

**AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
APRIL 13, 2004**

Item 1 Minutes

Submittal of the Minutes from the January 27, 2004, February 10, 2004 and February 26, 2004 Cabinet Meetings.

(See Attachment 1, Pages 1-33)

RECOMMEND APPROVAL

Item 2 The Nature Conservancy Charitable Trust Assignment of Option Agreement/St. Joe Timberland/Crooked Creek/Short Creek Florida Forever Project

REQUEST: Consideration of the acceptance of an assignment of an option agreement to acquire 1,604.7 acres within the St. Joe Timberland/Crooked Creek/Short Creek Florida Forever project from The Nature Conservancy Charitable Trust.

COUNTIES: Gadsden and Liberty

LOCATION: Sections 25 and 36, Township 03 North, Range 07 West; Sections 01, 02, 11, 12 and 14, Township 02 North, Range 07 West; and Section 06, Township 02 North, Range 06 West

CONSIDERATION: \$2,364,765 (\$2,326,500 for the acquisition; \$38,265 for the purchase of the option agreement)

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u>	<u>TRUSTEES'</u>	<u>OPTION</u> <u>DATE</u>
		<u>(10/04/02)</u>	<u>(12/16/02)</u>		<u>PURCHASE</u> <u>PRICE</u>	<u>PURCHASE</u> <u>PRICE</u>	
St. Joe	1,604.7	\$2,180,000	\$2,499,000	\$2,499,000	*	\$2,364,765** (95%)	06/15/04

* Property was purchased in numerous transactions.

** \$1,474 per acre

STAFF REMARKS: The St. Joe Timberland is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 171,498 acres, of which 81,480.39 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 88,412.91 acres or 52 percent of the project will remain to be acquired. This acquisition is also within the Apalachicola River project, which contains 27,155 acres, of which 1,182.31 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement and two other agreements in the Apalachicola River project on today's agenda, 23,256.09 acres, or 86 percent of the Apalachicola River project, will remain to be acquired.

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protections' (DEP) Division of State Lands (DSL) and The Nature Conservancy (TNC), TNC has acquired an option to purchase this 1,604.7-acre parcel from St. Joe Timberland Company of Delaware L.L.C. (St. Joe Company). After this acquisition is approved, the Board of Trustees will acquire the option from TNC for \$38,265, which represents agreed upon compensation to TNC for overhead associated with acquiring the option. The Board of Trustees may then exercise the option and purchase the property. The assignment of option agreement provides that payment to TNC is contingent upon the Board of Trustees successfully acquiring the property from the owner. In no event will the Board of Trustees' purchase price exceed the approved value.

Item 2, cont.

All mortgages and liens will be satisfied at the time of closing. There is an outstanding hunting lease on the property that will expire prior to closing. The owner has contacted the lessee to inform them of the expiration of said lease. DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to 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.

A title insurance policy, a survey, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

The Crooked Creek and Short Creek tracts occupy strategic locations for assisting in the protection of the tremendous natural resources of the Apalachicola River. Both tracts consist of rolling topography with many steep sided slopes/ravines that grade to the bottomlands and floodplains along Crooked Creek and Short Creek, respectively. The Crooked Creek tract includes approximately 1.4 miles of Crooked Creek, a clear, sandy-bottomed seepage stream that empties into Flat Creek. The Short Creek tract contains a 1.1-mile segment of Short Creek, also a seepage stream that empties directly into the Apalachicola River. The uplands of both tracts are predominately in medium-aged slash pine plantations that support areas of significant, intact native groundcover with good species composition. As well, steeper edges of the plantation areas frequently support remnant stands of the historic longleaf pine dominated upland pine forest natural community. The tracts support gopher tortoise, southeastern fox squirrel, Baltzell's sedge and eastern leatherwood and have the potential to harbor seven other rare animals and 27 additional rare plant species.

The St. Joe Company is one of the largest landowners in Florida. Public acquisition of this parcel will consolidate a larger intact tract of undeveloped plant and animal habitat that will also offer the public an opportunity for a large wilderness experience.

The property will be managed by DEP's Division of Recreation and Parks as an addition to the Torreya State Park.

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 2, Pages 1-46)

RECOMMEND APPROVAL

Item 3 TNC Purchase Agreement/Soterra/Apalachicola River Florida Forever Project

REQUEST: Consideration of a purchase agreement to acquire 833.70 acres within the Apalachicola River Florida Forever project from The Nature Conservancy.

COUNTY: Gadsden

LOCATION: Sections 23, 25, 26, 35 and 36, Township 03 North, Range 07 West

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Item 3, cont.

CONSIDERATION: \$1,801,462 (\$1,667,400 for the acquisition; \$31,674 for overhead costs; \$102,388 for reimbursable expenses; plus holding costs of 0.02% of seller's acquiring price per day, beginning on the day that the seller acquired fee title to the property and ending on the day before seller conveys title to the purchaser.)

<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>CLOSING</u> <u>DATE</u>
		<u>(05/09/03)</u> Rogers	<u>(05/01/03)</u> Arline				
Soterra	833.70	\$1,834,000	\$1,670,000	\$1,834,000	\$ 1,655,300*	\$1,801,462** (98%)	08/20/04

* Purchased property on October 29, 2002

** \$2,160.80 per acre

STAFF REMARKS: The Apalachicola River project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 27,155 acres, of which 1,182.31 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement and two other agreements in the Apalachicola River project on today's agenda, 23,256.09 acres, or 86 percent of the project, will remain to be acquired.

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protection's (DEP) Division of State Lands (DSL) and The Nature Conservancy, Inc. (TNC), TNC purchased this 833.70-acre parcel from Soterra Inc. After this acquisition is approved, the Board of Trustees will compensate TNC \$31,674 for overhead expenses, which represents agreed upon compensation to TNC for overhead associated with acquiring the option. In addition, TNC will be compensated for reimbursable expenses and a holding fee, which represents agreed upon compensation for TNC to hold the property prior to sale. The option agreement further provides that in no event, will the purchase price of the property, plus reimbursable expenses and holding fees, exceed the DSL approved value of the property.

All mortgages and liens will be satisfied at the time of closing. There is an easement in favor of American Telephone and Telegraph Company. DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to 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.

A title insurance policy, a survey, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

The high plateaus, steep bluffs and deep ravines of the northern Apalachicola River valley are some of the most significant natural resources of the southeastern Coastal Plain. There are 7,000 feet of shoreline covered with rich forests and dotted with unique sedgy glades. The area harbors many northern, rare, and endemic plants and animals, such as the nearly extinct Florida Torreya tree. By connecting Torreya State Park with a preserve of the Nature Conservancy to the south and with limestone glades to the north, and by protecting forests on the west bank of the river, public acquisition of the Apalachicola River project will help preserve the water quality of the river, which feeds the productive Apalachicola Bay, and the unique species and biological communities of the region, as well as provide the public with scenic areas for hiking, boat launching and other recreational pursuits.

The property will be managed by DEP's Division of Recreation and Parks as an addition to the Torreya State Park.

Item 3, cont.

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 3, Pages 1-24)

RECOMMEND APPROVAL

Item 4 TNC Purchase Agreement/Neal Land & Timber/Apalachicola River Florida Forever Project

REQUEST: Consideration of a purchase agreement to acquire 278.2 acres within the Apalachicola River Florida Forever project from The Nature Conservancy.

COUNTY: Liberty

LOCATION: Sections 08 and 17, Township 02 North, Range 07 West

CONSIDERATION: \$847,150 (\$819,000 for the acquisition; \$21,380 for overhead costs; \$6,770 for reimbursable expenses; plus holding costs of 0.02 percent of seller's acquiring price per day, beginning on the day that the seller acquired fee title to the property and ending on the day before the seller conveys title to the purchaser)

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY: Ryan (10/8/03)	<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>CLOSING DATE</u>
Neal	278.2	\$875,000	\$875,000	\$819,000*	\$847,150** (97%)	08/20/04

* Purchased property on March 3, 2003.
 ** \$3,045.11 per acre

STAFF REMARKS: The Apalachicola River project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 27,155 acres, of which 1,182.31 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement and two other agreements in the Apalachicola River project on today's agenda, 23,256.09 acres, or 86 percent of the project, will remain to be acquired.

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protection's (DEP) Division of State Lands (DSL) and The Nature Conservancy, Inc. (TNC), TNC purchased this 278.2-acre parcel from PDO Inc. (Neal Land and Timber Company Tract). After this acquisition is approved, the Board of Trustees will compensate TNC \$21,380 for overhead expenses, which represents agreed upon compensation to TNC for overhead associated with acquiring the option. In addition, TNC will be compensated for reimbursable expenses and a holding fee, which represents agreed upon compensation for TNC to hold the property prior to sale. The option agreement further provides that in no event, will the purchase price of the property, plus reimbursable expenses and holding fees, exceed the DSL approved value of the property.

All mortgages and liens will be satisfied at the time of closing. DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to 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.

Item 4, cont.

A title insurance policy, a survey, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

The high plateaus, steep bluffs and deep ravines of the northern Apalachicola River valley are some of the most significant natural resources of the southeastern Coastal Plain. There are 9,200 feet of shoreline covered with rich forests and dotted with unique sedgy glades. The area harbors many northern, rare, and endemic plants and animals, such as the nearly extinct Florida Torreya tree. By connecting Torreya State Park with a preserve of the Nature Conservancy to the south and with limestone glades to the north, and by protecting forests on the west bank of the river, public acquisition of the Apalachicola River project will help preserve the water quality of the river, which feeds the productive Apalachicola Bay, and the unique species and biological communities of the region, as well as provide the public with scenic areas for hiking, boat launching and other recreational pursuits.

The property will be managed by DEP's Division of Recreation and Parks as an addition to the Torreya State Park.

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 4, Pages 1-28)

RECOMMEND APPROVAL

**Item 5 Hardy/Waiver of Eminent Domain Policy/Eminent Domain Authorization/
DOA/Save Our Everglades Florida Forever Project**

**WITHDRAWN FROM THE MARCH 13, 2003 AGENDA
DEFERRED FROM THE FEBRUARY 11, 2003 AGENDA
DEFERRED FROM THE JANUARY 28, 2003 AGENDA**

REQUEST: Consideration of a request to (1) obtain a waiver of the Board of Trustees' eminent domain policy that eminent domain will not be exercised to acquire a homestead without the written approval of the owner in order to acquire the homestead property within the Hole in the Donut area of the Golden Gate Estates South owned by Jesse Hardy; (2) direct the Department of Environmental Protection to acquire by the exercise of the power of eminent domain pursuant to the provisions of chapters 259, 73 and 74, F.S., fee simple title to the homestead parcel owned by Jesse Hardy within the Save Our Everglades Florida Forever Project, on which two bona fide offers have been made; and (3) delegate authority to the Secretary of the Department of Environmental Protection, or designee, to accomplish the acquisition as described herein through negotiation or condemnation, including authority to prepare and execute the necessary parcel-specific condemnation resolution.

