

**AGENDA  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
APRIL 29, 2004**

\*\*\*\*\*

**Item 1      Barron Collier Investments, LTD Option Agreement/Rookery Bay Florida Forever Project**

**REQUEST:** Consideration of an option agreement to acquire 23.92 acres within the Rookery Bay Florida Forever project from Barron Collier Investments, LTD.

**COUNTY:** Collier

**LOCATION:** Section 24, Township 51 South, Range 25 East

**CONSIDERATION:** \$540,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Norris (04/10/02)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Gable	23.92	\$550,000	\$550,000	\$8,700*	\$540,000** (98%)	120 days after BOT approval

\* Purchased in 1966

\*\* \$22,575 per acre

**STAFF REMARKS:** The Rookery Bay Conservation and Recreation Lands Project was removed from the 2000 Priority Project List, as the project was substantially complete. Pursuant to chapter 259.032 (8), F.S., when at least 90 percent of the acreage of a project has been purchased, the project may be removed from the list and the remaining acreage may continue to be purchased. The project contains 20,231 acres, of which 18,619.8 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 1,588 acres or eight percent of the project will remain to be acquired.

The Barron Collier parcels have been identified on the Department of Environmental Protection (DEP), Office Coastal Aquatic Managed Areas (CAMA) Florida Forever approved acquisition list. This acquisition was negotiated by the Division of State Lands (DSL) on behalf of CAMA under the Florida Forever program.

The purchase price was based on the April 10, 2002, opinion of value which used comparable sales sold in a time period from May 2000 to November 2001. Comparables in this area support an increase of 17 percent. Due to the rapid increase of real estate values in this area, DSL has offered 98 percent of the 2002 appraised value rather than initiate the expense of getting a current appraisal.

The two parcels are surrounded by state-owned lands managed through the Rookery Bay National Estuarine Research Reserve and are two of the three remaining parcels on Cannon Island, a 320-acre tertiary barrier island. These parcels are a prime target for development because of the high demand for parcels of this size on unbridged barrier islands. They will fill in a critical gap that currently provides challenges for long-term management activities, including invasive plant control efforts and prescribed fire management. The resources on this site are contiguous with the adjacent mature mangrove forests and tropical hardwood hammock communities, and provide additional contiguous habitat for a number of listed species.

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

**Board of Trustees  
Agenda – April 29, 2004  
Page Two**

\*\*\*\*\*

**Item 1, 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.

Rookery Bay is an outstanding subtropical estuary in the fastest growing part of Florida. Its mangroves shelter important nesting colonies of water birds, and feed and protect many aquatic animals. These animals in turn, are the foundation of commercial and recreational fisheries. Public acquisition of the Rookery Bay project will protect the bay's water quality and its native plants and animals and will provide recreational opportunities to the people of southwest Florida. As an addition to the Rookery Bay National Estuarine Research Reserve, the project will also further coastal ecosystem research and environmental education.

This property will be managed by the CAMA as part of the Rookery Bay National Estuarine Research Reserve.

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 1, Pages 1-19)

**RECOMMEND APPROVAL**

\*\*\*\*\*

**Item 2      Brevard County Option Agreement/Turkey Creek Site/Brevard Coastal Scrub Ecosystem Florida Forever Project**

**REQUEST:** Consideration of an option agreement to acquire 29.83 acres within the Brevard Coastal Scrub Ecosystem (Turkey Creek site) Florida Forever project from Brevard County.

**COUNTY:** Brevard

**LOCATION:** Section 35, Township 28 South, Range 37 East

**CONSIDERATION:** \$220,000 (Board of Trustees' 50 percent share of the County's \$440,000 purchase price)

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Goodman (07/27/01)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
National Heritage Foundation	29.83	\$450,000	\$450,000	\$440,000*	\$220,000**	210 days after BOT approval

\* The National Heritage Foundation received the property in 1998 by donation from the Jack A. Swartz and Dolores L. Swartz Revocable Trust dated July 25, 1991. The trust received the property from the Swartzes, individually, who purchased the property in 1972 for \$17,500. Brevard County purchased the property on November 20, 2003 for \$440,000.

\*\* \$7,333.33 per acre

**STAFF REMARKS:** The Brevard Coastal Scrub Ecosystem Florida Forever 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 56,689 acres of which 7,178.6 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 49,480.57 acres, or 87 percent of the project, will remain to be acquired.

