

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**AUGUST 24, 2004**

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**Item 1**      **Minutes**

Submittal of the Minutes from the April 29, 2004, May 11, 2004, and May 25, 2004 Cabinet Meetings.

(See Attachment 1, Pages 1-44)

**RECOMMEND APPROVAL**

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**Item 2**      **Billiris Lease Renewal**

**REQUEST:** Consideration of a request to renew a five-year sovereignty submerged lands lease containing 5,400 square feet, more or less, for a commercial mooring facility that includes the mooring of a gambling cruise ship.

**COUNTY:** Pinellas  
Lease No. 523031723

**APPLICANT:** George M. Billiris and Georgii A. Billiris

**LOCATION:** Section 12, Township 27 South, Range 15 East, in the Anclote River, within the Pinellas County Aquatic Preserve, Class III Outstanding Florida Waters, within the local jurisdiction of the city of Tarpon Springs / Pinellas County Aquatic Preserve: Pinellas County, Resource Protection Area III  
Outstanding Florida Waters: Yes  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: No

**CONSIDERATION:** \$706.86 as the initial lease fee computed at the base rate of \$0.1309 per square foot. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable.

**STAFF REMARKS:** On June 22, 1999, the Board of Trustees made a decision to prohibit gambling ship "cruises to nowhere" from mooring on sovereignty submerged lands. As a result, the Department of Environmental Protection (DEP) developed the following language that would be incorporated into all subsequent new leases, renewals, extensions, modifications or assignments: *"During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships."* The lessee's five-year sovereignty submerged lands lease that expired on August 20, 2003 allowed the mooring of a gambling cruise ship. Prior to the expiration date of the lease, DEP's Division of State Lands, in accordance with the Board of Trustees' guidelines, sent to the lessee a lease renewal instrument for execution that contains the above stated condition. However, in light of the outcome of appellate and administrative hearings in late 2002 regarding gambling cruise ships on sovereignty submerged lands, the lessee declined to execute the renewal of the five-year sovereignty submerged lands lease with the gambling cruise ship prohibition.

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**Item 2, cont.**

In 2000 the Board of Trustees proposed a rule that would prohibit the mooring and anchoring of "cruises to nowhere" on sovereignty submerged lands. The Day Cruise Association challenged the proposed rule arguing that the Board of Trustees exceeded the rulemaking authority granted by the legislature. The issue was presented to the 1<sup>st</sup> District Court of Appeals. The court agreed that the proposed rule was beyond the authority the legislature delegated to the Board of Trustees. The court found that the rule was a selective prohibition based on the use of the vessel once it steamed offshore and not on what the vessel did while on sovereignty submerged lands.

The lessee is now requesting that the Board of Trustees renew the lease and allow them to continue the mooring of the gambling cruise ship at the facility. The expired lease authorized the preemption of 5,400 square feet that included the mooring of a commercial casino cruise/tour vessel in conjunction with an upland vehicular parking area with ticket booth and restroom facilities for tour business customers. The mooring area for the tour/casino cruise vessel lies adjacent to the seawall, and is the only slip at the facility.

A casino cruise ship has been operating at the subject facility since 1996 when the lessee and DEP entered a Temporary Use Agreement (TUA) to authorize the mooring of the vessel. Through the TUA, lease fees in arrears were collected for the previous mooring of tour vessels at the facility. After several time extensions to the TUA, DEP's Southwest District approved the proposed lease to include a gambling cruise ship under delegation of authority on August 20, 1998. The execution of the lease was prior to June 22, 1999, the date of the Board of Trustees' policy prohibiting future gambling cruise ships.

During a lease renewal compliance inspection conducted by staff on December 19, 2002 staff observed the absence of manatee signs as required by a special lease condition. In addition, manatee protection fenders required by a special lease condition had been improperly installed. The lessee stated that it no longer had a tour/casino vessel mooring at the facility and requested that it be able to install the fender system prior to bringing in another tour/casino vessel. Currently, there is no tour/casino vessel mooring at the facility. Staff proposes that the special lease condition be modified in the lease renewal to require the installation of the manatee protection fenders prior to bringing in a tour/casino vessel. The manatee signs have been posted, and all lease fees are current according to the Division of State Lands. Except for the proper installation of the manatee protection fenders which will be addressed as a special lease condition, a compliance inspection update conducted by staff on July 15, 2004 found the facility to be in compliance with the terms and conditions of the lease.

The existing lease does not authorize fueling and sewage pump-out facilities and prohibits liveaboards. A DEP environmental resource permit is not required because there are no additional structures proposed in this request. Based on previous site assessments by DEP staff, there are no resource concerns associated with the mooring of a gambling cruise ship at this site. In addition, staff observed no water quality violations or damage to resources when following behind the vessel as it proceeded from the facility to the open waters of the Gulf of Mexico. The existing lease contains provisions recommended by the Florida Fish and Wildlife Conservation Commission to protect manatees. The proposed lease renewal is not required to be noticed, pursuant to section 253.115(5)(i), F.S.

(See Attachment 2, Pages 1-5)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITION**

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**Item 3        Rice Lease Renewal**

**REQUEST:** Consideration of a request to renew a five-year sovereignty submerged lands lease containing 41,962 square feet, more or less, for a commercial marina docking facility that includes the mooring of a gambling cruise ship.

**COUNTY:**    Pinellas  
                 Lease No. 522085599

**APPLICANT:** Agnes E. Rice

**LOCATION:**    Section 15, Township 31 South, Range 15 East, in John's Pass and Boca Ciega Bay, within the Boca Ciega Bay Aquatic Preserve, Class III Outstanding Florida Waters, within the local jurisdiction of the city of Treasure Island / Pinellas County  
                 Aquatic Preserve: Boca Ciega Bay, Resource Protection Area III  
                 Outstanding Florida Waters: Yes  
                 Designated Manatee County: No  
                 Manatee Aggregation Area: No  
                 Manatee Protection Speed Zone: No

**CONSIDERATION:** \$5,492.83 as the initial lease fee computed at the base rate of \$0.1309 per square foot. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the rental rate pursuant to section 18-21.011, F.A.C.

**STAFF REMARKS:** On June 22, 1999, the Board of Trustees made a decision to prohibit gambling ship "cruises to nowhere" from mooring on sovereignty submerged lands. As a result, the Department of Environmental Protection (DEP) developed the following language that would be incorporated into all subsequent new leases, renewals, extensions, modifications or assignments: *"During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships."* The lessee's five-year sovereignty submerged lands lease that expired on July 1, 2004 allowed the mooring of a gambling cruise ship. DEP's Division of State Lands, in accordance with the Board of Trustees' guidelines, recently sent the lessee a lease renewal instrument for execution that contains the above stated condition. However, in light of the outcome of appellate and administrative hearings in late 2002 regarding gambling cruise ships on sovereignty submerged lands, the lessee is requesting the renewal of a five-year sovereignty submerged lands lease that would omit this condition and allow continuation of the mooring of the gambling cruise ship at the docking facility. At the request of the lessee, the Division of State Lands and the lessee entered a Temporary Use Agreement on July 2, 2004 that granted the lessee an interim authorization to continue the uses of sovereignty submerged lands stated in the expired lease while awaiting the presentation of this request to the Board of Trustees. The expired lease authorized the preemption of 41,962 square feet that included the mooring of commercial and non-commercial recreational vessels in conjunction with the upland restaurants, apartments, motels, seafood processing and sales, retail shops, charter fishing, and tour/casino cruise ship businesses. Most of the 36 slips at the facility are for transient use.

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**Item 3, cont.**

In 2000 the Board of Trustees proposed a rule that would prohibit the mooring and anchoring of "cruises to nowhere" on sovereignty submerged lands. The Day Cruise Association challenged the proposed rule arguing that the Board of Trustees exceeded the rulemaking authority granted by the legislature. The issue was presented to the 1<sup>st</sup> District Court of Appeals. The court agreed that the proposed rule was beyond the authority the legislature delegated to the Board of Trustees. The court found that the rule was a selective prohibition based on the use of the vessel once it steamed offshore and not on what the vessel did while on sovereignty submerged lands.