COUNTY: Collier

LOCATION: Section 16, Township 50 South, Range 28 East

STAFF REMARKS: The Save Our Everglades project is an "A" group project on the Florida Forever Small Parcel Project List approved by the Board of Trustees on February 26, 2004. That portion of the project area lying south of I-75, commonly referred to as Golden Gate Estates South, contains 55,247.17 acres, of which 54,262 acres have been acquired or are

Item 5, cont.

under agreement to be acquired, leaving 985 acres, or 1 percent of the project area to be acquired. The Golden Gate Estates South portion of this project includes the Southern Golden Gate Estates (SGGE) subdivision and surrounding acreage tracts bordered by the Florida Panther National Wildlife Refuge to the north (I-75), Ten Thousand Islands National Wildlife Refuge to the south (U.S. 41) and the Fakahatchee Strand and Belle Meade Florida Forever projects to the east and west, respectively.

The failed SGGE subdivision was a ditch and drain development that over-drained the area. The purpose of the project is to stop over-draining of the land, raise groundwater levels, and improve the freshwater/saltwater balance in the estuarine systems by reducing or eliminating the point discharge of water from the Faka-Union Canal at the Port of the Islands and by improving and redistributing sheet flow of surface water over eighteen linear miles. This allows the water to go back into the ground and reduces the nutrients picked up by vegetation. Because of the raising of groundwater and surface water levels, plugging of canals, and redistribution of flow of water, public ownership is required. Public access will be impacted by removal of roads, plugging of canals will cause septic tanks not to work, and there will be no flood protection south of I-75 within the project boundaries. Environmental factors, safety factors, and cost factors all were considered in defining the project and land within the project boundaries. Acquisition of this parcel is critical for the following reasons:

On January 23, 2001, the Board of Trustees recognized that (1) property within the Save Our Everglades Florida Forever project lying south of I-75 is of special importance to the state; (2) the acquisition of the land is necessary to protect hydrological connections among Big Cypress National Preserve, Fakahatchee Strand State Preserve, and Everglades National Park, and to protect and restore the Everglades, which is an endangered natural resource of unique value to the state; and (3) the failure to acquire this property will result in irreparable loss to the state and seriously impair the state's ability to manage or protect other state-owned lands. The Board of Trustees also recognized that this land is a necessary component of the Comprehensive Everglades Restoration Plan. Through a series of actions by the Board of Trustees over the last three years, the Department of Environmental Protection (DEP) has been directed to acquire by eminent domain 1,862 parcels, of which 1,859 parcels or 3,285.79 acres have been acquired to date through Orders of Taking. These three parcels are owned by the Miccosukee Tribe of Indians of Florida and pending an Order of Taking hearing.

Section 259.041(14), F.S., authorizes the Board of Trustees, by majority vote of all of its members, to direct DEP to exercise the Board's power of eminent domain pursuant to the provisions of chapters 73 and 74, F.S. Eminent domain may be used to acquire any of the property on the Florida Forever "A" group project priority list if: (1) the state has made at least two bona fide offers to purchase the land through negotiation and an impasse between the state and the land owner has been reached; and (2) the land is of special importance to the state because (a) it involves an endangered or natural resource and is in imminent danger of being developed; (b) it is of unique value to the state and failure to acquire the property would constitute an irreparable loss to the state; or (c) the failure to acquire the property would seriously impair the state's ability to manage or protect other state-owned lands.

Mr. Hardy, identified as qualifying for homestead status, would fall under the Board of Trustees' homestead eminent domain policy. This is the owner's primary residence and he qualifies under the Federal Relocation Program as a displaced homeowner. On March 13, 2001, the Collier County Board of Commissioners approved a conditional use permit for Mr. Hardy to construct and maintain an aquaculture farm. Based upon the date of approval of this permit, and that Mr. Hardy is exempt under the Tropical Fish Farms license exemption status to purchase and maintain an Occupational License on site, and that Mr. Hardy has registered his aquaculture operation with the State of Florida Department of Agriculture and Consumer

Item 5, cont.

Services, it would appear Mr. Hardy may also qualify for additional re-establishment expenses for his business under the Federal Uniform Relocation and Real Property Policies Act of 1970. DEP staff has requested on a number of occasions that Mr. Hardy provide business accounts receivables in order for staff to determine the benefits that he may be entitled to receive; however, he has failed to provide assistance as requested.

The filing of the requested eminent domain action will require a waiver of the Board of Trustees' policy that eminent domain will not be exercised to acquire a homestead without the written approval of the owner. In order to meet the project timetable and avoid costly delays, it is requested that the Board of Trustees authorize DEP to proceed with filing the necessary eminent domain action to acquire this homestead property within the project area, even without the homeowner's consent to the action.

Mr. Hardy acquired his 160-acre parcel in August 1976 for \$60,000. The chronology of offers is as follows:

- 1) First formal offer by DEP to acquire his property was made on October 23, 2002, for \$711,725 (the DSL value as of 12-06-00). The offer included compensation for the 160-acre homestead and value given his excavation efforts preliminary to his fish farming business. The owner declined the offer by giving no response.
- 2) The second DEP offer of \$909,158 (the DSL value as of 9-12-02) was made on November 2, 2002. The owner declined the offer by giving no response.
- 3) On January 31, 2003, staff increased the offer to \$1,208,843 to include the second offer amount of \$909,158, lump sum payment of estimated relocation benefits in the amount of \$149,685 and an additional incentive of \$150,000 in an effort not to go to eminent domain. Again, the owner declined the offer by giving no response.
- 4) The fourth offer was delivered to owner on March 14, 2003 in the amount of \$1,547,157, to include the offer to negotiate a Use Agreement until such time the Restoration would begin in his area. On March 26, 2003, the owner declined the offer but provided a Counter-offer to negotiate a flowage easement or some lesser than fee estate interest. Purchaser declined.
- 5) On June 27, 2003 a fifth offer in the amount of \$1,547,157 was presented to owner with notification purchaser withdraws proposal to negotiate a Use Agreement and notifies owner the restoration efforts would begin as soon as October 2003. The owner declined the offer by giving no response.
- 6) On August 11, 2003 a sixth offer was presented to owner which re-stated the \$1,547,157 offer given on June 27, 2003 with encouragement for Mr. Hardy to accept the offer prior to beginning Phase 1 of the Restoration efforts. Owner declined the offer.
- 7) A seventh offer was delivered to Mr. Hardy on August 28, 2003. This offer was advising Mr. Hardy the June 27, 2003 offer of \$1,547,157 did not include compensation for business relocation benefits. Although staff has been unable to determine the status of Mr. Hardy's business, DSL has determined he would receive a maximum benefit package of \$20,000 for federal business relocation under the current rules. On September 17, 2003 Mr. Hardy refused the state's seventh offer and he advised that negotiations are at an impasse.
- 8) As provided under the current federal relocation rules, three comparable properties have been identified as possible sites for relocating Mr. Hardy's residence and business.

DSL has actively pursued negotiations as stated above and concedes no agreement has been reached. Negotiations are at an impasse; however, the bona fide offer requirements of section 259.041(14), F.S., have been satisfied.

Item 5, cont.

Pursuant to the Board of Trustees' eminent domain policy, DSL has mailed proper notice to Mr. Hardy at least 45 days prior to this Board of Trustees' meeting. In accordance with the eminent domain policy, the notice advised the owner that homesteaded property was exempt from eminent domain without the owner's written permission. The agenda item, deferred from the January 28, 2003 and February 11, 2003 meetings, was withdrawn at the March 13, 2003 Board of Trustees' meeting in an attempt to continue good faith negotiations. However, even with the continuances, negotiations are at an impasse.

Purchasing fee simple title to Mr. Hardy's parcel is a critical component to the project plans for SGGE's hydrological restoration project. Although other Florida Forever projects throughout the state provide for DEP to consider acquisition of less-than-fee title, the SGGE project area, with the inter-agency restoration goals, does not allow for alternative ownership for the following reasons:

- The interest in land within the project area had to be identified in the Project Implementation Report and Environmental Impact Statement (PIR) in preparation for review in Congress for project authorization. This interest was identified as fee simple.
- Inter-agency staff discussions between the South Florida Water Management District (SFWMD), the Big Cypress Basin Board, the United States Army Corp of Engineers, Jacksonville Office (ACOE), DEP's Office of Ecosystem Projects, DEP's Bureau of Land Acquisition, the Division of Forestry (DOF), the United States Fish and Wildlife Service (USFWS), and National Wildlife Federation were instrumental in assisting DEP with establishing a policy to acquire the lands in SGGE in fee simple. Any less-than-fee estate would be inconsistent with the goals of the restoration for this project.
- 49 CFR 24.1 (Part 24, Subpart A), Federal Rules governing the acquisition and relocation of qualified landowners require that each person be treated fairly and consistently. DEP's policy has been fee simple title acquisition. Any offers for less-than-fee must be provided each and every landowner. This is the last remaining homestead parcel and it would be inappropriate to make any alterations to DEP's acquisition policy for the SGGE project area, given no other landowner has been granted a less-than-fee alternative.
- DEP has acquired fee simple title to all parcels within the project area except three parcels owned by the Miccosukee Tribe of Indians of Florida (Tribe) and Mr. Hardy. The parcels owned by the Tribe are waiting an Order of Taking hearing. DEP is prepared to certify to USFWS's Division of Federal Aid, that each and every landowner has been treated fairly, consistently and equitably, as required under 49 CFR 24.1(Section 24, Subpart A).
- The Water Resources Development Act 2000 requires that there be no significant adverse impact to flood level of service for members of the public as a result of the project. The restoration project will cause a wide range of increases in maximum water levels throughout the project. To leave residents in the project areas would place lives and property in harms way, and would be in violation of this law. SFWMD and the ACOE could not guarantee the flooding would not affect Mr. Hardy's property.
- Any change in the policy of acquiring fee simple title to this property would fail to comply with the federal rule for ensuring equal and fair treatment of all project landowners.