**Board of Trustees  
Agenda - April 29, 2004  
Page Three**

\*\*\*\*\*

**Item 2, cont.**

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protections' (DEP) Division of State Lands (DSL) and Brevard County (County), the County acquired the property from the National Heritage Foundation, Inc. ("NHF"), a Georgia corporation, on November 20, 2003 for \$440,000. Upon approval of this acquisition, the Board of Trustees will reimburse the County for the lesser of 50 percent of the DSL approved value or 50 percent of the County's purchase price and receive 100 percent title to the property. In no event will the Board of Trustees' purchase price exceed 50 percent of the DSL approved value.

All mortgages and liens will be satisfied at the time of closing. At the time the County took title, the property was benefited by an ingress/egress easement through an adjacent property. The ingress/egress easement was granted after the property was appraised, but was granted pursuant to a settlement agreement between the prior owner of the adjacent property and NHF. The appraisers received copies of the settlement agreement during the appraisal assignment. The adjacent property was purchased by the County on April 30, 2003, and is the subject of an approved option agreement with the Board of Trustees, which is pending closing. Because the County now owns both properties, the easement terminated as a matter of law. However, the option agreement terms will result in a new easement from the County in the event the Board of Trustees does not close on the adjacent property. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement the most appropriate resolution for any title issues that arise prior to closing.

A title insurance policy, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing. A survey will be provided by the seller prior to closing. The purchaser will reimburse the seller for the cost of the survey, not to exceed \$15,000.

The strip of coastal scrub that once paralleled the Indian River in Brevard County is now a set of small fragments surrounded by housing developments. Public acquisition of the Brevard Coastal Scrub Ecosystem project will preserve a few of the best fragments, thus helping to ensure the survival of the threatened scrub jay and scrub itself in the county, and providing areas where the public can learn about and appreciate this unique landscape.

The subject property primarily consists of sand pine scrub, scrubby flatwoods and mesic flatwoods. The property also contains hydric hammock as well as tributaries to Turkey Creek, an important manatee habitat in Brevard County. In addition, the property is used by migrating songbirds, including warblers and vireos.

The property will be managed by the County as a conservation area with limited passive recreation and environmental education.

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 1-24)

**RECOMMEND APPROVAL**

\*\*\*\*\*

**Item 3**      **NFWFMD/Conservation Fund Acquisition Agreement/Lower Perdido River Buffer Florida Forever Project/International Paper**

**REQUEST:** Authority to enter into an acquisition agreement with the Northwest Florida Water Management District and the Conservation Fund, as a cooperating entity, for the Lower Perdido River Buffer Florida Forever project, owned by International Paper.

**COUNTY:** Escambia

**LOCATION:** Sections 13, 24 and 25, Township 02 North, Range 32 West; Sections 02, 03, 10 through 15 and 23 through 25, Township 01 South, Range 32 West; Sections 07, 18, 19 and 30, Township 01 South, Range 31 West; Sections 06, 07 and 19, Township 01 North, Range 31 West; and Sections 01, 12 through 14 and 35, Township 01 North, Range 32 West

**STAFF REMARKS:** The Lower Perdido River Buffer 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 7,800 acres. There have been no acquisitions in the project.

To facilitate the acquisition of this project, the Northwest Florida Water Management District (District) has offered to take the lead in the less-than-fee acquisition of the International Paper parcels. Department of Environmental Protection (DEP) staff has prepared an agreement that would allow the District to acquire the parcels within the Lower Perdido River Buffer Florida Forever project in accordance with section 259.041(17), F.S., utilizing the procedures set out in section 373.139, F.S. On October 21, 1997, the Board of Trustees approved the use of the District's procedures to allow the District to acquire lands to be held jointly by the Board of Trustees and the District. Pursuant to section 373.139, F.S., the District has identified this parcel as needed to preserve a riverine area along one of the state's "Outstanding Florida Waters" and to provide recreational access points for canoeing and kayaking.

On March 25, 2004, the Governing Board of the District approved and executed the agreement. Incorporated into the agreement are a number of assurances that the District is giving the Board of Trustees in return for its consideration of this agreement. The District has agreed to: (1) comply with the procedures set out in section 373.139, F.S.; (2) defend the Board of Trustees against all title and survey disputes or defects and environmental contamination associated with each acquisition negotiated by the District that were either known or should have been known by the District at the time the District acquired the parcel; and (3) reimburse the Board of Trustees for any overpayment of the Board of Trustees' purchase price if an audit or investigation determines that the purchase price paid by the Board of Trustees exceeded 50 percent of the actual value.

