcel is being requested, pursuant to rule 18-1.005, F.A.C.

Closing Information

A title insurance policy and an environmental site evaluation will be provided by the buyer prior to closing.

Management

The subject parcel will be managed by Florida Fish and Wildlife Conservation Commission as an addition to the FKWEA and provide an additional protected flyway area for multiple migratory bird species.

Comprehensive Statement

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 1-62)

RECOMMEND APPROVAL

Item 7 Sandy Gully Conservation Easement/FDACS/Rural & Family Lands Protection Program

REQUEST: Consideration of (1) an option agreement to acquire a 2,457-acre perpetual conservation easement over lands lying within the Sandy Gully project of the Florida Department of Agriculture and Consumer Services' Florida Forest Service (FDACS/FFS) Rural & Family Lands Protection Program (RFLPP) from Sandy Gully Dairy, Inc.; and (2) designation of FDACS/FFS as the monitoring agency.

Item 7, cont.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

APPLICANT: Florida Department of Agriculture and Consumer Services' Florida Forest Service

COUNTY: Highlands

LOCATION: All of Sections 21, 28, 29, and 30, Township 34 South, Range 28 East

CONSIDERATION: \$5,528,250 (\$3,312,500 of the acquisition costs may be provided through an Agricultural Conservation Easement Program (ACEP) grant from the United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS))

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>TRUSTEES'</u> <u>PURCHASE</u> <u>PRICE</u>	<u>OPTION</u> <u>DATE</u>
		<u>(01/23/18)</u> String	<u>(01/23/18)</u> Zink				
Sandy Gully	2,457	\$6,625,000*	\$6,150,000	\$6,625,000	**	\$5,528,250***	120 days after BOT approval

*Fee value was determined to be \$11,050,000 (String).

**Property was assembled over many years by the Elrod Family.

***The Trustees' purchase price may be reduced to \$2,215,750 as a result of receiving an NRCS grant in the amount of \$3,312,500. The purchase price for the conservation easement is \$2,250 per acre.

STAFF REMARKS:

This acquisition was negotiated by FDACS/FFS under its RFLPP. If approved, this will be the forty-sixth perpetual conservation easement proposed for acquisition, with a total of approximately 53,121 acres preserved under the RFLPP. The Sandy Gully project is ranked in Tier One on the 2018 RFLPP Acquisition List.

PROPERTY DESCRIPTION:

Three generations of the Elrod/Goolsby family have owned land and participated in the Florida agriculture industry. In the 1930's, O.W. Goolsby purchased land to establish a dairy farm in Hiawatha. In 1968, after more than three decades of successful dairy operation, Mr. Goolsby moved his business to central Florida and purchased two tracts of land in Highlands County, one of which is now Sandy Gully Dairy, also known as Elrod Dairy.

The Sandy Gully Line, a railroad tram, was built and used in the 1930's and 1940's for logging operations. Although no components of the railway exist today, a record for the Sandy Gully Line is maintained in the Division of Historical Resources' master site file. Several original wooden structures/shacks located in an oak hammock exist on the property. The structures were part of a turpentine camp that operated in the 1920's and 1930's. The structures housed harvesting crews that collected turpentine for a week before being relieved by the next crew.

Item 7, cont.

Sandy Gully is a cow/calf operation, with hay and timber as secondary operations. Originally a dairy operation, the family transitioned to cattle in 2002 and now run about 650 to 700 head of crossbred beef cattle. Mr. Elrod has progressively implemented Best Management Practices to improve production and land management and the family has worked closely with FDACS and the local livestock agent.

Much of the ecological value of the property lies in the relatively large size of the natural communities present and their contiguity with those on adjacent public lands. Of particular significance is the scrub, an imperiled natural community of which few large, intact parcels remain outside of public ownership.

Two rare species are documented on the property: Florida Black Bear and Florida Gopher Tortoise. The Elrod's have also identified Florida sandhill crane, bald eagle, Sherman's fox squirrel, eastern indigo snake, gopher tortoise, and Florida panthers on the property. During the RFLPP evaluation site visit several wood storks, two fox squirrels, several gopher tortoises, and endangered cutthroat grass were observed. Also, the existing xeric communities on the property have the potential to harbor a suite of rare, often endemic, plants and a large number of rare invertebrates.

A major wildlife corridor exists between Highlands County Sun N' Lake Preserve (Preserve), Sandy Gully, and Highlands Hammock State Park (State Park). Sandy Gully shares three miles of its southern boundary with the State Park. Preserve staff have documented black bear and the occasional Florida panther, as well as other species, using the corridor. The Preserve property handles massive amounts of water, some of which pass to the south through Sandy Gully to the State Park. To benefit water quality, it is important that the water flows through as much native habitat as possible on its way to Charlotte Harbor. The buffer provided by Sandy Gully will allow the wildlife corridor to remain intact without fragmentation. It will also allow critical hydrological flow-ways between the three properties to remain intact.

Wetlands on the property are associated with the tributaries contributing to Little Charlie Bowlegs Creek, which are categorized as Priority 2 Surface Water Resources. The mixed wetland hardwood corridor on the western third of the property, as oriented in a north/south alignment, is categorized as Priority 2 and 3 Surface Water Resources. The greatest level of wetland protection associated with Sandy Gully is the protection from further development into the wetlands and surface water features associated with Little Charlie Bowlegs Creek. Little Charlie Bowlegs Creek feeds Charlie Creek, which in turn flows to the west and southwest and drains into the Peace River. Sandy Gully is also part of a greater wetland system, as it is located at the western edge of the Lake Wales Ridge. The east side of the property has very high recharge values, exceeding 25 inches annual recharge.

Item 7, cont.