Additionally,

- The lakes being created on Mr. Hardy's property will act as giant sinks and draw groundwater in much the same way the canals draw ground water. Prairie Canal is a good example of this in that the majority of the water in that canal is groundwater being drawn from Fakahatchee Strand and SGGE. The effects of the Prairie Canal extend out two to three miles on either side, so any remaining lakes on Mr. Hardy's property are likely to have a similar effect.

Item 5, cont.

- The benefits of the project will be diminished by the draw down of the water table in the areas around Mr. Hardy's property.
- The safety of the public remains foremost in DEP's policy to acquire all the lands within the SGGE project boundary in fee simple title. Having private citizens coming and going on the properties, without controls under the management plan, would place them in harms way.
- DEP has been notified that the "early start" progress thus far within Phase 1 of the restoration plan has been a success. Completion of this first construction piece of Phase 1 is slated for March 2004.
- Phase 1 of the Everglades Restoration was begun in October 2003 by utilizing the "early start" provision within the Comprehensive Everglades Restoration Plan. Not only has the Prairie Canal been plugged in several places, thereby creating the potential for flooding in some areas, but demolition of the improved properties now owned by the state has also begun.
- Mr. Hardy's property lies within Phase 2 of the restoration plan. Even though it may be as much as twelve to eighteen months before Phase 2 will begin, six very important issues must be considered:
 1. The parcel must be acquired in fee simple title before Phase 2 of the restoration efforts can begin.
 2. With the success of the "early start" portion, immediate processing of this last remaining parcel within the project area is important so as not to delay the inter-agency restoration efforts concerning Phase 2.
 3. With the restoration efforts underway, and the continued efforts to demolish the current structures, safety of the landowner must be considered.
 4. Time is of the essence. It is estimated that it will take approximately six to twelve months to process the parcel under eminent domain within the Collier County court system, given the expectations that Mr. Hardy will defend against an Order of Taking and the need for a jury trial to determine the compensation due Mr. Hardy for his parcel.
 5. Upon delivery of the Statement of Eligibility to the owner as provided under the Federal Relocation guidelines, Mr. Hardy would have up to a year in which to relocate his residence and/or business. Three properties have been located as potential relocation properties for Mr. Hardy; however, given the unique circumstances surrounding Mr. Hardy's parcel, additional time to secure actual relocation housing and business relocation properties may be required.
 6. Currently the project area is host to a variety of undesirable uses such as illegal weapons use, poaching of plants and animals, squatters and illegal dumping of trash and toxic substances. Continued delay in bringing the project area under management control will cause additional expense to the project as well as problems in providing police protection.
- Use of fire management in the project area will be severely hindered if individuals continue to live in the project area due to the need to provide fire suppression services to the residents.
- Post restoration access to the private property within the study area would be an issue as well. Removal of roads is necessary for the restoration of sheet flow. Any remaining paths are expected to be largely under water during the wet season and only passable with a high clearance vehicle the remainder of the year.
- Increased ground water levels in the project area could negatively affect the ability of residents to use their septic systems, thereby creating a concern for public health and safety.
- The continued presence of residents in the project area could disrupt one of the purposes of the project: to provide increasing habitat areas and allow for free movement of threatened and endangered species such as the Florida Panther.

Item 5, cont.

Purchasing this parcel will help complete the project and will:

- 1) Benefit the restoration of significant wetlands crucial to the reestablishment of the historic water flow pattern in the western Everglades;
- 2) Help preserve and restore the fresh water flow necessary for maintaining the rich productivity of Gulf Coast estuaries, such as Rookery Bay and the Ten Thousand Islands;
- 3) Ultimately contribute to the formation of a continuous public conservation corridor extending across South Florida from the Gulf Coast to approximately ten miles from the Atlantic Ocean;
- 4) Help protect the western Everglades ecosystem from encroachment of residential, commercial and industrial development; and
- 5) Allow for the timely implementation of the hydrological restoration plan that will restore important habitat for numerous endangered and threatened species, including the Florida panther, one of the world's most endangered mammals; and
- 6) Progress on the full project as defined in the CERP PIR would be impacted if the property were not acquired.

All mortgages and liens will be satisfied from the deposit as determined at the Order of Taking hearing. A title insurance commitment has been received and reviewed by legal staff. DSL will also order a Phase 2 environmental site assessment after the Order of Taking hearing and the Board of Trustees will be advised if there are any adverse effects to the subject property caused by the excavation, or use of heavy diesel driven trucks and other land moving equipment requiring petroleum products.

The property will be managed by DOF as an addition to Picayune State Forest. DEP's Division of Recreation and Parks will manage the property in the area east of the Faka-Union Canal. SFWMD will coordinate the implementation of the hydrologic restoration project.

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

(See Attachment 5, Pages 1-32)

RECOMMEND APPROVAL

Item 6 Reconsideration of Sale of State-owned Land/Orange County/Alexandra (U.S.A.), Inc.

DEFERRED FROM THE MARCH 30, 2004 AGENDA

REQUEST: Reconsideration of an application to purchase a 5.35-acre, more or less, parcel of filled, formerly sovereignty submerged land.

COUNTY: Orange
Deed No. 30145 (4848-48)

APPLICANT: Alexandra (U.S.A.), Inc.

LOCATION: Section 05, Township 24 South, Range 28 East, Lake Sheen, Class III waters

Item 6, cont.

CONSIDERATION: \$266,644, to be deposited in the Internal Improvement Trust Fund; and quitclaim of applicant's interest in two parcels of submerged lands, containing 2.85 acres (Parcel B), 1.20 acres (Parcel B-1) and 1.46 acres (Parcel C), respectively, for the purpose of clearing the Board of Trustees' title.

STAFF REMARKS: In 1994 and 1995, Alexandra (U.S.A.), Inc. (Alexandra), purchased property in Orange County for residential development purposes. The purchase included a 4.69 acre finger of land, Parcel A ("banana parcel"), that extends into Lake Sheen, and two parcels of submerged lands and associated wetlands to the north and south of the banana parcel containing 2.84 acres (Parcel B) and 2.23 acres (Parcel C), respectively. At the time of purchase, the banana parcel appeared relatively unimproved, with large trees ringing the perimeter along the lakefront. It was not until an application for a dredge and fill permit was submitted to the South Florida Water Management District (SFWMD) that title to the banana parcel became an issue. Aerial photographs taken in 1954 showed the area to be submerged lands in their natural state, and aerial photographs dated February 1958 showed recent fill in the area of the banana parcel.

On June 22, 1999, the Board of Trustees approved the sale of the 4.69 acres of filled, formerly sovereignty submerged land to Alexandra (U.S.A.), Inc. (Alexandra), for \$212,500 for the purpose of clearing the applicant's title. In addition to the cash payment, Alexandra agreed to quitclaim to the Board of Trustees its interest in the two parcels of submerged lands and to grant the Board of Trustees a conservation easement over a 1.45-acre parcel of wetlands located west of and adjacent to the banana parcel.

Following Board of Trustees' approval, the applicant requested that the legal description of the banana parcel be modified to reflect the ambulatory nature of the ordinary high water line. Department of Environmental Protection (DEP) staff agreed to the modification, which was to be forwarded to the Governor and Cabinet for approval via a letter of negative response. While waiting for revised legal descriptions, the applicant also determined that a strip of land to the north of Parcel B should have been included in the original negotiations. An alternative proposal was submitted to staff. Subsequent negotiations resulted in the following revised request that requires Board of Trustees' approval:

1. Following approval of the 1999 request, Alexandra determined that it should have included a 75-foot strip of land adjoining the northern boundary of Parcel B in the transaction. The strip includes a 0.14-acre parcel of land above the 99.5-foot contour (Parcel A-1), and 1.20 acres of submerged lands below the 99.5-foot contour (Parcel B-1). Alexandra would like the Board of Trustees to include Parcel A-1 with Parcel A in the Board of Trustees' conveyance to Alexandra, and Parcel B-1 with Parcel B in Alexandra's conveyance to the Board of Trustees.

2. At the time of Board of Trustees' approval of the original transaction, a 0.52-acre strip of land above the 99.5-foot contour located between the banana parcel and Parcel C (Parcel C-1) was included in the lands to be deeded to the Board of Trustees as part of Parcel C. Because Parcel C-1 is landward of the 99.5-foot contour, it should have been included with Parcel A in the conveyance to Alexandra.

3. Department of Environmental Protection (DEP) staff has learned that Parcel D, originally proposed for a conservation easement to the Board of Trustees, is designated for conservation purposes and is subject to a conservation easement in favor of the SFWMD, and its development rights have also been dedicated to Orange County. Because these lands will already be restricted for conservation purposes, there is no benefit to the Board of Trustees in accepting another conservation easement across the property. In recognition of this change in

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the previously negotiated transaction, Alexandra has agreed to eliminate the ten percent reduction in purchase price it was to receive for the conservation easement to the Board of Trustees across Parcel D.

4. Alexandra has requested that a 0.25-acre portion of Parcel C south of and including a 30-foot right-of-way across the southern portion of Parcel C (Parcel E) be removed from the lands to be quitclaimed to the Board of Trustees as proposed in the original transaction. In accordance with applicable development permits and the subdivision plat, Parcel E is also designated for conservation purposes and is subject to a conservation easement in favor of the SFWMD. Alexandra has also dedicated its development rights to Parcel E to Orange County. Although Alexandra has offered to grant the Board of Trustees a conservation easement over Parcel E, DEP staff believes that there is no benefit to be derived from receiving a conservation easement over lands already subject to multiple development restrictions. DEP's Bureau of Survey and Mapping (BSM) has reviewed aerial photographs of the area and determined that in the event Alexandra were to apply for regulatory permits involving these lands, it would recommend that proprietary authorization was not required. For this reason DEP staff has no problem with eliminating Parcel E from the lands originally proposed for quitclaim to the Board of Trustees by Alexandra.

In 1999, the Board of Trustees approved a sale price of \$212,500 for 4.69 acres, or \$45,309 per acre. Elimination of the ten percent reduction granted in exchange for the conservation easement over Parcel D results in an increase in the purchase price to \$233,750 or \$49,840 per acre for the original 4.69 acres. Based on updated surveys of the respective parcels, DEP staff is recommending that the Board of Trustees accept \$266,644 for Parcel A, which now contains 5.35 acres above the 99.5-foot contour (5.35 acres x \$49,840/acre), as well as a quitclaim deed for Parcels B, B-1, and C, which now contain 2.85 acres, 1.20 acres, and 1.46 acres, respectively, of submerged lands lying below the 99.5-foot contour. DEP staff believes it is in the public interest to accept the above-noted modifications to the original proposal because (1) there is no need for the Board of Trustees to accept a conservation easement over lands that are already subject to development restrictions; (2) the 10 percent reduction given for the conservation easement will be eliminated, increasing the payment to be received by the Board of Trustees; (3) both parties will have clear title to their respective lands; and (4) there will be no need for lengthy and expensive litigation between the parties.