Pursuant to the proposed agreement, District staff will obtain appraisals, DEP's Division of State Lands (DSL) and the District will review appraisals, The Conservation Fund (TCF) will negotiate an option or purchase contract in accordance with the provisions of this agreement, and the District will secure the approval of its Governing Board. The District will provide DSL with a board memo requesting reimbursement of the Board of Trustees' share of the purchase price. DEP staff will seek approval for the Board of Trustees' share of the purchase price for each parcel the District contracts to purchase. In addition, the agreement provides for the District, under some circumstances, to be reimbursed 50 percent of all costs associated with its attempt to acquire lands within the project, including all pre-acquisition and closing related costs, with the pre-acquisition costs and certain closing costs being reimbursed even if the District is unsuccessful in acquiring any property. If the Board of Trustees and the District elect to purchase an assignment of the option agreement or purchase agreement, TCF shall offer to assign its interest in and under its option agreement or purchase agreement to the Board of Trustees and the District for the costs pursuant to the acquisition agreement. If the

\*\*\*\*\*

**Item 3, cont.**

Board of Trustees approves a specific purchase, the District will proceed to closing with title to be vested jointly, with the District and the Board of Trustees each holding an undivided 50 percent interest.

Pursuant to the proposed agreement, the District will purchase in fee and provide 100 percent of the acquisition costs for a 10-acre recreation site and ingress/egress right-of-way within the project boundary and hold 100 percent interest.

The Lower Perdido River Buffer project will be monitored by the District and Escambia County will manage the 10-acre recreation site.

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

(See Attachment 3, Pages 1-21)

**RECOMMEND APPROVAL**

\*\*\*\*\*

**Item 4      BOT/DMS/City of Tallahassee Settlement Agreement/Cascades Park**

**REQUEST:** Consideration of the conveyance of two parcels of land at Cascades Park to the City of Tallahassee as part of a settlement agreement between the State of Florida and the City of Tallahassee.

**COUNTY:** Leon

**LOCATION:** Section 36, Township 01 North, Range 01 East; and Sections 01 and 06, Township 01 South, Range 01 East

**STAFF REMARKS:** Cascades Park is an area a few blocks southeast of the current Capitol building and is generally comprised of three parcels; a 7.2-acre parcel (Centennial field/MGP site or Parcel A), a 5-acre parcel (East of Gadsden Parcel or Parcel B), and a 5.56-acre parcel (Front of Burns Building or Parcel C). The area had great natural beauty with a waterfall, a sink, woods and rolling hills. In 1821, as a territorial government, Florida needed a more central meeting location between its two largest cities - St. Augustine and Pensacola. In 1823, a commissioner was appointed from each city to select the location for the territory's new Capital. At the Cascades Park area the commissioners were struck by the beauty and splendor of the site, leading them to select the top of a nearby hill as the location for Florida's new Capital.

In 1963, two of the three parcels (Parcels A and B) were conveyed to the Board of Trustees by the City of Tallahassee (City) for expansion of the Capitol Center. The Board of Trustees purchased the third parcel (Parcel C), which is the parcel in front of the Department of Transportation's Burns Building and the site of the Korean War Memorial, from numerous private owners.

In May of 1971, two of the three parcels (Parcels B and C) were approved for listing in the National Register of Historic Places. Subsequently, in November of 1971, the Governor and Cabinet passed a resolution dedicating the land of all three parcels as Cascades Park. The Board of Trustees also leased Cascades Park to the Department of Environmental (DEP), formerly the Department of Natural Resources (DNR), Division of Recreation and Parks

\*\*\*\*\*

**Item 4, cont.**

(DRP), to develop the park. The complete development was never realized due to the lack of sufficient funding.

With the funding that DRP was able to obtain they began the removal of buildings and excavation of the site. The park development continued until 1979 with the completion of a modest park setting. This was accomplished by reshaping and landscaping the terrain, demolishing most buildings and Centennial Field, relocating utility lines, building several foot bridges to cross the St. Augustine Branch, and rerouting of the St. Augustine Branch.