The subject property has a high potential of conversion to non-agricultural use because it is in close proximity to existing and planned urban and suburban residential and nonresidential development. Although factors discourage conversion to non-agricultural use, the development trends in the surrounding area show strong threats of conversion to non-agricultural use.

PROHIBITED USES:

- Dumping of biodegradable or nonbiodegradable, toxic, unsightly, offensive or hazardous substances, trash or garbage, wastes, abandoned vehicles, appliances, machinery, toxic wastes or substances, pollutants or contaminants, or similar material.
- The mining, excavation of surface or subsurface materials, the 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 either directly or indirectly by Grantor or on Grantor's behalf.
- Activities that affect the hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish and wildlife habitat, etc.
- Planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Grantor shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property.
- Concentrated and confined animal feed lot operations as defined by the USDA.
- 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 permitted hereinafter, or as necessary by Grantor for maintenance or normal operations of the Property or during emergency situations or as may otherwise be specifically provided for in the Easement.
- Construction or placing of roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the Easement, and except for linear facilities described in section 704.06(11), F.S. Grantee may erect and maintain signs designating the Property as land under the protection of Grantee.
- Fertilizer use for agriculture activities shall be in accordance with agricultural Best Management Practices (BMPs) recommended by the NRCS or FDACS, whichever is more stringent, as those BMPs may be amended from time to time. No agricultural activities shall occur within a 100-foot buffer around sinkholes and other karst features that are connected to spring conduits, except as provided in the applicable BMPs.

Item 7, cont.

- Actions or activities that may reasonably be expected to adversely affect state or federally-listed species.
- Any subdivision of the Property, unless specifically stated in this Easement.
- Commercial water wells on the Property.
- Harvesting of cypress trees in the designated Significant Natural Areas (SNAs).
- Mitigation banks pursuant to Section 373.4135, et. seq., F.S.
- Construction or improvements in any SNAs or conversion of SNAs to more improved areas or more intense uses. Any use of the Property which would impair, adversely impact, or destroy the SNAs, including a change to more intensive agricultural practices, is also prohibited.
- Activities detrimental to the preservation of historical, architectural, archaeological, or cultural resources on the Property.
- Conversion of forested areas to non-forested areas as shown in the Baseline Documentation Report (BDR) within the SNAs.

OWNER'S RIGHTS:

- Grantor has, and shall be deemed hereby to have retained, the underlying fee simple absolute title in the Property.
- The right to conduct silvicultural and agricultural operations on the Property; provided, however, that prior to any timbering in an SNA, Grantor shall consult with Grantee concerning methods to minimize damage.
- The right to conduct prescribed burning on the Property; provided, however, that Grantor shall obtain and comply with a prescribed fire authorization from FDACS' FFS or its successor agency.
- 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.

Item 7, cont.

- The right to continue to use, maintain, repair, and reconstruct, all existing buildings, barns, animal pens, outbuildings, fences, roads, ponds, wells, utilities, drainage ditches, docks, and such other facilities on the Property as depicted in the BDR.
- The right to sell, devise or otherwise transfer ownership of the Property to a third party. This right, however, does not include the right to sell the remaining property rights on the Property for the purposes of a conservation easement or other restriction that would divest the Property of its use under the terms and conditions of the Easement.
- The right to exclusive use of the improvements on the Property.
- Grantor shall obtain and comply with all permits for management of stormwater, for water wells and consumptive uses as may be required by the water management district or any successor agency having jurisdiction over those activities.
- The right to construct, after giving notice to Grantee, buildings or other structures incident to agricultural uses carried on in accordance with sound agricultural practices. Such buildings shall not be used as residences.
- Nothing shall prohibit Grantor from establishing (by survey, fencing or marking) and maintaining property lines around the perimeter of the Property to protect the Property from trespassing and to assist Grantor in the management of the Property in accordance with the Easement.
- The right to observe, maintain, photograph, introduce, and stock native fish or wildlife on the Property, to use the Property for hiking and horseback riding. Grantor reserves, and shall continue to own, the hunting and fishing rights on or related to the Property and Grantor may lease and sell privileges of such rights.
- Grantor reserves one building envelope, as shown in Exhibit E attached hereto and made a part hereof, and the right to develop not more than 45,000 square feet of impervious surfaces. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; this includes, but is not limited to, residential buildings, residential support buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs, excluding agricultural buildings. Any such development may not be constructed within the SNAs. The building envelope is 10 acres in size. The property within the envelope contains a single-family residence and related structures as shown in Exhibit E of the Deed of Easement. This right includes the right to maintain, repair, reconstruct, and enlarge such residence and the immediate surrounding areas for the use and

Item 7, cont.

enjoyment of the family that resides in such residence, including the right to construct and maintain ancillary structures.

- The right to install connections to normal utility systems, such as electric, cable, water and sewer, and telephone. If a connection to a sewer system is not available, this right shall include the right to install a septic system. The granting of easements or rights-of-way for power lines, gas lines, sewer lines, waterlines, telecommunications towers, and wind farms is prohibited. Notwithstanding this prohibition the Grantee may grant or modify easements for utility connections necessary to serve the permitted uses of the Property that are consistent with the Easement Purposes. Existing utilities may be replaced or repaired at their current location.

ENCUMBRANCES:

There are no known encumbrances on the property that adversely affect marketability or the ability to enforce the rights granted under the easement.

MORTGAGES AND LIENS:

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 the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing.

CLOSING INFORMATION:

A title insurance commitment and an environmental site assessment of the property will be provided by FFS prior to closing.

EASEMENT MONITOR:

This perpetual conservation easement will be monitored by the FFS.

COMPREHENSIVE PLAN:

This acquisition is consistent with section 187.201(22), F.S., the Agriculture Section of the State Comprehensive Plan.

(See Attachment 7, Pages 1-97)

RECOMMEND APPROVAL