A casino cruise ship has been operating at the subject facility since 1989 when the Department of Natural Resources state lands investigation staff discovered that the docking facility was on state-owned submerged lands without authorization. After the initial notice of violation, additional docks were added without authorization leading to the assessment and collection of administrative fines and lease fees in arrears through the execution of a temporary use agreement in 1997. After several time extensions to the TUA, DEP's Southwest District approved the proposed lease to include a gambling cruise ship under delegation of authority on June 9, 1999. However, by the time DEP's Division of State Lands began its review of the file for lease execution, the Board of Trustees' policy prohibiting future gambling cruise ships had already gone into effect. DEP administration decided to allow the casino cruise ship to remain at the facility, based on the district office's approval of the lease prior to June 22, 1999, the date of the policy.

A lease renewal compliance inspection was conducted by staff on May 22, 2003. Several derelict vessels were observed within the lease area. In addition, minor alterations had been made to several structures within the lease area. The lessee removed the derelict vessels and provided as-built drawings reflecting the alterations to the structures. The lessee was notified on November 25, 2003 that the facility was in compliance with terms and conditions of the lease. A check with the Division of State Lands revealed that all lease fees are current. A compliance inspection update conducted by staff on July 22, 2004 found the facility to be in compliance with the terms and conditions of the lease.

The existing lease does not authorize fueling and sewage pump-out facilities and prohibits liveaboards. A DEP environmental resource permit is not required because there are no additional structures proposed in this request. Previous DEP regulatory permit reviews of applications for over-the-water structures revealed that there were no resource or water quality concerns associated with the mooring of the gambling cruise ship at this site. Florida Fish and Wildlife Conservation Commission recommendations regarding manatee protection were made specific conditions of the previous regulatory permits. The proposed lease renewal is not required to be noticed, pursuant to section 253.115(5)(i), F.S.

(See Attachment 3, Pages 1-4)

**RECOMMEND APPROVAL**

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**Item 4      Miss Becky's Seafood Lease Renewal/Modification**

**REQUEST:** Consideration of a request to renew and modify a five-year sovereignty submerged lands lease to (1) remove Lease Condition No. 30; and (2) include an additional 2,014 square feet of sovereignty submerged lands, for a total preemption of 71,732 square feet.

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**Item 4, cont.**

**COUNTY:** Duval  
Lease No. 160099922

**APPLICANT:** Miss Becky's Seafood

**LOCATION:** Section 38, Township 01 South, Range 29 East, in the St. Johns River, Class III Waters, within the local jurisdiction of the city of Jacksonville  
Aquatic Preserve: No  
Outstanding Florida Waters: Yes  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Yes, 300-foot shoreline buffer.

**CONSIDERATION:** \$9,719.26, representing: (1) \$9,455.93 as the initial lease fee computed at the base rate of \$0.1309 per square foot, and including the initial 25 percent surcharge payment for the additional area; and (2) \$263.33 as lease fees in arrears. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual rental value pursuant to section 18-21.011(1)(a)1, F.A.C.

**STAFF REMARKS:** The lessee is requesting the renewal of a five-year sovereignty submerged lands lease, which expired on October 24, 2002, and from which the lessee is also requesting the removal of Lease Condition No. 30. Lease Condition No. 30 states *"During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships."*

A sovereignty submerged lands lease was first executed on November 20, 1978, and authorized the preemption of 30,500 square feet of submerged lands. A lease modification approved by the Board of Trustees on September 5, 1985, increased the lease area from 30,500 to 52,035 square feet to include all grandfathered and existing structures. Lease modifications and renewals executed after 1985 until October 24, 1997 increased the preempted area from 52,035 to 57,362 square feet.

A site inspection on April 8, 1998 by the Department of Environmental Protection (DEP) staff found vessels mooring outside of the lease area. A Temporary Use Agreement (TUA) was executed to authorize the mooring while the lessee applied for a lease modification. On November 3, 1999, Miss Becky's Seafood submitted a written statement to DEP stating that it would not moor a casino ship at the facility and that the use of the sovereignty submerged lands would be for commercial shrimping, fishing and charter vessels. Based upon the information submitted by the lessee, the Board of Trustees approved the lease modification on December 14, 1999 with a condition prohibiting casino boats. The modification increased the preempted area from 57,362 square feet to 65,341 square feet.

On April 14, 2000, Miss Becky's Seafood requested a lease modification to increase the preempted area by 4,377 square feet (6.7 percent) for a total of 69,718 square feet. The modification was to allow for the mooring of larger and multiple boats at the facility. The modification also requested a Change of Use for the current lease to allow the contractual agreements with third parties for the docking of cruise ships and charter/tour boats. On June 28, 2000, DEP's Office of General Council approved a change in the language for the Change

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**Item 4, cont.**

of Use lease condition to read *“The lessee is hereby authorized to operate a docking facility with a non-water dependent fish processing plant exclusively to be used for the mooring of commercial vessels including the rental of wet slips, and the mooring and the loading/offloading of commercial fishing vessels used in conjunction with an uplands wholesale seafood facility, with fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the Department of Environmental Protection or local authority, whichever entity applies the more stringent criteria, and without liveboards as defined in paragraph 29, as shown and conditioned in Attachment “A”...”*. The modification was approved pursuant to a delegation of authority on July 7, 2000.

Subsequently in a site inspection on January 2, 2001, DEP staff observed a casino ship moored at the facility in violation of Lease Condition No. 30. Furthermore a portion of the vessel was moored beyond the lease area and extended into the riparian rights of the adjacent property owner. A Notice of Non-Compliance was issued noting the mooring of a vessel outside of the lease area. The lessee responded by requesting a modification of its current lease.

Subsequent to the resolution of the appellate and administrative hearings in late 2002 the lessee entered into a TUA for the additional 2,014 square feet. The TUA collected fees due for the additional square footage for a period from October 24, 2002 until October 23, 2003. During the tenure of this TUA, the lessee replaced the previous casino ship with a smaller casino ship which is located within the existing lease area and is 165 feet long by 5 feet wide. The lessee does however continue to desire to expand the lease area in the event that a larger casino ship would be moored at the facility in the future.

On October 24, 2002 the lessee’s lease expired; however, DEP staff continued to bill the lessee, and the lessee continued to pay, for the use of those sovereignty submerged lands previously leased. Currently the lessee has paid for the continued use of those sovereignty submerged lands previously leased through to October 24, 2004.

A site inspection on February 18, 2004 by DEP staff found that the lessee had failed to comply with (1) Special Lease Condition No. 31. a., which requires the lessee to install and maintain a manatee information display and manatee awareness signs; and (2) Special Lease Condition No. 31. c., which requires the lessee to install and maintain a literature display to distribute “Duval County Manatee Protection Zones” booklets. In a letter to DEP, dated July 14, 2004, the lessee advised that it will correct these matters and has ordered the necessary signage and informational display.

In 2000 the Board of Trustees proposed a rule that would prohibit the mooring and anchoring of “cruises to nowhere” on sovereignty submerged lands. The Day Cruise Association challenged the proposed rule arguing that the Board of Trustees exceeded the rulemaking authority granted by the legislature. The issue was presented to the 1<sup>st</sup> District Court of Appeals. The court agreed that the proposed rule was beyond the authority the legislature delegated to the Board of Trustees. The court found that the rule was a selective prohibition based on the use of the vessel once it steamed offshore and not on what the vessel did while on sovereignty submerged lands. The Court did, however, find that if a condition was included in a lease it was a valid condition and failure to comply would constitute a breach of the lease.

Since the applicant violated the terms of the lease, the Board of Trustees has a number of options. The Board of Trustees can (1) approve the request; (2) deny the request for a lease renewal; or (3) approve the lease renewal with conditions. These conditions include a shorter lease term; for example one year rather than the standard five-year lease. Moreover, since one

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**Item 4, cont.**

of the violations resulted from conducting an activity prohibited under the terms of the lease (casino boats) the Board of Trustees could continue the prohibition.