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

(See Attachment 6, Pages 1-13)

**RECOMMEND APPROVAL SUBJECT TO RECEIPT OF A MARKETABLE TITLE
INSURANCE COMMITMENT OR OPINION OF TITLE
ACCEPTABLE TO DEP FOR PARCELS B, C AND C-1**

Item 7 **Yachting Promotions, Inc. Recommended Consolidation Intent**

REQUEST: Consideration of an application for a five-year, Class IV special event, sovereignty submerged lands lease to preempt approximately 247,725 square feet of sovereignty submerged lands for a temporary boat show.

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COUNTY: Okaloosa
Lease No. 460033321
Application No. 46-0211714-003-DE

APPLICANT: Dane Graziano
Yachting Promotions, Inc.
(d/b/a Emerald Coast Boat Show)

LOCATION: Unsectionalized, Township 02 South, Range 23 West, in Choctawhatchee Bay, Class III Waters, within the local jurisdiction of Okaloosa County, less than one mile of Brooks Bridge
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speeding Zone: No

CONSIDERATION: \$3,377.84 representing the initial lease fee computed at the base rate of \$0.1309 per square foot, and including the initial 25 percent surcharge payment. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The special event lease fee may be adjusted based on five percent of the gross rental income generated over sovereignty submerged lands, pursuant to section 18-21.011(1)(d) 1, F.A.C.

STAFF REMARKS: In April 2003, the applicant went before the Board of Trustees requesting a five-year, Class IV special event, sovereignty submerged lands lease for the May 2003 Emerald Coast Boat Show. Due to the applicant's lack of compliance with some of the terms of leases at other similar boat shows in the state, the Board of Trustees authorized only a one-year, Class IV special event, sovereignty submerged lands lease for the 2003 Emerald Coast Boat Show. In follow-up to this action, Department of Environmental Protection (DEP) staff conducted a compliance inspection of the May 2003 Emerald Coast Boat Show and reported that the activities and structures at that show were in compliance and satisfied the requirements of the permit and lease. In addition, the applicant held a boat show in February 2004 in Dade County on Indian Creek (Biscayne Bay Aquatic Preserve). DEP staff conducted a compliance inspection and determined that the activities and structures at that show operated consistent with the permit and lease requirements. Pursuant to these findings of consistency and the applicant's compliance with the terms of the leases and permits for the latest shows, the applicant is now requesting the Board of Trustees to issue a five-year, Class IV special event, sovereignty submerged lands lease for the Emerald Coast Boat Show.

The applicant's current proposal is to construct and subsequently remove floating docks and pilings for the Emerald Coast Boat Show event scheduled for May 20 through May 23, 2004 on Okaloosa Island. The 54,176 square feet of temporary, commercial, floating docks structures will contain 258 slips within 247,725 square feet (5.69 acres), more or less, of sovereignty submerged lands. The installation of the structures, the show, and the removal of the structures is scheduled in May of each year, but shall, in no event, exceed 30 days. The temporary docks will be utilized as a centralized public display of vessels to be sold by various brokers. The applicant proposes to construct the facility, run the sales operation for four days, and dismantle the facility within a 30-day timeframe. A floating refreshment barge is also proposed which is standard practice at other special event boat shows in Florida. As there are two existing boat ramps at the site, no temporary ramps are proposed. The boat brokers and exhibitors will lease mooring space from the applicant. The applicant is required to report the gross rental income collected from the special event to DEP's Division of State Lands as part of the annual certification required for its lease, pursuant to section 18-21.011(1)(d) 3, F.A.C.

Item 7, cont.

The facility is located in Choctawhatchee Bay in an area of good flushing, with water depths ranging from -3 feet mean low water to -18 feet mean low water. Due to the rapid flushing of the area, no hydrographic study, water quality testing or water quality monitoring was requested of the applicant. The 258 vessels displayed at the boat show will range from under 20 feet to 60 feet or more in length and have drafts ranging from 1.5 feet to 6.6 feet. The site is characterized by a narrow sand shelf along the shoreline that quickly drops off to depths in excess of 10 feet. None of the boats will be moored in depths less than ten feet at mean low water. No seagrasses or other submerged resources are located within the lease area or within several hundred feet of the proposed lease area. Additionally, no seagrasses are located in the area used by the boats for ingress or egress to the boat show. Temporary buoys will mark the optimum navigational route for vendor ingress and egress to the docks. Navigation charts will be provided to all vendors in advance of the show. No sea trials are allowed during the boat show, which will also eliminate any concerns with destruction of adjacent seagrass beds, or discharges to adjacent waters from boat bilges or heads. The applicant will provide for continuous vessel patrol by law enforcement during the show. The Florida Marine Patrol stated in a letter, received on March 25, 2004, that it did not object to the project or have any navigational concerns. The proposed project will not be located within the 25-foot riparian setback area.

The applicant has proposed a plan and procedure to protect nearby Class II waters and water quality. Pilings will consist of 40-foot steel I beams. The pilings will anchor floating docks, which are constructed of polystyrene blocks with wood decking. These floating docks and steel pilings have been used at other boat shows and virtually eliminate concerns regarding potential leaching of hazardous chemicals. All pilings and floating docks will be removed immediately after conclusion of the boat show. Best management practices include the prohibition of discharges of other common pollutants such as: waste or new oil, anti-freeze/engine coolants, waste gasoline, diesel, kerosene, mineral spirits, grease or batteries.

The project is located in Class III Waters, Prohibited for Shellfish Harvesting, however, the adjacent waters are Class II Waters, Conditionally Approved for Shellfish Harvesting. The Department of Agriculture and Consumer Services, Shellfish Environmental Assessment Section, provided comments in a letter received on March 24, 2004, that they have no objection to the project provided certain conditions are met. Those conditions have been made part of the permit and relate to the applicant following the exact plan that was reviewed, as well as, assuring sufficient bathroom facilities and handling of waste before, during and after the show. No permanent liveboards are permitted at the boat show, except for crews of approximately three people per boat on 20 of the largest boats. These twenty crews are authorized to remain overnight with their vessels for safety purposes only. This is standard practice for all larger boats for safety and security reasons and it has been a customary procedure at other special event boat shows in Florida. The applicant has provided assurances that these boats have sufficient holding tank capacity to accommodate overnight use without having to discharge. In addition, only those boats with Type III marine sanitation devices will be used and either a mobile sewage pump-out unit or a contracted pump-out company will be made available as necessary. The smaller boats and the new boats will not need to have permanent crews stationed on board the boats during the show or at night. Commercially maintained restroom facilities will be provided on the uplands for boat show attendees and staff. The applicant will provide a display area for use by various governmental agencies and the Choctawhatchee Bay Alliance to facilitate public education on topics relative to the area.

DEP issued a five-year, wetland resource permit on May 02, 2003, that requires sewage pump out facilities, authorizes 20 temporary liveboards, and prohibits fueling facilities. According to a March 24, 2004 response from the Florida Fish and Wildlife Conservation Commission, the proposed project will not significantly affect the endangered manatee so long as the applicant follows the standard manatee construction conditions for all in-water construction.

Item 7, cont.

This has been included as a specific condition in the wetland resource permit and as a special lease condition. The Department of Community Affairs had no objections to the project in a letter received on April 2, 2003.

Adjacent property owners within a 500-foot radius were sent a notice of application by certified mail with the return-receipt card addressed to DEP. Return-receipt cards have been received from all adjacent property owners except one in which the notice was returned to sender due to unknown address. A notice of receipt of the application was published in the Daily News of Northwest Florida on February 25, 2004. DEP has received a letter of concern from a citizen of Okaloosa County regarding the location of the event in relation to the existing roped swimming area, and the use of the public boat ramp for a 30-day period. DEP addressed the concerns in a phone conversation on March 16, 2004 stating that the event should not interfere with the roped swimming area, and that the boat ramp is one of two existing ramps which shall be utilized for a period of approximately 10 days.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. In accordance with the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. The proposed action is consistent with the adopted plan according to a letter received from Okaloosa County dated March 21, 2003.

(See Attachment 7, Pages 1-15)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$3,377.84**

Item 8 **AES Ocean Express LLC Recommended Consolidated Intent**

DEFERRED FROM THE MARCH 9, 2004 AGENDA

REQUEST: Consideration of an application for a 25-year sovereignty submerged lands public easement, with fees, for a natural gas transmission pipeline.

COUNTY: Broward
 Easement No. 31003
 BOT No. 060226406
 File No. 06-0193181-002

APPLICANT: AES Ocean Express LLC

LOCATION: Sections 26 through 30 and 34 through 36, Township 50 South, Range 42 East, in the Atlantic Ocean, Class III Waters, within the local jurisdiction of the city of Dania Beach
Aquatic Preserve: No
Outstanding Florida Waters: Yes (West Lake Park)
Designated Manatee County: Yes, without an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone Area: Dania Cutoff Canal is a slow speed zone; however, the project will not be entering the ICW. No Entry Zone within Florida Power and Light cooling canal

Item 8, cont.

CONSIDERATION: (1) An initial one-time easement fee at a rate of \$0.15 per linear foot based on a 25-foot wide easement as determined by a real property appraisal that considered the extent to which the easement is exclusionary, but did not consider the "enhanced value or profit gained by the applicant" pursuant to section 18-21.011(2)(b) 2, F.A.C.; (2) an interim "enhanced value or profit gained" fee of \$5.00 per linear foot of pipeline (based on a minimum width of ten feet) that crosses sovereignty submerged lands of the territorial sea out to the state's territorial limit, and prorated for any increases in width due to the placement of gabions or mats covering the pipeline. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The initial one-time easement fee and interim "enhanced value" fee shall be determined based upon receipt of an acceptable survey and legal description of the easement area. The easement fee may be revised upward or downward at the end of the term should the Board of Trustees adopt rules revising the fees for easements, or establish different procedures for determining the "enhanced value or profit gained by the applicant"; and (3) \$13,317.75 fee for the severance of 5,919 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard pursuant to section 18-21.011(3)(a) 2, 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. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

AES Ocean Express, LLC (Ocean Express) proposes to own, construct, operate, and maintain a 24-inch diameter natural gas pipeline and associated aboveground facilities that originates at the Exclusive Economic Zone (EEZ), designated as Mile Post (MP) 0.0, extends approximately 54.1 miles through federal and state waters, and terminates onshore at two delivery points in central eastern Broward County. The Ocean Express pipeline will interconnect at its origination point at the EEZ (MP 0.0) with the AES Ocean Cay pipeline. The AES Ocean Cay pipeline, to be constructed by a Bahamian affiliate of Ocean Express, will originate at the AES Ocean Cay liquefied natural gas facility located at Ocean Cay, Bahamas, and extend to the EEZ.