In 1984, the Board of Trustees leased the Cascades Park site to the Department of Management Services (DMS), formerly Department of General Services (DGS), to pursue the development of Cascades Park. DGS also was unsuccessful in securing funding.

In the late 1980s, in response to a U.S. Environmental Protection Agency (EPA) national initiative to identify and assess old Manufactured Gas Plant (MGP) sites, DEP formerly Department of Environmental Regulation (DER) identified an old MGP site at Cascades Park. A preliminary assessment had shown that the soil and groundwater in this area were chemically affected.

The contamination at Cascades Park originates from the use of the property while the City owned it. This use includes major activities of a MGP, which began operation in 1896 and continued in operation until 1956 when natural gas and propane replaced manufactured gas as a fuel source. The plant facilities were located on the southeastern side of the Centennial Field parcel. At the Tallahassee MGP, the manufactured gas process (also known as coal gasification) consisted of heating coal to high temperatures to convert it to gas, and enriching it to produce gas for lighting. Impurities in the gas were removed by forcing the gas through wood chips and sawdust impregnated with iron. By-products of the process included coal tar, light and heavy oils, sludge/ash, and ammonia waste. The chemicals typically associated with MGP operations include: volatile organic compounds (VOCs), semi-VOCs (SVOCs; ie, polynuclear aromatic hydrocarbons [PAHs] and phenolic compounds), metals, and cyanide.

Representative historical practices indicate that MGP wastes were generally disposed in the vicinity of the MGP. The water used in MGP operations was reportedly discharged into nearby St. Augustine Branch (sometimes referred to as Cascade Creek), and the spent filtering material was buried or discarded near the MGP. In addition, contaminated filtering material was also reportedly disposed in a City-owned landfill, located directly to the south of the MGP, from 1928 to 1936.

With the discovery of the contamination from the MGP site, environmental regulatory interests were focused on Cascades Park. In 1990, DER entered into a consent order with DNR, DGS, and the City to initiate corrective actions at the site. It was pursuant to this order that the Phase I Contamination Assessment Report was prepared. That report provided preliminary information on the contamination and recommended that further site investigation be conducted to more fully identify the contamination. Due to a lack of funding the additional site investigation was not initiated.

In response to the lack of action in addressing the site contamination EPA initiated the Expanded Site Inspection in late 1996. In 1997 EPA contacted the City, DEP, and DMS (Respondents) to begin discussions regarding the progress of corrective action at the site. This resulted in the execution of an Administrative Order on Consent (AOC) in 1998 between EPA and the City, DEP, and DMS. The area covered by the AOC is the Centennial Field/MGP site (Parcel A) and the City's former landfill site. The former landfill site is still owned by the City and is only referenced in the proposed settlement agreement for purposes of clarification

\*\*\*\*\*

Item 4, cont.

between the parties. The AOC required that the parties initiate an Engineering Evaluation/Cost Analysis (EE/CA). An EE/CA report details the contamination problem at a site and provides cost analysis on possible methods to address the contamination. In order to implement the requirements of the AOC, the City, DEP, and DMS executed an agreement to equitably share the costs of the EE/CA report specific to the Centennial Field/MGP site. The cost of this report totaled \$645,361.42.

In 1999, the Respondents retained a consultant to conduct the EE/CA at the site. For the first phase of the assessment, the consultant conducted a preliminary survey in April and May 1999 to quickly identify affected areas at the site. The assessment results indicated elevated MGP-related chemical concentrations on the former MGP land, and absent to low/moderate concentrations in other areas of the site.

In response to the assessed contamination, the EE/CA identified a selected remedy, which would include excavation of source contamination, removal of contaminated sediments within Cascades Creek, and monitored natural attenuation of groundwater contamination with an estimated total cost of \$5,155,242.

The Final Draft EE/CA document was submitted to EPA in February 2002, with final supporting documents being submitted March 2002. The final EPA Action Memorandum was issued in June 2003.

Since 1996 the City, DEP and DMS have debated the apportionment of costs associated with the remediation of Cascades Park under the AOC. While the state is the current property owner, liability for contamination is largely due to the City's operation of the MGP plant. However, during the state's ownership, site improvements, which include creation of a storm water detention area, may have contributed to the spread of contamination. Competing studies conducted separately for DEP and the City depict the extent of these effects ranging from negligible to significant (respectively).