The existing lease authorizes fueling facilities, sewage pumpout facilities and prohibits liveaboards. A DEP environmental resource permit is not required because there are no additional structures proposed. There are no seagrasses, or any other resources, at this site. Florida Fish and Wildlife Conservation Commission manatee provisions are contained in the existing lease; however, the lessee has failed to comply with Special Lease Condition Nos. 31. a. and 31. c. The proposed lease renewal and modification is not required to be noticed, pursuant to section 253.115(5)(i), F.S. The project is not located within the 25-foot setback area.

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 is not in compliance. In accordance with a Compliance Agreement between the DCA and the local government, an amendment has been adopted which brought the plan into compliance. The proposed activity is consistent with the adopted plan as amended according to a letter received from the City of Jacksonville, Planning and Development Department, dated October 23, 1998.

(See Attachment 4, Pages 1-6)

**RECOMMEND APPROVAL OF A ONE-YEAR TERM LEASE SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF \$9,719.26**

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**Item 5        T2K Fregly, L.L.C. Exchange Agreement**

**REQUEST:** Consideration of an exchange agreement under which the Board of Trustees would convey two parcels, totaling 0.24-acre, of state-owned non-conservation land in Leon County to T2K Fregly, L.L.C., in exchange for two parcels, totaling 0.24-acre, of land owned by T2K Fregly, L.L.C.

**COUNTY:** Leon

**APPLICANT:** T2K Fregly, L.L.C. (Fregly)

**LOCATION:** Section 01, Township 01 South, Range 01 West

**CONSIDERATION:** Parcel for-parcel

		APPRAISED		
		BY		
		Carlton	APPROVED	CLOSING
PARCEL	ACRES	10/02/03	VALUE	DATE
(1)T2K Fregly	0.24	\$123,400	\$123,400	120 days
(2)BOT	0.24	\$115,000	\$115,000	after BOT
				approval

**STAFF REMARKS:** This exchange was negotiated by the Department of Environmental Protection's (DEP) Division of State Lands (DSL). DSL received a request from Fregly, with approval from the Department of Management Services (DMS) to exchange two parcels,

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**Item 5, cont.**

totaling 0.24-acre, of state-owned land for two parcels, totaling 0.24-acre, of land owned by Fregly. The state owned parcel is vacant land and is managed by DMS under lease No. 3973, the Capitol Complex Center Lease. These state owned lots were purchased in the 1970's for future government office space. The property to be exchanged by Fregly is also vacant land, and both properties are located in downtown Tallahassee between Blount Street and West Bloxham Street. The exchange of these parcels would provide Fregly with ownership of most of the north half of the block and the Board of Trustees with ownership of the majority of the south half of the block. This would allow both parties to consolidate their property ownership in this area.

This exchange is beneficial to the state not only because it provides for consolidation of state-owned lands, but also because the property being received by the state exceeds the value of the state-owned parcel by \$8,400. In addition, the exchange agreement provides that Fregly will pay all closing costs including reimbursing DSL for the cost of the environmental site assessment and title insurance for Parcel 2.

DEP has determined that surplus land sales are not subject to the local government planning process. The acquisition of the Fregly property 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 1-31)

**RECOMMEND APPROVAL**

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**Item 6        St. Joe Timberland Company of Delaware, L.L.C. Exchange Agreement/  
Determination**

**REQUEST:** Consideration of (1) a determination that a 2.2-acre parcel, more or less, of state forest land in Bay County is no longer needed for conservation purposes, pursuant to Article X, section 18 of the Florida Constitution and section 253.034(6), F.S.; (2) a determination that the property is surplus; and (3) an exchange agreement under which the Board of Trustees would convey the previously mentioned parcel to St. Joe Timberland Company of Delaware, L.L.C. in exchange for a 4.4-acre parcel, more or less, of land adjacent to and to be included in the Pine Log State Forest.

**COUNTY:** Bay

**APPLICANT:** St. Joe Timberland Company of Delaware, L.L.C. (St. Joe)

**LOCATION:** Section 19, Township 01 South, Range 16 West

**CONSIDERATION:** Parcel-for-parcel

		APPRAISED BY		CLOSING
		Wright	APPROVED	
<u>PARCEL</u>	<u>ACRES</u>	<u>01/30/04</u>	<u>VALUE</u>	<u>DATE</u>
(1)St. Joe	4.42	\$7,300	\$7,300	120 Days
(2)BOT	2.20	\$3,700	\$3,700	after BOT
				approval



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**Item 6, cont.**

**STAFF REMARKS:** The Department of Environmental Protection (DEP), Division of State Lands (DSL) received a request from St. Joe to exchange a parcel of land located adjacent to the Pine Log State Forest (Forest) for a parcel of Board of Trustees' land in the Forest located south of Pine Log Road/County Road 2296 (Pine Log Road) and west of Highway 79.

The Division of Forestry (DOF) manages the Forest and recommends approval of the surplus land request and exchange, since the small sliver of land located within the Forest is separated from the main state forest by Pine Log Road. The separation limits DOF's ability to effectively manage the parcel. The parcel that is owned by St. Joe is adjacent to the Forest and would facilitate DOF's ability to manage the Forest.

The small strip of Forest land became separated from the Forest when Bay County (County) paved Pine Log Road. Originally, Pine Log Road served as a dirt, logging road. When the County received a road easement, around 1970, they took the centerline of the existing dirt logging road and built a paved road 30 feet from the existing line, without regard to the Forest property line.

The state-owned parcel was acquired in 1936 from funds appropriated by the federal government through a program authorizing the acquisition, development and management of a system of state forests and parks. Pine Log State Forest was the very first state forest acquired through this program.

The Forest parcel is triangular in shape and lies between Pine Log Road and St. Joe property. This property consists of mostly sand and slash pine plantations. The sand and slash pines are approximately 15 years old. The ground cover is made up of gallberry, yaupon holly, waxmyrtle, titi, cat briar, blackberry and runner oak.

The St. Joe parcel is a rectangular shaped parcel running parallel to the Forest. This property consists of mostly slash pine plantation, approximately 15 years old. The ground cover is made up of gallberry, yaupon holly, waxmyrtle, titi, cat briar, blackberry and runner oak. There is an unimproved dirt road that runs along the entire length of the parcel that is used by both St. Joe and the state. Upon approval by the Board of Trustees of this proposed land exchange, this road will belong to the state. St. Joe will no longer have a need to use this road, as they will establish new roads from Pine Log Road to access their property.

On February 7, 2003, the Acquisition and Restoration Council recommended that the state-owned parcel is no longer needed for conservation purposes and may be exchanged for adjacent land owned by St. Joe.

In order to surplus conservation lands through a land exchange, pursuant to section 253.034(6), F.S., the Board of Trustees, by a vote of at least three members, must make a determination that the lands are no longer needed for conservation purposes and that the exchange will result in a net positive conservation benefit to the state. In this case, the Forest boundary will become contiguous, allowing better management of the Forest. In addition, a net gain of 2.2 acres of additional conservation land, valued at \$3,700, will be added to the Forest boundary.

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

(See Attachment 6, Pages 1-34)

**RECOMMEND APPROVAL**

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**Item 7            DHSMV Exchange Agreement/Determination**

**REQUEST:** Consideration of (1) a determination that a 4.35-acre parcel, more or less, of state-owned land is no longer needed pursuant to 253.034(6), F.S.; and (2) a determination that the property is surplus; and (3) an exchange agreement under which the Board of Trustees would convey an improved 4.23-acre parcel of state-owned land in exchange for a 5.03-acre parcel with to-be-constructed improvements.