Of the approximately 54.1 miles of proposed pipeline, approximately 48.0 miles will be located offshore, and 6.12 miles will be located onshore. Of the approximately 48.0 miles of proposed offshore pipeline, approximately 43.03 miles (from MPs 0.0 to 40.48 and from Revised Mile Posts [RMPs] 40.48 to 43.03) will be located in offshore federal waters, and approximately 4.97 miles (from RMP 43.03, the State of Florida's 3-mile jurisdictional line to approximately RMP 48.0, the Erosion Control Line [ECL]) will be located on sovereignty submerged land within the State of Florida's jurisdiction.

Approximately 6.12 miles of pipeline will be located onshore (west of the ECL). Portions of the onshore route will traverse under the following major waterbodies and environmentally sensitive areas: the Intracoastal Waterway, the Dania Cutoff Canal, West Lake Park (Outstanding Florida Waters), a narrow mangrove wetland at the Florida Power and Light (FPL) site and FPL's Fort Lauderdale plant cooling canal.

Item 8, cont.

The purpose of the Ocean Express Pipeline Project, in association with the AES Ocean Cay pipeline, is to transport 842 million standard cubic feet per day (MSCFD) of natural gas to service markets in Florida. Construction of the AES Ocean Express pipeline is scheduled to begin in late 2004 or early 2005 with active transport of natural gas to begin in late 2006 or early 2007.

Pursuant to section 18-21.004(1)(e), F.A.C., the project is being recommended for a fee associated public easement. Ocean Express proposes a 25-foot-wide easement over the entire length of the pipeline located on sovereignty submerged land within the State of Florida's jurisdiction.

The nearshore approach of the pipeline is located south of Port Everglades in Dania Beach. It will incorporate two horizontal directional drill (HDD) segments, and two direct-lay segments. The area of coastal waters out to the 200-foot depth contour (RMP 44.19) is designated as the "Nearshore" area. Within the Nearshore area, there is a reef system that consists of three reef tracts oriented approximately parallel to the coastline. These are known as, Reef 1 (located closest to the shoreline), Reef 2 (consisting of two sections of reef, designated as Reef 2-Inner and Reef 2-Outer that are separated by a sandy area), and Reef 3 (located most oceanward).

Potential impacts to reef habitat by pipeline installation will be avoided by the use of an approximately 6,100-foot-long shore-crossing HDD (Landfall HDD), traversing beneath the Reef-1 and Reef 2-Inner (designated as Segment 1, RMP 48.03 to RMP 46.88). The Landfall HDD exits into the sand area between Reef 2-inner and Reef 2-outer within an abandoned sand borrow area. The pipeline will then be routed approximately 7,000 feet due South, and installed directly on the seafloor in the sandy area between Reef 2-Inner and Reef 2-Outer. The pipeline will then turn East through a natural gap in Reef 2-Outer for a distance of approximately 2,200 feet (designated as Segment 2, RMP 46.88 to RMP 45.15) where a second approximately 2,400-foot long offshore water-to-water HDD (Offshore HDD) originates at another abandoned sand borrow pit. This Offshore HDD traverses beneath the third reef, thus avoiding impacts to the third reef, and exits approximately 1,000 feet east of Reef 3 (designated as Segment 3, RMP 45.15 to RMP 44.70). The pipeline will then be routed approximately due east, and laid directly on the seabed for the remaining approximately 8,818 linear feet out to the state's three-mile jurisdictional line (designated as Segment 4, RMP 44.70 to RMP 43.03). The portion of the pipeline to be laid directly on the seabed within the Nearshore area, which includes Segment 2 and the portion of Segment 4 out to the 200-foot depth contour (RMP 44.19), shall be covered with articulated concrete mats. The remaining portion of pipeline in Segment 4 oceanward of the Nearshore area will not be covered. Specific pipeline installation methods are included in the "Florida Nearshore Installation Methods" document, incorporated into the environmental resource permit (ERP) as Attachment A.

The Onshore pipeline portion of the Ocean Express pipeline initiates at the Dania Beach Traffic Circle, and extends generally westward for 6.12 miles through undeveloped areas, under West Lake Park, and along existing rights-of-ways in heavily commercialized and industrialized areas of Hollywood, and will terminate at a Florida Gas Transmission (FGT) interconnection and a FPL interconnection at the Fort Lauderdale Power Plant, located on the Dania Cutoff Canal, approximately 1.3 miles east of the Florida Turnpike.

The Onshore section of the Ocean Express pipeline will be installed by the open trench method where possible, and by the HDD at major roads and major waterway crossings, and at other difficult and environmentally sensitive locations. The following six segments of the onshore pipeline route will be installed by HDD methodology: (1) an approximately 1,350-foot long HDD segment from the Dania Beach Traffic Circle, where the offshore pipeline makes

Item 8, cont.

landfall, to an exit point along the north side of Dania Beach Boulevard to traverse below the Intracoastal Waterway; (2) an approximately 3,250-foot long HDD segment traversing under West Lake Park and Dania Cutoff Canal running just west of an existing FPL access road and exiting at an open area within the Southport portion of Port Everglades; (3) an HDD segment from the open area at Port Everglades to the west side of NE 7th Avenue, to traverse under NE 7th Avenue; (4) an approximately 1,850-foot long HDD segment to traverse under U.S. Highway 1 and Perimeter Road; (5) an approximately 1,700-foot long HDD segment to traverse under Interstate I-95; and (6) an approximately 1,000-foot long HDD segment to traverse under a narrow mangrove wetland and the cooling canal at the FPL Fort Lauderdale Power Plant.

The open trench methodology will be used to install the portions of pipeline located between the HDD segments. Three segments of the pipeline to be installed by Open Trench methodology are located adjacent to, or near wetlands. These segments include (1) an approximately 2,650-foot long section adjacent to wetlands of West Lake Park along the north side of Dania Beach Boulevard; (2) a section located adjacent to and across Perimeter Road from wetlands; and (3) an approximately 0.35 mile long section to be installed within the FPL access road that is adjacent to wetlands located on the FPL property. The remaining sections of pipeline to be installed by Open Trench methodology are not adjacent to wetlands.

The Onshore pipeline construction has been designed to have no wetland impacts. This has been accomplished through careful selection of the route in areas adjacent to wetlands, incorporating HDD methodologies to pass under unavoidable wetland crossings, and only using open trench methodologies in areas which allow adequate work spaces without wetland impacts. In the event that there are wetland or surface water impacts from Onshore construction activities, Ocean Express shall immediately notify DEP and implement contingency actions to remediate the impacts, and shall submit a Mitigation Plan that is acceptable to DEP to offset the impacts.

State-owned uplands will be traversed by the pipeline within West Lake Park, which is state-owned uplands that are managed by Broward County. Ocean Express has revised the project route in the vicinity of West Lake Park to the route suggested and recommended by Broward County Parks and Recreation Division staff in order to minimize potential disturbance to pristine mangrove wetlands. The route is aligned on the west side of an existing FPL access road, beneath an area of previously disturbed mangroves, and will utilize HDD technology to go under the mangroves. The access road will act as a berm between the HDD area and the undisturbed mangrove wetlands in the northeast area of Wet Lake. The upland easements for West Lake Park have already been determined by the Acquisition and Restoration Council to be consistent with the management plans for the affected state-owned uplands, and will be obtained under a separate Board of Trustees' action.

Offshore construction impacts will occur from the excavation of the HDD entry and exit pits, from the HDD temporary work areas, from the footprint of the direct-lay portion of the pipeline, and from the sedimentation associated with pipeline pullback. Directly impacted will be 3.27 acres of marine resources (1.2 acres of Type B Habitat and 2.07 acres of Type D Habitat; see the following Permitted Ocean Express Mitigation Ratios Table). Ocean Express has demonstrated avoidance and minimization to marine resources by the following:

- Evaluation of numerous potential route alternatives;
- Selection of the most environmentally favorable route available;
- Avoidance of impacts to high and medium density reef systems (Habitat Type A);
- Implementation of a coral relocation plan prior to and during construction;

Item 8, cont.

- Use of HDD to avoid impacts to the offshore reefs;
- Use of a marine riser system during HDD operations to reduce potential turbidity and sedimentation impacts;
- Use of a floatover system with associated lateral guidance system during HDD pull-thru operations to avoid impacts to Reef 2-Outer;
- Use of midline buoys on mooring lines;
- The establishment of work area buffers to protect important resources;
- The designation of Temporary work areas; Contingency work areas; Exclusion zones; Vessel transit areas; Vessel holding areas; and Anchor safety zones;
- The development of special anchor handling and placement procedures;
- The use of guide piles in sandy areas to reduce the risk of potential impacts to hard bottom areas during pipe placement;
- The development and implementation of an extensive frac-out monitoring program;
- Revision and realignment of the concrete mats from the standard concrete mats (8 ft. x 20 ft.) installed perpendicular to the pipe to the revised mats (with dimensions of 12 ft x 20 ft) installed lengthwise parallel to the pipeline which reduces the permanent impact corridor from 16 feet wide to 9 feet wide;
- Implementation of a voluntary 15 NTU turbidity standard at reef edges; and,
- The development of a comprehensive Environmental Construction Monitoring and Verification Plan (ECMVP).

Ocean Express, along with input from the regulatory agencies, has developed several marine construction plans and procedures designed to reduce the chances of additional impacts to coral reef communities and the marine flora and fauna that utilize and depend on them. The marine construction contingency plans include methods to further protect natural resources such as water quality, threatened and endangered species, and proposes mitigation to offset the impacts that could not be avoided or minimized during the permitting process.