In addition to the MGP site, the East of Gadsden parcel (Parcel B) was heavily used by the City for a variety of functions. This parcel included the City's electric generator building, an incinerator building, coal and oil storage, a concrete pipe factory (for the production of storm-water sewer pipes), a vehicle maintenance garage with a fueling station, and an electric equipment warehouse. Some private use of this parcel also occurred which included a planing mill, a sash, door and blind factory, and an ice factory.

The East of Gadsden parcel (Parcel B) also has contamination levels that exceeded acceptable health risk levels. This contamination was confined to three specific areas within the parcel and will require a more minor remedial action than the AOC site with an estimated cost of \$1,012,902.

The City's planned use, while not finalized, includes a range of possible activities including re-establishing a baseball field, developing as part of its Blueprint 2000 program a storm water facility with recreational elements (as the City has done at Lake Ella) building an amphitheater for cultural activities, renovating the historic buildings, and using the open area for community activities. Any use or development by the City must be consistent with the Governor and Cabinet's 1971 dedication of the property.

DEP staff feels that this proposed settlement agreement represents an acceptable good-faith resolution of the issue of the apportionment of costs between the Respondents without having the issue resolved in court or with further EPA involvement. The major issues contained in this proposed settlement agreement are:

\*\*\*\*\*

**Item 4, cont.**

1. The City will be responsible to EPA for all remediation at Centennial Field/MGP and East of Gadsden parcels (Parcels A and B).
2. The City will be responsible to EPA for the remediation of the Landfill site.
3. The State will convey the Centennial Field/MGP parcel (Parcel A) and a modified portion of the East of Gadsden parcel, which will include a portion of Bloxham Street, (Parcel B) to the City (appraised value of \$200,000 and \$140,000 respectively for use as a park ).
4. The State will place deed restrictions on the conveyed property consistent with the Governor and Cabinet's 1971 dedication of the property.
5. The State will provide a flowage easement to the City for that portion of St. Augustine Branch on the parcel in front of the Burns building (Parcel C).
6. All costs previously paid by the City and the State are assumed by the respective parties.
7. Subject to Legislative appropriation, DEP and DMS agree to pay to the City a total of \$500,000 and 15 percent of any costs incurred by the City within five years of the execution of a new AOC, which exceed \$5.2 million.
8. All oversight costs required by EPA shall be paid as follows: 50 percent by the City and 50 percent by DEP and DMS jointly.
9. The City agrees to maintain the East of Gadsden parcel (Parcel B) with the current historic preservation covenant.

(See Attachment 4, Pages 1-21)

**RECOMMEND APPROVAL**

\*\*\*\*\*

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

**DEFERRED FROM THE APRIL 13, 2004 AGENDA  
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



\*\*\*\*\*

Item 5, cont.

**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

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 increases 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,

\*\*\*\*\*

Item 5, cont.

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 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.

\*\*\*\*\*

Item 5, cont.

- 9) A preliminary range of value for Mr. Hardy's property of between \$1.1 million to \$2.6 million has been considered by DSL appraisal staff and a confidential memorandum has been used as a basis for establishing an offer for Mr. Hardy to consider. Upon learning that Mr. Hardy wasn't interested in dealing with the state negotiators, Representative Greg Evers expressed an interest in acting as DSL's emissary and on Monday afternoon, April 5, 2004, he and DSL Senior Acquisition Review Agent Jerry Parrish discussed with Mr. Hardy the sale of his property to the state. During subsequent telephone conversations Mr. Hardy was offered 160 acres in St. Lucie County, owned by the South Florida Water Management District (SFWMD), as a possible land exchange for Mr. Hardy, and he declined any land exchange options. He declined an offer of \$4.5 million representing the preliminary appraisal amount and a calculation for cost avoidance from using eminent domain, stating emphatically he was not interested in selling or exchanging his land. He does not want to move from his property.

DSL has actively pursued negotiations as stated above as well as other attempts to negotiate with Mr. Hardy through the SFWMD and through a friend. All efforts to secure a voluntary sale of his property have failed and we are clearly at an impasse. However, the bona fide offer requirements of section 259.041, (14), F.S., have been satisfied.

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

\*\*\*\*\*

Item 5, cont.

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.
- 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. The first construction piece of Phase 1 is complete.
- Phase 1 of the Everglades Restoration was begun in October 2003. 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. 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

\*\*\*\*\*

Item 5, cont.

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.

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, submitted with the April 13, 2004 Agenda)