**COUNTY:** Orange

**APPLICANT:** Department of Highway Safety and Motor Vehicles

**LOCATION:** Section 32, Township 21 South, Range 29 East; and Section 01, Township 22 South, Range 29 East

**CONSIDERATION:** Value-for-value with \$30,000 to be deposited into the Highway Safety Operating Trust Fund.

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>CLOSING DATE</u>
		<u>Sutte (06/21/04)</u>	<u>Church (06/24/04)</u>		
(1) Casto Southeast	5.03	\$3,000,000	\$3,000,000	\$3,000,000	within 15 days after issuance of a certificate of substantial completion by the building authority
(2) BOT	4.35	\$3,030,000	\$2,830,000	\$3,030,000	

**STAFF REMARKS:** Pursuant to section 18-2.018(3)(b)4.a.b., F.A.C, a state agency may apply for an exchange of state-owned lands for a parcel of privately-owned uplands by certifying it needs a parcel of private land for a particular use; and that it manages uplands vested in the Board of Trustees which it wishes to use for a state agency exchange.

Due to a lack of funding that would allow the Division of Highway Safety and Motor Vehicles (DHSMV) to expand the current Driver’s License (DL) facilities located in Winter Park, Florida, staff at the DHSMV discussed the option of exchanging the existing DL facility for other property that would better suit its needs. Department of Environmental Protection (DEP) staff advised DHSMV that a Request for Information (RFI) would be the best way to proceed with an exchange.

On October 9, 2000, DHSMV issued a RFI to various real estate companies in Orange County. DHSMV received four replies; two of which were considered non-responsive. DHSMV staff reviewed the responsive replies from Casto Southeast, LLC and Florida Property Group and selected Casto Southeast, LLC to construct the new driver’s license facility. Factors for selection included: location, size and configuration of the site to the specific need, accessibility onto the site by the motoring public, and proximity to other DL offices and other related state, city and county agencies.

On October 13, 2003, DHSMV submitted an Application for Land Exchange to DEP for the land exchange with Casto Southeast, LLC. The parcel to be conveyed by the Board of Trustees is currently under lease and used by DHSMV as a driver’s license office in Winter Park. This DL facility is presently open, but is in urgent need of repair and renovation. The office is the second busiest DL facility in Florida and DHSMV staff has determined that it is too small for the number of public constituents it serves. In the event that the Board of Trustees approves this exchange, not only will the state receive a new and much larger DL facility; the building will also house the Division of Motor Vehicle’s Compliance and Enforcement group, saving DHSMV \$57,904.50 per year in lease payments.

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**Item 7, cont.**

The Legislature has acted twice on the issue of this exchange. During the 2003 session, Specific Appropriation 2377A and 2377B was passed by the Legislature. The language that was passed allocated monies for this exchange, and a future exchange of land, which is contingent upon sufficient proceeds from the sale of this facility in Winter Park and a Palm Beach facility. The Palm Beach facility is not a part of the present exchange. The capital asset funds approved by the 2003-2004 Legislature for the Winter Park facility total \$3,252,289. The capital asset funds are the proposed project costs, which would include costs of land, all appraisals, design contract and construction specifications for the turnkey new building, including furnishings.

In its 2004 session, the Legislature, in House Bill 1837, amended section 253.034, F.S., and added subsection (13) which reads as follows:

(13) Notwithstanding the provisions of this section, funds from the sale of property by the Department of Highway Safety and Motor Vehicles located in Palm Beach and Orange Counties are authorized to be deposited into the Highway Safety Operating Trust Fund to facilitate the exchange as provided in the General Appropriations Act, provided that at the conclusion of both exchanges values are equalized. This subsection expires July 1, 2005.

Pre-construction work on the new building will commence approximately 30 days after Board of Trustees approval and is anticipated to take 10-12 months to complete. The exchanging of lands will not occur prior to, nor exceed, 15 days after, issuance of a certificate of substantial completion by the building authority and satisfaction of matters on the punch list.

Property owners within 500 feet of the state-owned property were notified of the exchange. Two letters of objections were received during the noticing period.

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

(See Attachment 7, Pages 1-72)

**RECOMMEND APPROVAL**

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**Item 8      FWCC/Palm Beach County Easement/Exchange/Determination/J.W. Corbett Wildlife Management Area**

**REQUEST:** A determination that a request by Palm Beach County that the Florida Fish and Wildlife Conservation Commission issue road, canal and electrical substation easements totaling approximately 29.62 acres within the J. W. Corbett Wildlife Management Area in exchange for 60 acres of land adjoining J. W. Corbett Wildlife Management Area is in the best interest of orderly and economical development of the area, pursuant to section 372.023(1), F.S.

**COUNTIES:** Palm Beach and Martin

**APPLICANT:** Palm Beach County (County)

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**Item 8, cont.**

**LOCATION:** Sections 12 and 13, Township 42 South, Range 40 East; and Section 24, Township 41 South, Range 40 East (easement areas).  
Section 30, Township 40 South, Range 40 East (replacement parcel)

**CONSIDERATION:** Easements for Property

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>CLOSING</u>
		Holden (07/24/04)	<u>APPROVED</u> <u>VALUE</u>	<u>DATE</u>
Easement areas	29.62	\$319,625 (06/02/04)	\$319,625	120 days after BOT approval
Replacement property	60.00	\$600,000	\$600,000	120 days after BOT approval

**STAFF REMARKS:** Pursuant to section 372.023, F.S., in order to trade, barter, lease, or exchange lands for lands of greater acreage contiguous to the J. W. Corbett Wildlife Management Area, (Corbett WMA) or grant easements over land within the Corbett WMA, the Florida Fish and Wildlife Conservation Commission (FWC) must obtain a determination by the Board of Trustees that such action is in the best interest of orderly and economical development of the area.

The County submitted an application to the FWC requesting the use of a portion of Corbett WMA in the development of the Scripps-Palm Beach County Biotechnology Research Park (Research Park). Palm Beach County, in cooperation with the state, is currently engaged in planning for the imminent arrival of the Research Park. Construction of the site is anticipated to begin in the summer of 2005.

The County advised that it will require five specific areas of Corbett WMA. The sites include: a road right-of-way easement to accommodate the planned expansion of Seminole Pratt Whitney Road (approximately 4.73 acres); a canal easement to allow for construction of a canal maintenance road (approximately 3.35 acres); an electrical substation easement upon which Florida Power and Light Company can facilitate delivery of electrical service to the Research Park (approximately 6.37 acres); a road right-of-way easement to accommodate improving the Bee Line/Seminole Pratt Whitney intersection and railroad crossing just to the south of the intersection (approximately 1.25 acres); and the planned construction of a “canal/flow way” by the South Florida Water Management District (SFWMD) as part of the Comprehensive Everglades Restoration Plan (CERP) (approximately 13.92 acres). Although the SFWMD “canal/flow way” site is not immediately needed to undertake construction of the Research Park, the County has agreed to incorporate it into the application on behalf of the SFWMD so that all of the planned affected areas of Corbett WMA can be considered in one request. Collectively, these sites total approximately 29.62 acres and are generally along the eastern perimeter of Corbett WMA as shown on the attached maps.

To provide contextual background for these requests, a brief history and description of Corbett WMA is provided. Corbett WMA encompasses approximately 60,288 acres in north central Palm Beach County, south of State Road 710, 25 miles west of West Palm Beach. FWC purchased the original 52,000 acres of Corbett WMA in 1947, with subsequent acquisitions contributing to its present size. The lands within Corbett WMA consist of a diverse mosaic of natural habitats important to the conservation of fish and wildlife as well as providing resource based public outdoor recreation. Natural land coverage within the Corbett WMA includes pine flatwoods, cypress sloughs and domes, marshes and prairies, and hammocks. These areas provide habitat for a variety of listed species including the red-cockaded woodpecker, Florida sandhill crane, bald eagle, southeastern kestrel, and Audubon’s caracara.