Along with the avoidance and minimization designs outlined in the paragraph above, the implementation of a 'Florida Nearshore Installation Methods' Plan, Attachment A of the ERP, and the implementation of a comprehensive Environmental Construction Monitoring and Verification Plan (ECMVP, Attachment C of the ERP), developed with input from regulatory agencies, offers additional methods to protect natural resources and water quality. Furthermore, the ECMVP proposes mitigation to offset the impacts that could not be further avoided or minimized during the permitting process. The ECMVP provides the following plans/guidelines that shall be strictly adhered to during project activities:

- Appendix A: Spill Prevention, Control and Countermeasures Plan;
- Appendix B: Upland Erosion Control, Revegetation, and Maintenance Plan;
- Appendix C: Wetland and Waterbody Construction and Mitigation Procedures;
- Appendix D: Marine Biological (Manatee, Cetacean and Sea Turtle) Monitoring Plan;
- Appendix E: Plan for the Unanticipated Discovery of Hazardous Wastes or Contaminated Sites;
- Appendix F: Hydrotesting and Pre-Commissioning Plan;
- Appendix G: Marine Turbidity, Sedimentation and Reef Monitoring Plan;
- Appendix H: HDD Monitoring and Contingency Plan;
- Appendix I: Offshore Mitigation and Restoration Plan;
- Appendix J: Environmental Training Syllabi;
- Appendix K: Emergency Scenario and Response Plan;
- Appendix L: Florida Nearshore Maneuvering and Anchoring Guidelines;
- Appendix M: Miami Escarpment Installation Guidelines;
- Appendix N: Coral Relocation Plan; and
- Appendix O: Storm Handling Plan.

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The referenced plans are attached to and will become part of the ERP should it be issued.

DEP staff recognizes that the jurisdiction of the Environmental Resource Program extends from the erosion control line out three geographic miles to the state's territorial limit; however, DEP's Office of Intergovernmental Programs (OIP) coordinates DEP's position on the consistency of federal projects and federally funded activities with applicable departmental policies and regulations, and provides comments to the Florida State Clearinghouse in accordance with Presidential Executive Order 12372, the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA) and other federal laws and policies. Along with the nearshore coral reef's and resources within the state's jurisdiction, there are benthic resources and habitats in federal waters, including deep water coral and hardbottom resources at the Miami Terrace and Escarpment, that provide critical ecosystem functions to resources important to the state of Florida. DEP acknowledges that Ocean Express, as required by the FERC Certificates, will avoid and minimize impacts to these habitats and mitigate unavoidable impacts in federal water in the manner consistent with Table 4 of the Offshore Mitigation and Restoration Plan, Appendix I of the ECMVP.

In order to offset the impacts to 1.2 acres of Type B Habitat and the habitat conversion of 2.07 acres of Type D Habitat, Ocean Express shall remove 117,176 tires (8.07 mitigation units) from a 31.0 acre artificial reef site created off the coast of Broward County using waste automobile tires. Storm events and ocean currents have moved the tires from their original deployment site in sandy bottoms up onto the second and third reef systems resulting in significant impacts to natural marine resources. It is the intent of the mitigation plan to enhance the existing natural reef systems by removing the tires from on top of and adjacent to the reefs thus allowing natural restoration of the newly exposed reef face by recruitment of new coral species. Based on observations, tires in the Priority 1 removal zone of the mitigation area are, on average, three layers deep, it is anticipated that the 117,176 tires will occupy approximately 2.69 acres, a portion of which will occur on the Second Reef. However, the final acreage of the mitigation area may vary depending on the actual density of tires present.

Permitted Ocean Express Mitigation Ratios:

Habitat Type	Ratio
A- 20-100% cover by attached epi-benthic biota and/or hard bottom with > or = 0.25 meter in relief, inclusive of sand components integral to these habitats	8 units:1acre
B- 5-20% cover by attached epi-benthic biota and/or hard bottom < 0.25 meter in relief, inclusive of sand components integral to these habitats	5 units:1acre
D- sand (soft substrate/sedimentary) habitat in proximity to reef/hard bottom resources, sand veneer over hard substrate with < 5% attached epi-benthic coverage	1 unit:1acre

Item 8, cont.

- One mitigation unit is equal to the number of tires comprising an acre of the tire field, one layer deep. The area covered by one tire is 3.0 square feet. Therefore, the number of tires contained in one acre of a single layer of tires = (43,560 square feet per acre)/(3 square feet per tire) = 14,520 tires per mitigation credit.
- The number of tires that will need to be removed to offset unavoidable impacts to marine resources for the AES Ocean Express Pipeline project = (8.07 mitigation credits) x (14,520 tires per credit) = 117,176 tires.

The proposed compensatory mitigation for the nearshore marine portion of the Ocean Express project will consist of two primary activities: the one-time removal and disposal of 8.07 mitigation units (117,176 tires) from a portion of the Priority Area 1 of an artificial reef site north of the construction area; and following tire removal, Ocean Express shall provide funds to Broward County Department of Planning and Environmental Protection for the long-term monitoring of the mitigation area.

Ocean Express has engineered several innovative construction methods proposed to minimize impacts to the offshore marine environment. While the water-to-water HDD method offers impact minimization, there are higher environmental risks associated with this methodology than with the traditional upland-to-upland bores commonly used. Empirical evidence has documented that there is a high probability of an inadvertent release of drilling mud that may occur on the ocean floor causing potential damage to the coral reefs and other important marine resources.

Bore hole abandonment during drilling, failure to successfully pull back the pipeline into the bore holes, and failure of the Float Over/Lateral Guidance System for pipestring pull-thru into the Landfall HDD all represent failure of the construction methodologies proposed for the offshore pipeline installation. Because of the environmental risks associated with the pipeline construction, the ERP authorizes only one attempt at the following pipeline installation methods:

- One HDD (Landfall HDD) bore hole originating from Dania Beach Traffic Circle, traversing under Reef 1 and Reef 2-Inner, and punching out approximately 6,000 feet offshore between Reef 2-Inner and Reef 2-Outer.
- One attempt of the Float Over/Lateral Guidance system method for Pipestring pull-thru through the Landfall HDD. If the system fails and the pipestring contacts the seabed (in any Habitat type), another effort shall not be attempted.
- One 2,300-linear foot water to water horizontal directional drill (Offshore HDD borehole originating on the inside (landward) of Reef 3, extending under and exiting oceanward of Reef 3, and one associated pipestring pull-thru.

Any additional bore hole entrance points, any additional attempts of the pipestring pullback, and any additional attempts for the Float Over/Lateral Guidance system shall require a permit modification from the FDEP.

To address the increased risk of possible additional unanticipated environmental impacts, Ocean Express shall provide DEP with financial assurance in the form of a Letter of Credit, Surety Bond, or some other pre-approved financial instrument for inadvertent or non-permitted environmental damage in the amount of \$774,675 in order to compensate the state for the costs of reasonable measures taken to prevent or limit environmental damage and for clean-up and restoration of the environment to its previous state; and to cover costs where responsibility for the damage cannot be determined, or where those liable are insolvent.

Item 8, cont.

The environmental review process for the AES Ocean Express Pipeline project was achieved through a “coordinated permitting” approach. Initiating in January of 2003, a core group of agency representatives frequently met with Ocean Express to discuss means of avoiding and minimizing impacts to wetlands and coral reef habitat. Consideration was given to alternative alignments, construction methodologies, contingency plans, and other best management practices that should be incorporated into the construction procedures to address unanticipated accidents or impacts. Members of this “Coordination Team” included representatives from DEP’s Southeast District Office ERP Program, DEP’s Office of Intergovernmental Programs, Broward County Department of Planning and Environmental Protection, National Oceanic and Atmospheric Administration’s National Fisheries Management Service, U.S. Army Corps of Engineers, Florida Fish and Wildlife Conservation Commission’s (FFWCC) Florida Marine Research Institute, FFWCC’s Bureau of Protected Species, U.S. Environmental Protection Agency, and the U.S. Department of Transportation. The result of this coordinated effort was a streamlined review process for Ocean Express and the development of detailed marine construction contingency plans to aid in resource protection.

Ocean Express’ project was required to go through two independent processes with the Federal Energy Regulatory Commission (FERC). One was a determination of Public Convenience and Necessity, and the other was an Environmental Impact Statement performed by FERC. For the demonstration of Public Convenience and Necessity or “project need,” FERC was required to look at each project individually to see if one pipeline, as a stand-alone project, would fulfill the requirements of Florida’s ten-year energy plan. FERC determined that the project would meet the ‘need’ criteria and issued the final certification to AES Ocean Express LLC on January 29, 2004.

The City of Dania Beach (City) passed and adopted on January 28, 2003 a resolution (2003-013) of the City Commission opposing the construction of the AES Ocean Express Pipeline project. The resolution expressed the following concerns: risks of substantial injury to reefs and marine life; damage to the City’s shoreline, roadways, and right-of-ways; probable interruption of utility services; potential for harmful exposure to the City’s residents and visitors by leaks, ruptures, and terrorist attacks on the pipeline; and possible adverse effects upon air quality. The resolution states that the environmental issues and other concerns associated with the pipeline construction preclude the City’s support of the project. However, since adoption of the Resolution, Ocean Express has worked with the City to resolve these concerns. On February 24, 2004, the City Commission voted to approve the grant of an easement over City property for the AES Ocean Express Pipeline project.

The Naval Surface Warfare Center, Carderock Division (NSWCCD), had notified Ocean Express of concerns that it had with the proposed pipeline project. Ocean Express and NSWCCD, after exchanging extensive technical information and participating in several meetings, have reached an agreement regarding measures design to resolve NSWCCD’s concerns by means of certain routing variations and modifications to the design and construction of the Ocean Express Pipeline and the adoption of certain construction and operating procedures. The Memorandum of Agreement (MOA) was signed by the U.S. Navy on February 20, 2003.

The State Historic Preservation Office (SHPO) has required that ‘onshore resource probability’ areas and ‘offshore anomalies’ be investigated and information provided to them by Ocean Express prior to commencement of pipeline construction. The requirement of SHPO has been included as a specific condition in the ERP.

The recommendations of the FFWCC regarding the protection of manatees and sea turtles have been addressed in the ERP.

Item 8, cont.

To construct a project within sovereignty submerged lands outside of an aquatic preserve, it must be demonstrated that the project is not contrary to public interest. This project is not located in an aquatic preserve. The construction of the proposed facilities will help satisfy the growing demand for natural gas in Florida, diversify the sources of supply to the state, and increase competitive alternatives to the existing pipeline infrastructure. Ocean Express' project will provide a public benefit as it will introduce substantial new volumes of clean burning natural gas into Florida. DEP staff is of the opinion that with the payment of equitable compensation, environmental resource remediation and mitigation the proposed project is not contrary to the public interest, pursuant to section 18-21.004(1)(a), F.A.C.

