

**AGENDA  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
MAY 25, 2004**

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Item 1      Minutes

Submittal of the Minutes of the March 9, 2004 Cabinet Meeting.

(See Attachment 1, Pages 1-26)

**RECOMMEND    APPROVAL**

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Item 2      **TPL Option Agreements/Division of Recreation and Parks Tomoka State Park Additions and Inholdings Project**

**REQUEST:** Consideration of two option agreements to acquire 406.70 acres within the Division of Recreation and Parks Tomoka State Park Additions and Inholdings project from The Trust for Public Land.

**COUNTY:** Volusia

**LOCATION:** Sections 39 and 40, Township 13 South, Range 32 East

**CONSIDERATION:** \$3,311,200

APPRAISED BY:

<u>PARCEL</u>	<u>ACRES</u>	Goodman (11/18/03)	Robinson (11/18/03)	<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>		<u>TRUSTEES' PURCHASE PRICE</u>		<u>OPTION DATE</u>
					*	*	(92%)	(92%)	
Mission Pines	226.40	\$1,140,000	\$1,030,000	\$1,140,000	*	\$1,048,000**		90 days after	
Tall Pines	180.30	\$2,340,000	\$2,460,000	\$2,460,000	*	\$2,263,200***		BOT approval 90 days after	
Totals	<u>406.70</u>			<u>\$3,600,000</u>		<u>\$3,311,200</u>			

\* Inherited  
\*\* \$4,629 per acre (114 units @ \$9,193)  
\*\*\* \$12,552 per acre (223 units @ \$10,149)

**STAFF REMARKS:** The Tomoka State Park project has been identified on the Department of Environmental Protections' (DEP) Division of Recreation and Parks (DRP) Additions and Inholdings List. These agreements were negotiated by DEP's Division of State Lands on behalf of DRP under the State Parks Additions and Inholdings Florida Forever program.

All mortgages and liens will be satisfied at the time of closing. Preliminary due diligence has revealed that the Mission Pines parcel is subject to a 50-foot conservation/environmental easement located along the southerly and easterly boundary of the property, and that the Tall Pines parcel is subject to easements and encumbrances that consist of a 50-foot environmental/conservation easement and a 20-foot drainage easement. The environmental/conservation easement is located along the northern and eastern boundary of the Tall Pines parcel. The drainage easement is located in the southern portion of the same parcel and runs parallel to Pine Tree Drive. The easements and encroachments were considered by the appraisers in their final reconciliation of value. DRP, the future managing agency, has determined that the property can be managed with the easements and encroachments in place. Because these issues were discovered during the preliminary due diligence, further research may change the facts and scope of each issue and, therefore; 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.

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Item 2, cont.

Title insurance policies, surveys, environmental site evaluations and, if necessary, environmental site assessments will be provided by the purchaser prior to closing.

The Tomoka State Park area has long been acknowledged to have exceptional historic values that include plantation ruins. Archaeologists have identified the ruins of a residence and kitchen foundation on the Mission Pines tract. Further surveys are expected to reveal other plantation features on both the Mission Pines and Tall Pines tracts. Acquiring the properties will further enhance a water quality and resource preservation effort begun with the acquisition of the adjacent VOLT tract in 2000. The Tall Pines/Mission Pines tracts are an integral part of an ongoing preservation initiative by local citizens to preserve a greenway corridor in northeast Volusia County. In addition to their natural and cultural resource values, the tracts have aesthetic value for multiple use trail and other resource-based recreation uses.

The properties will be managed by DRP as an addition to the Tomoka State Park.

These acquisitions are consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 2, Pages 1-49)

**RECOMMEND APPROVAL**

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<u>Item 3</u>	Hardy Exchange Agreement/DOA/Waiver of Eminent Domain Policy/Eminent Domain Authorization/Save Our Everglades Florida Forever Project
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DEFERRED FROM THE MAY 11, 2004 AGENDA  
DEFERRED FROM THE APRIL 29, 2004 AGENDA  
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 (1) an exchange agreement between the Board of Trustees and Jesse Hardy; (2) delegation of authority to the Secretary of the Department of Environmental Protection, or designee, to accomplish the acquisition through the exchange agreement; (3) 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 in the event the exchange agreement fails to close; (4) direction to 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 (5) delegation of 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.