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**Item 8, cont.**

Other rare and listed species occurring rarely or occasionally on Corbett WMA include the Florida panther, Everglades mink, peregrine falcon, snail kite, wood stork, and least tern. In addition, Corbett WMA is habitat for a variety of more common native wildlife and provides a variety of nature-based recreation. Accordingly, it is because of the important conservation purpose that Corbett WMA fulfills and the fact that it was acquired to conserve these resources in perpetuity that such requests for conversion of conservation lands require careful consideration. Corbett WMA is primarily composed of lands acquired with federal grant in aid monies (which includes the sites under consideration) administered by the U.S. Fish and Wildlife Service (USFWS) with title vested in the FWC. Therefore, use of the property is governed by grants stipulating management for fish and wildlife conservation and compatible resource based public outdoor recreation. For these reasons, both the FWC and USFWS must give approval of any proposed use of the property which is inconsistent with that purpose.

Further, Section 372.023(1), F.S., requires that the Board of Trustees must also approve any requested use of this type on Corbett WMA.

The County's application culminated a series of meetings between FWC and County staff on this project to resolve issues associated with the proposed uses. As a result of FWC's initial review, staff determined that the proposed uses outlined in the County's application were incompatible with the purpose for which the Corbett WMA lands were acquired (wildlife conservation). FWC advised the County to consider and obtain approval for the incompatible uses by acquiring replacement lands, and to agree to pay all costs associated with land transactions, permits, surveys, appraisals and conveyance of the replacement property to FWC, free and clear of any other encumbrances except for the Florida Power Light utility easement and Southern States Land and Timber oil, gas and mineral reservations.

As mitigation for the impacted sites, the County has contracted to purchase an 85-acre triangular parcel of land (Minkin parcel) that abuts Corbett WMA. In exchange for the easements, and as mitigation to offset any impacts, the County has agreed to convey to FWC, approximately 60 acres of the Minkin parcel (in Martin County and located on Corbett's northern boundary). The replacement property will be conveyed in fee simple ownership to FWC and will be managed as part of the Corbett WMA. These lands would carry the same reservations as lands to be conveyed and would not be considered Board of Trustees' land under the 1967 Act that transferred all agency lands to the Board of Trustees.

The remaining acreage of the Minkin parcel will be used for regulatory mitigation. The SFWMD will handle environmental resource permitting through the Southeast District Office. The SFWMD also believes that approval of the various easement areas to be obtained within the Corbett WMA, should all be presented, reviewed, and approved at one time. Regarding the replacement lands, the SFWMD has committed to pursue an agreement to reimburse the County for the portion of lands necessary for the North Palm Beach County CERP project, Part 1 and Restoration of the Northwest Fork of the Loxahatchee River, at the same price per acre the County paid for these lands. The timing and method for reimbursement will be determined through a future agreement between the County and the District Office. Further, as a result of ongoing negotiations with the County, FWC staff has agreed to recommend the conceptual approval of replacement lands adjoining the boundary of Corbett WMA. This property is included within the optimum planning boundary of the Corbett WMA Conceptual Management Plan. However, before final approval can be granted by FWC, the County is required to furnish all outstanding items. Acceptance of the replacement property the County is acquiring will apply only to the proprietary consideration necessary to satisfy both the fiduciary and land replacement requirements associated with the proposed proprietary grants.

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**Item 8, cont.**

Any mitigation that may be required for the issuance of regulatory permits will be considered separately.

An Environmental Site Assessment, Phase I, was performed for the Minkin parcel. The assessment complies with the typical standards (ASTM E 1527-00) and indicates no environmental hazards that would preclude acquisition of this parcel, nor would it raise concerns of a management or administrative nature. No evidence to justify further environmental study of the subject property was identified.

A resource assessment for the Minkin parcel in south central Martin County was provided on June 29, 2004. The resources studied included all minerals as well as oil and gas. A couple of oil test wells were drilled at this site over the years and the wells were found to be dry, plugged and abandoned. The potential for the discovery of hydrocarbons at this particular location is thought to be quite slim. The near-surface sediments in this region are believed to hold little economic potential as industrial mineral commodities.

The County has also received approval from the Department of Community Affairs (DCA) for the development of the Research Park with several conditions. New transportation and housing studies will have to be done once the first phase of development is under way. Further, it is likely the campus master plan will have to be changed to add affordable housing and to control additional business traffic that the Research Park is expected to attract. The county expects to consider adoption of the Comprehensive Plan amendments and approval of the Development of Regional Impact (DRI) application on September 8, 2004.

Pursuant to the National Environmental Policy Act (NEPA) Section 7, and the State Historic Preservation Office (SHPO), the USFWS has stated it will review the County's request upon their receipt of all due diligence documentation. Section 7 of the Endangered Species Act directs all Federal agencies to use their existing authorities to conserve threatened and endangered species and, in consultation with the USFWS to ensure that their actions do not jeopardize listed species or destroy or adversely modify critical habitat. Section 7 applies to management of federal lands as well as other federal actions that may affect listed species, such as federal approval of private activities through the issuance of federal permits, licenses, or other actions.

Pursuant to chapter 253.034(6)(e) F.S., the County's request will be considered by the Acquisition and Restoration Council (ARC) during its August 19-20, 2004 meeting.

On June 10, 2004 the Fish and Wildlife Conservation Commission granted conceptual approval of the County's request for these incompatible uses of conservation land, contingent upon the following requirements:

- Agreement to convey suitable replacement land that adjoins Corbett WMA to the Commission at equal or greater fiduciary and habitat value than the lands being taken, with replacement acreage provided at a ratio of at least 2 to 1;
- Agreement to mitigate, to the greatest extent practicable, the residual impacts of the proposed uses;
- Agreement by the County to pay all of the costs required to complete the land transactions;
- Review and approval of the necessary documents (easements, deeds, etc.) and products (title work, surveys, appraisals, environmental site assessments, etc.) necessary to effectuate such a transfer;
- Conveyance of the replacement property free and clear of any encumbrances other

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**Item 8, cont.**

encumbrances except for the Florida Power Light utility easement and Southern States Land and Timber oil, gas and mineral reservations;

- Agreement to provide final surveys and any other documents necessary for all easement areas and the replacement parcel prior to or at closing;
- Approval of the USFWS; and
- Final approval of the FWC upon satisfaction of the above requirements.

FWC in conjunction with DEP has reviewed the required items and documents listed above and have determined that the County has sufficiently satisfied the requirements at this stage, to move forward with requesting the consideration and the approval of the USFWS and the Board of Trustees. By proceeding with this land transaction as proposed, the Corbett WMA and the residents of Palm Beach County will benefit in the following ways:

- Creates a permanent “compatibility buffer” along the eastern boundary of the Corbett WMA so that development immediately to the east of Corbett WMA enhances the ability of the Corbett WMA to meet its preservation, wildlife management, and recreational program objectives by providing natural barrier and controlled access into Corbett WMA and provides for set back from adjacent residential and commercial uses.
- Facilitates proper short and long term planning between the County, the SFWMD, and the Corbett WMA on implementation of a portion of the CERP by securing a viable implementation strategy/corridor.
- Facilitates a number of related State program initiatives by setting aside land for a trail head and feeder trails for biking, hiking and equestrian use, relating to the Ocean to Lake Trail, and the Lake Okeechobee Scenic Trail.
- Eliminates the need to impact the Corbett WMA with new electrical transmission lines and corridors within the Corbett WMA. Eliminates the need for additional overhead electrical transmission lines/structures impacting residential neighborhoods.
- Creates an evacuation route for Acreage/Loxahatchee and Research Park with direct access to SR 710 (Beeline Highway).
- Enhances the Corbett WMA area by: (1) exchanging land within Corbett WMA which cannot be used to its greatest potential because of limited ability to perform prescribed burns for twice as much land of greater quality and utility to Corbett WMA, (2) immediately creating enhanced access control along the affected eastern boundary of the Corbett WMA, including enhanced access control to the transmission corridor, and ultimately the highest level of access control into the Corbett WMA by the construction of the Corbett Canal, (3) creating enhanced public access facilities to the Corbett WMA adjacent to its existing South Entrance and Youth Camp by the construction of a paved access road and parking facilities on approximately six acres of the Research Park property, the total value of land and improvements which will exceed \$1,000,000.00 when completed, and, (4) eliminates the ongoing maintenance costs associated with the current access easement to the South Entrance/Youth Camp along the western boundary allowing the Corbett WMA to redirect those resources to other program objectives.
- Eliminates condemnation of residential homes and property along existing Seminole Pratt Whitney allowing existing home sites to remain, eliminating delays to the implementation of the Scripps development within the Research Park associated with the delays of condemnation and/or unknown financial exposure associated with a quick take of the property.