Property owners within a 500-foot radius of the proposed sovereignty submerged lands public easement were specifically noticed via certified mail, pursuant to section 253.115, F.S., and no comments or objections were received.

The project is not located in an aquatic preserve. DEP staff is of the opinion that with the payment of equitable compensation, and environmental resource remediation and mitigation, the proposed project is in the public interest pursuant to section 18-21.010(1)(e), F.A.C.

The Department of Community Affairs (DCA), Division of Community Planning, determined that the project is consistent with the statutes included in the Florida Coastal Management Program, however they had several recommendations regarding public safety related issues. DCA recommends the following: (1) Ocean Express shall construct the entire pipeline to U.S. Department of Transportation, Office of Pipeline Safety, Class 4 Standards in order to eliminate the need for future upgrades and to provide an additional measure of protection to persons living or working near the pipeline; (2) Ocean Express shall add odoriferous gas (the odorant 'ethyl mercaptan' or equivalent) to the gas transported by the pipeline on land. A pipeline rupture or leak would release a sufficient quantity of odorized gas to alert persons in the area of the leak or rupture, (3) Ocean Express shall join the Florida One Call Program; (4) Ocean Express shall submit to the Division of Community Planning an emergency response plan prior to construction. The plan should describe the pipeline operator's notification procedures, internal response and coordination and should describe the applicant's procedures in preparing for and responding to a storm or terrorist event during construction and operation of the pipeline and associated facilities. Also, the plan should reflect an awareness of the Broward County and state emergency management procedures; and (5) a baseline internal inspection shall be made of the pipeline before being placed into service using a high-resolution magnetic flux in-line tool, or its technological equivalent. This would find any potential defects and create a record to compare future tests. The system's Operation and Maintenance plan required by Code of Federal Regulation Part 192 should include a procedure for periodic internal reinspections every five years. The FERC certificate requires that the proposed pipeline be constructed, operated and inspected in accordance with all applicable construction, safety and inspection standards for interstate natural gas pipelines established by the U.S. Department of Transportation, which has exclusive jurisdiction over these issues.

(See Attachment 8, Pages 1-59)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
AND SPECIAL EASEMENT CONDITIONS**

Item 9 **Tractebel Calypso Pipeline, LLC Recommended Consolidated Intent**

DEFERRED FROM THE MARCH 9, 2004 AGENDA

REQUEST: Consideration of an application for a 25-year sovereignty submerged land public easement, with fees, for a natural gas transmission pipeline.

COUNTY: Broward
 Easement No. 30669
 BOT No. 060223896
 File No. 06-0186699-002

APPLICANT: Tractebel Calypso Pipeline, LLC

LOCATION: Sections 19 through 24 and 28 through 30, Township 50 South, Range 42 East, in the Atlantic Ocean, Class III Waters, making landfall within the local jurisdiction of the city of Hollywood
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, without an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone Area: Slow Speed Year Round within the Port Everglades turning basin, No Entry Zone within Florida Power and Light cooling pond

CONSIDERATION: (1) An initial one-time easement fee at a rate of \$0.15 per linear foot based on a 25-ft. wide easement and as determined by a real property appraisal that considered the extent to which the easement is exclusionary, but did not consider the “enhanced value or profit gained by the applicant” pursuant to section 18-21.011(2)(b)2, F.A.C.; (2) an interim “enhanced value or profit gained” fee of \$5.00 per linear foot of pipeline (based on a minimum width of ten feet) that crosses sovereignty submerged lands of the territorial sea out to the state’s territorial limit, and prorated for any increases in width due to the placement of gabions or mats covering the pipeline. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The initial one-time easement fee and interim “enhanced value” fee shall be determined based upon receipt of an acceptable survey and legal description of the easement area. The easement fee may be revised upward or downward at the end of the term should the Board of Trustees adopt rules revising the fees for easements, or establish different procedures for determining the “enhanced value or profit gained by the applicant;” and (3) \$7,745.00 fee for the severance of 3,342 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard pursuant to section 18-21.011(3)(a) 2, F.A.C., which the applicant has already paid.

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. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a “Consolidated Notice of Intent to Issue” that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a “Consolidated Notice of Denial.”

Item 9, cont.

The applicant is proposing to construct and operate a 24-inch natural gas pipeline and associated aboveground facilities that extend 90 miles from a liquefied natural gas (LNG) import/export terminal proposed to be constructed near Freeport, Bahamas, to a landing point in Fort Lauderdale within John U. Lloyd Beach State Park, through Port Everglades and ultimately terminating inland at the Florida Power & Light property located in southeastern Broward County.

State-owned uplands will be traversed by the pipeline within John U. Lloyd State Park. Staff has received a letter from the DEP's Division of Recreation and Parks setting out the benefit package to the park and stating they have no objections to the project. The upland easements for John U. Lloyd were approved by the Acquisition and Restoration Council on August 15, 2003, and will be obtained under a separate Board of Trustees' action.

The project is located entirely within the States' coastal marine waters, federal waters, and upland onshore areas, including wetlands, in Broward County, Florida. The pipeline will include the following: approximately 31.6 statute miles (27.4 nautical miles) in offshore federal waters from the Exclusive Economic Zone (EEZ) to the limits of Florida state waters off the southeast Florida coastline; approximately 4.4 statute miles (3.8 nautical miles) in Florida state coastal waters; and approximately 6.5 miles onshore in southeastern Broward County.

The purpose of the Tractebel Calypso Pipeline Project is to transport 832 million standard cubic feet (MSCF) of natural gas per day to service markets in Florida. Construction of the Tractebel Calypso Pipeline is scheduled to begin in 2004 with active transport of natural gas to begin in 2007.

The nearshore approach is located near Port Everglades and will incorporate two sequential horizontal directional drills (HDD) and trenching. The first horizontal directional drill (HDD #1) will originate from the state park and will "punch out" 4,616 feet offshore within a hardbottom/livebottom area known as the Submerged Breakwater Spoil Area. The second horizontal directional drill (HDD #2) is a 5,130-foot water-to-water drill that will begin in the Submerged Breakwater Spoil Area, extend under the second and third coral reef systems, and will terminate in a hardbottom area described as the Third Reef Transitional Area. The three HDD entrance/exit holes (HDD #1 exit, HDD #2 entrance, and HDD #2 exit) will be dredged using a clamshell dredge, and each hole will measure 75-feet long by 60-feet wide by 20-feet deep. Between the two horizontal directional drill segments, an approximately 2,132-foot long by 25-foot wide by 6-foot deep trench will be excavated by clamshell dredge through the Submerged Breakwater Spoil Area. Once the drills and trench are complete, the pipeline will be pulled back into the two HDD bore holes, connected, then placed in the linear trench. The trench will then be backfilled with washed crushed rock and overlain with rock cobbles. In water depths of 120 to 200 feet mean sea level, the 1,836-linear-foot span of the pipeline will be laid directly on the sea bottom and covered with articulated concrete mats. In water depths exceeding 200 feet, the pipeline will be coated with concrete for stability on the bottom and to provide protection of the pipe; however, the pipeline will not be covered.

The Onshore pipeline portion of the Tractebel Calypso Pipeline project will begin at the directional drill site for the Nearshore pipeline located in John U. Lloyd State Park. The Onshore pipeline segment will extend generally westward approximately 6.5 miles through heavily commercialized and industrialized areas of Broward County and will tie into the Florida Gas Transmission (FGT) pipeline system near the FPL Fort Lauderdale power plant located on the Dania Cut-off Canal, 1.3 miles east of the Florida Turnpike.

Item 9, cont.

Onshore pipeline construction will be accomplished using open-cut trenching methods, HDD, and jack and bore techniques. The pipeline will be horizontally directional drilled from the John U. Lloyd landing, (HDD B) for approximately 5,280 linear feet underneath the Port Everglades turning basin to the Port Everglades property. From there, the pipeline will be constructed using open-cut installation methods from the Port Everglades property to Interstate 95 (3.4 miles). The pipeline will then be horizontally directional drilled under Interstate 95, and the remaining portions of the project (1.8 miles to the Western terminus of the project) will be trenched using the open cut method. Three waterbodies will be crossed using open-cut trenching methods: a drainage ditch located just west of Port Everglades; a drainage ditch at the Fort Lauderdale Airport; and a 230-foot-wide crossing of a cooling pond located on the FPL property. Along the terrestrial route, 11 surface roads and railways will be crossed utilizing the jack and bore method of installation.

The onshore pipeline construction will temporarily impact 0.26 acre of wetlands and surface waters. In order to offset those impacts, the applicant will restore the impacted areas to original grade and will enhance two wetland areas (totaling 0.16 acre) by removing exotic vegetation and replanting with native wetland plants suitable for the impacted area.

During offshore construction, the excavation of the HDD entry and exit pits, the open-cut trench, and the pipeline pulls along the ocean floor will directly impact 7.14 acres of marine communities and resources through disturbance and removal of habitat, turbidity and sedimentation effects. The applicant has demonstrated avoidance and minimization to marine resources by the following: routing a portion of the pipeline using a guided pipeline pull method through a gap in the third reef; traversing sandy habitats and areas of low relief hardbottoms, such as in the Submerged Breakwater Spoil Area; and by relocating corals and sponges of a required size out of the project impact area. The applicant, after input from the regulatory agencies, has developed several marine construction plans and procedures designed to reduce the chances of additional impacts to coral reef communities and the marine flora and fauna that utilize and depend on them.

DEP staff recognizes that the jurisdiction of the Environmental Resource Program extends from the erosion control line out three nautical miles to the state's territorial limit; however, the DEP's Office of Intergovernmental Programs (OIP) coordinates DEP's position on the consistency of federal projects and federally funded activities with applicable departmental policies and regulations, and provides comments to the Florida State Clearinghouse in accordance with Presidential Executive Order 12372, the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA) and other federal laws and policies. Along with the nearshore coral reefs and resources within the state's jurisdiction, there are benthic resources and habitats in federal waters, including deep water coral and hardbottom resources at the Miami Terrace and Escarpment, that provide critical ecosystem functions to resources important to the state of Florida. DEP has strongly encouraged the applicant to avoid and minimize impacts to these habitats and mitigate unavoidable impacts in a manner consistent with what is required under the Environmental Resource Program in state waters.