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**Item 3, cont.**

**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 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.

**History of this Everglades Project**

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 currently scheduled for May 26, 2004.

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

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**Item 3, cont.**

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.

History with Mr. Hardy's property

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 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 has been 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.

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**Item 3, cont.**

- 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.
- 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.
- 10) During the April 13, 2004 Cabinet Meeting, the Board of Trustees deferred action and directed staff to seek creative alternatives that would allow Mr. Hardy's homestead to remain within the project area. To accomplish that goal, DEP asked SFWMD to secure the necessary engineering studies and cost estimates. SFWMD hired an independent firm, Jacobs, MWH Joint Venture, (JMJV) to evaluate two options and give cost estimates. JMJV issued a report and the two options with cost estimates are: (1) berm the entire 160 acres for a construction cost of \$8 million and an annual maintenance cost for pumps, etc. of \$125,000; and (2) berm the house plus 35 acres as depicted on Mr. Hardy's aquaculture/blasting permit for a cost of \$4.6 million and annual maintenance of \$90,000. Following consultation with the four Cabinet offices, DEP staff developed a negotiation strategy, and on May 7, 2004, DSL Director Eva Armstrong and other DEP staff met with Mr. S. W. Moore, of Brigham, Moore, LLP, in Sarasota, Florida. Mr. Hardy was consulted by telephone after his attorney and engineer had been briefed in detail. The state offered two options: (1) the state pays to berm Mr. Hardy's house and 35 acres, Mr. Hardy pays the annual maintenance, and the state buys the remaining 125 acres associated with the aquaculture business; or (2) Mr. Hardy exchanges his property for 125 acres the state has located in Northern Golden Gate Estates with the same zoning so he can pursue an aquaculture business providing he acquires the appropriate permits and the property is in the same school zone as his current home. Following consultation with his attorney, Mr. Hardy rejected both options but raised the possibility of being open to an exchange for 160 acres, provided it is situated so he can raise fish and sell fill.

A DSL land acquisition agent was sent to Naples the week of May 10<sup>th</sup> to see if a suitable parcel could be found to exchange with Mr. Hardy. By week's end, three 160-acre parcels were located with willing sellers, two in North Golden Gate Estates, zoned for agricultural use and in the same school zone, and one in Belle Meade, zoned for agricultural use. One of the

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**Item 3, cont.**

North Golden Gate Estates properties is owned by someone known to Mr. Hardy. It is part of a 1,000-acre parcel and Mr. Hardy was told he could pick the 160 acres he wanted within the 1,000-acre site.

While staff continues to work towards a successful conclusion, previous attempts to secure a voluntary sale of his property have failed. The bona fide offer requirements of section 259.041, (14), F.S., have been satisfied.

In the event the exchange of land with Mr. Hardy is approved, staff recommends that the Board of Trustees also authorize condemnation on the property similar to the action taken by the Board of Trustees on January 28, 2003. That way, if for whatever reason the exchange is never completed, we will be able to secure title to Mr. Hardy's property without holding up the construction of Phase II anticipated in the Spring of 2005.

As of 2:00 PM, May 13, 2004, staff is waiting for a status report from Mr. Hardy's attorney. Staff's recommendation will be amended as soon as the result of his site visits is known.

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.

Purchasing fee simple title to Mr. Hardy's parcel is a critical component to the project plans for SGGF's hydrological restoration project. Although other Florida Forever projects throughout the state provide for DEP to consider acquisition of less-than-fee title, the SGGF 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 SGGF 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 SGGF 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).

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Item 3, cont.

- 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 will cause additional expense to the project as well as problems in providing police protection.

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**Item 3, cont.**

- 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 3, Pages 1-37)

**RECOMMENDATION PENDING**