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**Item 8, cont.**

- Allows the Research Park and Scripps projects to meet its critical infrastructure needs for access, reliable power and water management in the most responsible and reliable manner possible. The public benefit of the Scripps project has already been established by the State of Florida via, the Office of Tourism, Trade and Economic Development (OTTED) via the Memorandum of Understanding between OTTED and the County, and by the Palm Beach County Board of County Commissioners via Grant Agreement between the County and the Scripps Research Institute.

In summary, due to the urgency associated with meeting the timeline requirements for the Comprehensive Plan amendments and the DRI application of the Research Park and due to the importance of this project to expanding Florida’s economic diversity and potential, the County is requesting approval of this project. Final approval will be considered upon receipt of documentation from the County that it has satisfied all of the requirements associated with allowing incompatible uses upon state and federal aid conservation land. Closing of this transaction will be considered by FWC upon approval of USFWS and the Board of Trustees.

Department of Environmental Protection staff recommends that the Board of Trustees grant approval of the proposed exchange pursuant to section 372.023(1), F.S. Staff is of the opinion that the proposed land to be conveyed to FWC is (1) of greater acreage and value; (2) is contiguous to the Corbett WMA; and (3) is in the best interest of orderly and economical development of the area.

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

(See Attachment 8, Pages 1-104)

**RECOMMEND APPROVAL**

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**Item 9            Orange County Option Agreement/Cady Way Trail Phase II Florida Forever Project**

**REQUEST:** Consideration of an option agreement to acquire 4.59 acres within the Cady Way Trail, Phase II Florida Forever project from Orange County.

**COUNTY:** Orange

**LOCATION:** Section 02, Township 22 South, Range 30 East

**CONSIDERATION:** \$433,000

PARCEL	ACRES	APPRAISED BY	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
		DeRango (06/11/01)				
Orange County	4.59	\$433,000	\$433,000	\$483,000*	\$433,000** (100%)	120 days after BOT Approval

\* Orange County purchased the property on 07/28/03  
\*\* \$94,335 per acre



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**Item 9, cont.**

**STAFF REMARKS:** The Cady Way Trail project has been identified on the Department of Environmental Protection's (DEP) Office of Greenways and Trails' (OGT) Florida Forever approved acquisition list. This acquisition was negotiated by the Division of State Lands on behalf of OGT under the Florida Forever Greenways and Trails program. The project contains 4.59 acres. After the Board of Trustees approves this agreement, the project will be complete.

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.

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 proposed extension to the Cady Way Trail is a rail corridor located in north central Orange County that is no longer in use. The railroad tracks have been removed and it is a vacant corridor. It begins at the north end of the existing Cady Way Trail in the City of Winter Park and runs through the community of Goldenrod before connecting to the Cross Seminole Trail to the northeast.

The Cady Way Trail, Phase II is a key link in a 30-mile-long system of trails in eastern Orange and Seminole Counties, connecting the existing Cady Way Trail and the Little Econ Greenway with the Cross Seminole Trail.

This will be a paved multi-use trail. The conversion of the corridor into a recreational trail and subsequent development and management activities will assist in controlling the exotics that are prevalent on the property.

This acquisition furthers the mission of OGT, which is "To facilitate the establishment of a statewide system of greenways and trails for recreation and conservation purposes."

**OGT's Application Process**

Applicants apply for OGT's 1.5 percent (\$4.5 million) annual allocation of Florida Forever funding through an application process. The applicants must meet criteria specified by chapter 260, F.S., and detailed by rule in chapter 62S-1, F.A.C. Applications are initially reviewed by OGT staff and biologists and then forwarded to the Florida Greenways and Trails Council for review and approval. The council consists of 21 members as outlined in chapter 260, F.S. At a public meeting, the council evaluates the projects before recommending a final acquisition list. The list is then forwarded to the Secretary of DEP for final approval.

In order to be eligible, applicants must apply for and receive a Certificate of Eligibility. A Certificate of Eligibility is approved by staff if the proposed project meets the definition of a greenway or trail; as defined in chapter 260, F.S.; the planned project corridor is located with or adjacent to at least one opportunity segment on one or more of the Recreational Prioritization Maps; at least 80 percent of the planned project corridor has a landowner willing to negotiate and; the project has a willing manager. Once the Certificate of Eligibility is approved, the application may then be submitted during an open cycle period. Proposed projects are then evaluated based on the following criteria: the rank (high, medium, or low) assigned to the project based on the Recreational Prioritization Maps; the percentage of any matching funds available or committed to the project; the percentage of acreage that is

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**Item 9, cont.**

proposed for less-than-fee acquisition; the ecological values; the recreational attributes; and the historical and cultural resources. Projects are then grouped into an A or B category and recommendations are made to the Florida Greenways and Trails Council for approval at a public meeting and then forwarded to the Secretary of DEP for final approval.

The proposed purchase of Cady Way Trail, Phase II, was identified for acquisition in accordance with this plan because of its opportunity for recreational connections.

**Florida's Statewide Greenways & Trails System**

The major components of the Florida Statewide Greenways and Trails Program were established through a legislatively adopted plan. This plan was developed through the work and consensus of a broad range of groups and stakeholders such as recreational users, conservation groups and private landowners. The foundation for its development consisted of various legislative actions and efforts that occurred throughout the more than 20 years prior to its adoption in 1999. OGT is charged with overseeing the establishment of the statewide system of greenways and trails, in coordination with the Florida Greenways and Trails Council.

One important component of the Florida Greenways and Trails Program is the identification of ecological and recreational connections (opportunity areas) throughout the state. These areas have been identified, mapped and prioritized and are the basis for developing and evaluating acquisition projects.

OGT will be the interim manager of the property with the Orange County Parks and Recreation Division as the long-term manager.

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 9, Pages 1-31)

**RECOMMEND APPROVAL**

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**Item 10      TNC Assignment of Option Agreement/Conservation Easment/Apalachicola River Florida Forever Project**

**DEFERRED FROM THE AUGUST 10, 2004 AGENDA**

**REQUEST:** Consideration of the acceptance of an assignment of an option agreement to acquire a perpetual conservation easement over 2,124.5 acres within the Apalachicola River Florida Forever project from The Nature Conservancy.

**COUNTY:** Calhoun

**LOCATION:** Sections 04 through 09 and 17 through 20, Township 02 South, Range 08 West

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Item 10, cont.

CONSIDERATION: \$2,160,745 (\$2,124,500 for the acquisition; \$36,245 for the purchase of the option agreement)

APPRAISED BY:				SELLER'S		TRUSTEES'	OPTION
PARCEL	ACRES	Rogers (01/06/03)	Ryan (01/06/03)	APPROVED VALUE	PURCHASE PRICE	PURCHASE PRICE	
Corbin/ Tucker	2,124.5	\$1,850,000	\$2,170,000	\$2,170,000	*	\$2,160,745** (99%)	120 days after BOT approval

\* The property has been in the family for over 60 years.  
\*\* \$1,017 per acre; Fee Value is \$3,930,000; Conservation Easement Value is 55% of the Fee Value

STAFF REMARKS: The Apalachicola River project is an “A” group project on the Florida Forever Less Than Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 27,155 acres, of which 2,294.21 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement 22,736.29 acres, or 84 percent of the Apalachicola River Florida Forever 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 an easement over this 2,124.5-acre parcel from David Finlay Corbin, John Kendrick Tucker and Thomas Michael Tucker. There are approximately 1.5 miles of river frontage. After this acquisition is approved, the Board of Trustees will acquire the option from TNC for \$36,245, 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 easement. The assignment of option agreement provides that payment to TNC is contingent upon the Board of Trustees successfully acquiring the easement from the owner. In no event will the Board of Trustees’ purchase price exceed the approved value.