The marine construction contingency plans offer methods to protect natural resources such as water quality, threatened and endangered species, and propose mitigation to offset the impacts that could not be avoided or minimized during the permitting process. The Tractebel-Calypto Natural Gas Pipeline Nearshore Construction Monitoring Plan; Marine Mitigation Plan; and all appendices have been attached to and become part of the permit.

In order to offset the impacts to 6.76 acres of livebottom and coral reef habitats (Habitat Types A-0.28 acre, B-2.22 acre, and C-4.26 acres) and the habitat conversion of 0.38 acre of low relief livebottom or hardbottom covered with a sand veneer (Habitat Type D), the applicant

Item 9, cont.

shall remove 229,126 tires (15.78 mitigation units) from a 31-acre artificial automobile tire reef site created in the late 1970s-early 1980s off the coast of Broward County. Storm events and ocean currents have moved the tires from their original deployment site in sandy bottoms up onto the second and third reef systems resulting in significant impacts to natural marine resources. It is the intent of the mitigation plan to enhance the existing natural reef systems by removing the tires from on top of and adjacent to the reefs thus allowing natural restoration of the newly exposed reef face by recruitment of new coral species.

Permitted Tractebel Calypso Mitigation Ratios:

Habitat Type	Mitigation Ratios
A- 20-100% cover by attached epi-benthic biota and/or hard bottom with > or = 0.25 meters in relief, inclusive of sand components integral to these habitats	8 units:1acre
B- 5-20% cover by attached epi-benthic biota and/or hard bottom with <0.25 meters in relief, inclusive of sand components integral to these habitats	5 units:1acre
C- Breakwater spoil Area- livebottom	2 units:1acre
D- sand (soft substrate/sedimentary habitat in proximity to reef/hard bottom resources, and a sandy veneer over hard substrate with <5% attached epi- benthic coverage	1 unit:1acre

- One mitigation unit is equal to the number of tires comprising an acre of the tire field, one layer deep. The area covered by one tire is 3.0 square feet. Therefore, the number of tires contained in one acre of a single layer of tires = (43,560 square feet per acre)/(3 square feet per tire) = 14,520 tires per mitigation unit.
- The number of tires that will need to be removed to offset unavoidable impacts to marine resources for the Tractebel Calypso Pipeline project = (15.78 mitigation units) x (14,520 tires per unit) = 229,126 tires.

The proposed compensatory mitigation for the nearshore marine portion of the Tractebel Calypso Pipeline project will consist of two primary activities: (1) the one-time removal and DEP approved disposal of 15.78 mitigation units (229,126 tires) from a portion of the Priority Area 1 of an artificial reef site north of the construction area; and (2) the applicant shall provide funds to Broward County Department of Planning and Environmental Protection for the long-term monitoring of the mitigation area.

The applicant will implement several innovative construction methods proposed to minimize impacts to the offshore marine environment, however there are associated risks. While the water-to-water horizontal directional drilling method offers impact minimization, there are higher environmental risks associated with this methodology than with the traditional upland to upland bores commonly used. Also, empirical evidence shows that there is a high probability of an inadvertent release of drilling mud that may occur on the ocean floor causing potential damage to the coral reefs and other important marine resources. The applicant proposes the

Item 9, cont.

use of guide piles to direct an approximately 5,800-linear-foot curved pipeline segment into the HDD bore hole and to keep the impacts within a five-foot corridor. There is a risk that a guide pile(s) may fail under the pressure of the pipeline pull, causing unanticipated impacts.

Bore hole abandonment during drilling, guide pile failure during pull back, and failure to successfully pull back the pipeline into the bore holes all represent failure of the construction methodologies proposed for the offshore pipeline installation. Because of these environmental risks associated with the pipeline construction, the environmental resource permit (ERP) authorizes only one attempt at the following pipeline installation methods, and any other attempt will require DEP approval.

- One HDD (HDD #1) bore hole originating from John U. Lloyd State Park and punching out 4,616 feet offshore within a hardbottom/livebottom area known as the Submerged Breakwater Spoil Area and one associated guided pull in.
- One 2,132-foot long by 25-foot wide by 6-foot deep trench excavated through the Submerged Breakwater Spoil Area.
- One HDD (HDD #2) 5,130-foot water-to-water drill beginning in the Submerged Breakwater Spoil Area, extending under the second and third coral reef systems terminating in the Third Reef Transitional Area and one associated pull in.

The applicant shall successfully complete installation of the nearshore pipeline project segment (inclusive of the HDD B and pull back, HDD #1 and the Guided Pull, the Open Cut Trench, HDD #2, and the HDD #2 pull back) before initiating construction of any other pipeline segment or facility, including the remainder of the onshore route portion of the project or the remainder of the offshore portion within the State of Florida's jurisdiction.

To address the increased risk of possible additional unanticipated environmental impacts, the applicant shall provide to DEP with financial assurance for inadvertent or non-permitted environmental damage in the amount of \$1,500,000. In the event of additional unanticipated environmental impacts, these monies will compensate the state for the costs of assessing the environmental damage incurred and reasonable measures taken to prevent or limit environmental damage and for clean-up and restoration of the environment to its previous state; and to cover costs where responsibility for the damage cannot be determined, or where those liable are insolvent.

The environmental review process for the Tractebel Calypso Pipeline project was achieved through a "coordinated permitting" approach. Beginning in August of 2001, a core group of agency representatives frequently met with the applicant to discuss means of avoiding and minimizing impacts to wetlands and coral reef habitat. Consideration was given to alternative alignments, construction methodologies, contingency plans, and other best management practices that should be incorporated into the construction procedures to address unanticipated accidents or impacts. Members of this "Coordination Team" included representatives from the DEP's Southeast District Office ERP program, DEP's Office of Intergovernmental Programs, Broward County Department of Planning and Environmental Protection, National Oceanic and Atmospheric Administration's National Fisheries Management Service, U.S. Army Corps of Engineers, Florida Fish and Wildlife Conservation Commission's (FFWCC) Florida Marine Research Institute, FFWCC's Bureau of Protected Species, U.S. Environmental Protection Agency, and the Port Everglades Port Authority. The result of this coordinated effort was a streamlined review process for the applicant and the development of detailed marine construction contingency plans to aid in resource protection.

Item 9, cont.

The Tractebel Calypso Pipeline project was required to go through two independent processes with the Federal Energy Regulatory Commission (FERC). One was a determination of Public Convenience and Necessity, and the other was an environmental impact statement completed by a consulting firm contracted by FERC. For the demonstration of Public Convenience and Necessity or “project need,” the reviewers were required to look at each pipeline project individually to see if each pipeline, as a stand-alone project, would fulfill the requirements of Florida’s ten-year energy plan. On May 1, 2003, FERC made a preliminary determination that the applicant's proposed facilities would help satisfy the growing demand for natural gas in Florida. FERC issued a favorable final environmental impact statement on January 23, 2004, and is soon expected to issue final certification to the applicant.

Pursuant to section 18-21.004(1)(e), F.A.C., the project is being recommended for a fee associated public easement. The applicant proposes a 200-foot-wide temporary construction easement which reduces to a 25-foot wide permanent easement running along the centerline. The easement fees were developed to follow the Board of Trustees’ decision on the telecommunication lines and conduits negotiated fees. The fee was calculated as follows: \$0.006 by 25-foot-wide easement = \$0.15 per linear foot as determined by a real property appraisal and \$5.00 per linear foot of pipeline as an interim “enhanced value or profit gained” fee (based on a minimum width of 10 feet) that crosses sovereignty submerged lands of the territorial sea out to the state’s territorial limit, and prorated for any increases in width due to the placement of gabions or mats covering the pipeline.

While conducting the permitted geotechnical project there were inadvertent impacts to the hard-bottom and coral reef habitat. DEP and the applicant have entered into a short form consent order agreement including mitigation and penalties for both regulatory and proprietary violations.

The City of Dania Beach (City) passed and adopted on January 28, 2003 a resolution (2003-012) of the City Commission opposing the construction of the Tractebel Calypso Pipeline project. The resolution expressed the following concerns: risks of substantial injury to reefs and marine life; damage to the City’s shoreline, roadways, and right-of-ways; probable interruption of utility services; potential for harmful exposure to the City’s residents and visitors by leaks, ruptures, and terrorist attacks on the pipeline; and possible adverse effects upon air quality. The resolution states that the environmental issues and other concerns associated with the pipeline construction preclude the City’s support of the project. All surveys have been completed and no part of the sovereignty submerged lands easements sought pass through Dania Beach.

The recommendation of FFWCC regarding the protection of manatees and sea turtles have been addressed in the ERP.

Property owners within a 500-foot radius of the proposed public easement were specifically noticed via certified mail, pursuant to section 253.115, F.S., and no comments or objections were received.

To construct a project within sovereignty submerged lands outside of an aquatic preserve, it must be demonstrated that the project is not contrary to public interest. The project is not located in an aquatic preserve. The construction of the proposed facilities will help satisfy the growing demand for natural gas in Florida, diversify the sources of supply to the state, and increase competitive alternatives to the existing pipeline infrastructure. The applicant’s project will provide a public benefit because it will introduce substantial new volumes of clean burning natural gas into Florida. DEP staff is of the opinion that with the payment of equitable compensation, environmental resource remediation and mitigation the proposed project is not contrary to the public interest pursuant to section 18-21.004(1)(a), F.A.C.

Item 9, cont.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs (DCA), Division of Community Planning, determined that the project is consistent with the statutes included in the Florida Coastal Management Program, however they had several recommendations regarding public safety related issues. DCA recommends the applicant: (1) construct the entire pipeline to U.S. Department of Transportation Safety, Office of Pipeline Safety, Class 4 Standards in order to eliminate the need for future upgrades and to provide an additional measure of protection to persons living or working near the pipeline; (2) join the Florida One Call Program; and (3) submit to the Division of Community Planning an emergency response plan prior to construction. The plan should describe the pipeline operator's notification procedures, internal response and coordination and should describe the applicant's procedures in preparing for and responding to a storm or terrorist event during construction and operation of the pipeline and associated facilities. Also, the plan should reflect an awareness of the Broward County and state emergency management procedures. The applicant has stated the pipeline will meet or exceed all of the preemptive safety regulations of the Office of Pipeline Safety, USDOT, as found at 49 CRF 192, will join the Florida's One Call Program, and will submit an emergency response plan to DCA prior to construction.

(See Attachment 9, Pages 1-69)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
AND SPECIAL EASEMENT CONDITIONS**