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

- Dumping of soil, trash, liquid or solid waste, hazardous materials will be prohibited;
- Exploration for and extraction of oil, gas, minerals, peat, muck, limestone, etc. will be prohibited, except as reasonably necessary to combat erosion or flooding and except for directional drilling conducted from the Disturbed Uplands. According to the Bureau of Geology, current information does not suggest the presence of any economically viable near-surface commodities at this location other than perhaps the quartz sand;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife preservation will be prohibited;
- Acts or uses detrimental to the retention of land or water areas in their natural, scenic and wooded condition will be prohibited;
- Commercial water wells will be prohibited;
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portion of the property having historical, archaeological or cultural significance will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying of biocides of trees, shrubs, or other natural vegetation except as specifically provided in the easement will be prohibited;
- The planting of nuisance exotic or non-native plants will be prohibited;

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**Item 10, cont.**

- Commercial and industrial activities will be prohibited;
- Except as allowed in the owner's reserved rights, new construction or placing of temporary or permanent buildings, mobile homes, or other structures in, on or above ground will be prohibited;
- Placement of signs, billboards, or outdoor advertising will be prohibited;
- Construction of new roads or jeep trails will be prohibited;
- The operation of dune buggies, motorcycles, all terrain vehicles or other loud, destructive or offensive recreation or motorized vehicles will be prohibited, except on allowed access roads and except for emergency vehicles, farm equipment, timber equipment, and vehicles used in connection with prescribed burns;
- Except for the agricultural uses allowed in the Disturbed Uplands pursuant to the owner's reserved rights, there shall be no more intense agricultural use of the property than currently exists and there shall be no conversion of non-agricultural areas to agriculture use;
- Actions or activities that adversely impact threatened or endangered species will be prohibited;
- New food plots will be prohibited in the Special Natural Area;
- Timber harvesting or other silviculture activities will be prohibited in the Special Natural Area;
- The cutting of cypress anywhere on the property will be prohibited; and
- The Board of Trustees will have the right of notice of the owner's intent to sell; in the event the owners wish to sell the property.

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

- The rights to observe, maintain, photograph, fish, hunt and introduce and stock native fish or wildlife;
- The right to utilize the property for non-commercial hiking, camping and horseback riding;
- The right to maintain existing food plots and create new food plots for game and other wildlife in the Disturbed Uplands, provided the total food plot acreage does not exceed five percent of the total acreage at any point in time;
- The right to conduct prescribed burning within the Disturbed Uplands;
- The right to mortgage the property;
- The right to contest tax appraisals, assessments and taxes;
- The right to continue to use, maintain, repair and reconstruct, but not relocate or enlarge, all existing buildings and structures;
- The right to utilize sand from the existing sandpit for road maintenance on the property;
- The right to construct three residential structures within the Disturbed Uplands limited to two contiguous acres for each structure;
- The right to subdivide the property for sale or other disposition into up to four units;
- The right to engage in silviculture practices within the Disturbed Uplands; and
- The right to produce row crops in Area 1 (approximately 261 acres) of the Disturbed Uplands.

All mortgages and liens will be satisfied or subordinated at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions

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**Item 10, cont.**

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.

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 Apalachicola River ecosystem contains tremendous conservation significance in terms of biological diversity and economic importance. The Apalachicola River is 21<sup>st</sup> in magnitude of flow volume among the rivers of the coterminous United States and is the largest and longest river system in the southeastern United States. The rich floodplain forest/floodplain swamp mosaic found on the lands comprising the Corbin/Tucker tract and protected in perpetuity under the terms of the conservation easement contribute to the overall effort to protect the Apalachicola River watershed and the wildlife that inhabit the river's drainage basin.

The property will be monitored by DEP's Office of Environmental Services.

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 10, Pages 1-80)

**RECOMMEND APPROVAL**

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**Item 11        Seven Option Agreements/Conservation Easements/Pinhook Swamp Florida Forever Project**

**DEFERRED FROM THE AUGUST 10, 2004 AGENDA  
DEFERRED FROM THE MAY 11, 2004 AGENDA**

**REQUEST:** Consideration of seven option agreements to acquire perpetual conservation easements over 11,585.90 acres within the Pinhook Swamp Florida Forever project from seven landowners.

**COUNTY:** Columbia

**LOCATION:** Sections 01 and 13, Township 01 North, Range 16 East; Sections 17 and 18, Township 02 North, Range 17 East; Sections 05 through 09, 16 and 17, Township 01 North, Range 17 East; Sections 12 through 14, 23 through 26, 35 and 36, Township 02 North, Range 16 East

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Item 11, cont.

CONSIDERATION: \$4,711,000

PARCEL	ACRES	APPRAISED BY Candler (07/11/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Keen	1,620.43	\$486,000	\$486,000	\$ ***	\$427,680**** (88%)	120 days after BOT Approval
Carter/Nowicki	2,383.17	\$715,000	\$715,000	\$308,400*	\$657,800**** (92%)	120 days after BOT Approval
Carter Jr.	1,622.69	\$988,000	\$988,000	\$194,200**	\$908,960**** (92%)	120 days after BOT Approval
Griffin	1,620.45	\$729,000	\$729,000	\$ ***	\$670,680**** (92%)	120 days after BOT Approval
Grant/Lord	1,620.47	\$810,000	\$810,000	\$ ***	\$745,000 **** (92%)	120 days after BOT Approval
Espenship	1,620.45	\$810,000	\$810,000	\$ ***	\$745,200 **** (92%)	120 days after BOT Approval
Espenship, III	1,098.24	\$604,000	\$604,000	\$ ***	\$555,680 **** (92%)	120 days after BOT Approval
TOTALS	11,585.90		\$5,142,000		\$4,711,000	

- \* On 2/25/02 240.50 acres were purchased at \$1,282 an acre
- \*\* On 7/14/99 501.81 acres were purchased at \$281 an acre; On 2/25/02 36.60 acres were purchased for \$53,200
- \*\*\* Inherited Property over 5 years ago
- \*\*\*\* Keen \$263.93 per acre; Fee Value is \$1,215,000; Conservation Easement Value is 40% of the fee value
- \*\*\*\* Carter/Nowicki \$276.02 per acre; Fee Value is \$1,787,000; Conservation Easement Value is 40% of the fee value
- \*\*\*\* Carter Jr. \$560.16 per acre; Fee Value is \$2,448,000; Conservation Easement Value is 41% of the fee value
- \*\*\*\* Griffin \$413.89 per acre; Fee Value is \$1,539,000; Conservation Easement Value is 48% of the fee value
- \*\*\*\* Grant/Lord \$459.74 per acre; Fee Value is \$1,620,000; Conservation Easement Value is 50% of the fee value
- \*\*\*\* Espenship \$459.87 per acre; Fee Value is \$1,620,000; Conservation Easement Value is 50% of the fee value
- \*\*\*\* Espenship III \$505.97 per acre; Fee Value is \$1,208,000; Conservation Easement Value is 50% of the fee value

**STAFF REMARKS:** Pinhook Swamp 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 183,991 acres, of which 111,361 acres have been acquired, are protected by conservation easements or are under agreement to be acquired or protected by conservation easements. After the Board of Trustees approves this agreement, 61,044.10 acres, or 33 percent of the project, will remain to be acquired.

Under the proposed conservation easements, the properties will be restricted in perpetuity by the provisions of the easements, summaries of which include, but are not limited to, the following:

- Commercial or industrial activity, or ingress, egress or other passage in conjunction with any such activity across or upon the property will be prohibited;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species will be prohibited;
- Acts or uses detrimental to the retention of land or water areas, or to the use of the property as a water recharge area will be prohibited;
- Dumping of trash, waste, hazardous materials and soil will be prohibited;
- New construction or placing of temporary buildings, mobile homes or other structures in, on or above the ground will be prohibited, except as may be necessary for maintenance and normal operations of the property or during emergency situations;
- Any subdivision of the land except as may otherwise be provided in this easement will be prohibited; however, division to Lineal Descendent will be permitted;
- The construction or creation of new roads or jeep trails will be prohibited; and
- The Board of Trustees will have the right of notice of the owner’s intent to sell, in the event the owner intends to sell the property.

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**Item 11, cont.**

The proposed conservation easements will allow the owners to retain certain rights. The summary of owners' rights include, but are not limited to, the following:

- The right to observe, maintain, photograph, introduce and stock native fish or wildlife;
- The right to conduct controlled or prescribed burning;
- The right to mortgage the property;
- The right to exclusive use of the improvements depicted in the Baseline Documentation;
- The right to use, maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings;
- The right to construct two new residential structures on the property, along with access driveways and two appropriately-sized outbuildings, such as barns.
- The right to engage in silviculture except in herbaceous wetlands and open water areas;
- The right to contest tax appraisals, assessments, taxes and other charges on the property; and
- Michael Carter, Jr. has the right to continue operations for the commercial deer farm.

All mortgages and liens will be satisfied or subordinated at the time of closing. Department of Environmental Protection (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.

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

The pine flatwoods and swamps between the Osceola National Forest and the Okefenokee National Wildlife Refuge have been logged, but are otherwise undisturbed. Public acquisition of the Pinhook Swamp project will protect and restore a natural area linking these two conservation areas and the Suwannee River, providing a huge unpopulated tract of land for such wildlife as the Florida black bear and sandhill crane; maintaining the water flows from this area to the Okefenokee Swamp, Suwannee River and St. Mary's River; and giving the public a large, near-wilderness tract in which to enjoy various recreational activities, from simple nature appreciation to active hunting and fishing.

The properties will be monitored by DEP's Office of Environmental Services.

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

**RECOMMEND WITHDRAWAL**

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**Item 12      Levings Jr. Option Agreement/Conservation Easement/Pinhook Swamp  
Florida Forever Project**

**REQUEST:** Consideration of an option agreement to acquire a perpetual conservation easement over 923.30 acres within the Pinhook Swamp Florida Forever project from Al Levings Jr.

**COUNTY:** Columbia

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**Item 12, cont.**

**LOCATION:** Sections 13, 24 and 25, Township 01 North, Range 16 East; and Sections 18, 19 and 30, Township 01 North, Range 17 East

**CONSIDERATION:** \$636,640

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Chandler (07/11/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Levings Jr.	923.30	\$692,000	\$692,000	*	\$636,640** (92%)	120 days after BOT Approval

\* On September 5, 2002, 930 acres were purchased for \$1,124 an acre  
\*\* \$689.53 an acre; Fee Value is \$1,292,000; Conservation Easement Value is 54% of the Fee Value.

**STAFF REMARKS:** Pinhook Swamp project is an “A” group project on the Florida Forever Less than Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 183,991 acres, of which 111,361 acres have been acquired, are protected by conservation easements or are under agreement to be acquired or protected by conservation easements. After the Board of Trustees approves this agreement, 71,706.70 acres, or 39 percent of the project, will remain to be acquired.

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

- Dumping of trash, waste, hazardous materials and soil will be prohibited;
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portions of the property having historical, archeological or cultural significance will be prohibited;
- Commercial or industrial activity, or ingress, egress or other passage in conjunction with any such activity across or upon the property will be prohibited;
- New construction or placing of temporary buildings, mobile homes or other structures in, on or above the ground, except as may be necessary for maintenance and normal operations of the property or during emergency situations will be prohibited;
- The construction or creation of new roads or jeep trails will be prohibited;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species will be prohibited;
- Any subdivision of the land except as may otherwise be provided in this easement will be prohibited; however, division to Lineal Descendent will be permitted;
- Commercial wells on the property will be prohibited;
- Cutting of cypress will be prohibited; and
- Commercial agricultural activities will be prohibited on the property, except to the extent that silviculture activities may be considered to be agricultural.

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

- The right to observe, maintain, photograph, introduce and stock native fish or wildlife;
- The right to conduct controlled or prescribed burning;
- The right to mortgage the property;
- The right to contest tax appraisals, assessments, taxes and other charges on the property;
- The right to exclusive use of the improvements depicted in the Baseline Documentation;
- The right to engage in silviculture in areas depicted on the Baseline Documentation as



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**Item 12, cont.**

silvicultural areas; however, there shall be no harvesting of trees in any areas designated as Wetlands in the Baseline Documentation; and

- The right to construct two new residential structures on the property, along with access driveways and two appropriately-sized outbuildings, such as barns.

The Board of Trustees will have the right of first refusal to purchase the property or any interest therein. This right of first refusal will be subject to all statutory and regulatory requirements in effect when exercised.

All mortgages and liens will be satisfied or subordinated at the time of closing. Department of Environmental Protection (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, survey, environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

The pine flatwoods and swamps between the Osceola National Forest and the Okefenokee National Wildlife Refuge have been logged, but are otherwise undisturbed. Public acquisition of the Pinhook Swamp project will protect and restore a natural area linking these two conservation areas and the Suwannee River, providing a huge unpopulated tract of land for such wildlife as the Florida black bear and sandhill crane; maintaining the water flows from this area to the Okefenokee Swamp, Suwannee River and St. Mary's River; and giving the public a large, near-wilderness tract in which to enjoy various recreational activities, from simple nature appreciation to active hunting and fishing.

The property will be monitored by DEP's Office of Environmental Services.

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 12, Pages 1-43)

**RECOMMEND APPROVAL**

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**Item 13      Acquisition Efforts Status Report/North Key Largo Hammocks/Florida  
Keys Ecosystem/Coupon Bight/Key Deer Florida Forever Projects**

**REQUEST:** Consideration of a status report on the acquisition efforts of parcels located within the North Key Largo Hammocks, Florida Keys Ecosystem and Coupon Bight/Key Deer Florida Forever projects.

**COUNTY:** Monroe

**LOCATION:** Multiple

**STAFF REMARKS:** On December 16, 2003 the Board of Trustees delegated authority to the Secretary of the Department of Environmental Protection (DEP), or designee to waive the

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**Item 13, cont.**

appraisal requirements and to extend binding offers up to 125 percent of either the current appraised value or the 1986 tax assessed value (TAV) in the North Key Largo Hammocks, Florida Keys Ecosystems and Coupon Bight/Key Deer Florida Forever projects. The Board of Trustees delegated this authority with the requirement that DEP staff report the status of the acquisition efforts in the project areas.

DEP tasked American Government Services Corporation, et al to coordinate the acquisition efforts of the Keys projects. The task included overall management of the appraisal, survey, negotiation and reporting phases of the projects. Under the delegation granted, new offers were extended to owners within the three project areas. The offers were based on the highest of 125 percent of the TAV or the most recent Division of State Lands approved appraised value on file for the parcel.

Offers	
Total number of 1st offers	1942
Total number of 2nd offers	30
Total number of offers	1972
Contracts Received	
Total number parcels under contract	140
% of offers accepted	7%

Responses from landowners have varied from the “offer was too low” to “not interested in selling.” The table below reflects responses received from owners that have not accepted an offer.

Responses	
Total number of responses	180
% of offers too low	75%
% not interested	18%
% undecided	6%

For offers that have not been accepted, new appraisals have been ordered for all remaining parcels in the project areas. As of July 23, 2004, 268 new appraisals have been received. Offers will be extended on the remaining parcels based on the new appraisals under the guidelines of the delegation granted on December 16, 2003.

Since the December Board of Trustees’ meeting, one boundary amendment has been approved, and two amendments are in the process of being approved. The first addition consists of 911 parcels (3,063 acres) in the lower Keys. The second amendment which was pending approval when this item was prepared contains 4,139 parcels (3,500 acres) located within all three project areas. The third amendment which was pending approval when this item was prepared contains 113 parcels (269 acres) within the Village of Islands in Islamorada. Mapping will determine which parcels are above the mean high water line and approximate acreage. Prior to the three new boundary amendments, the project had 2,171 parcels totaling 3,900 acres remaining.

(See Attachment 13, Pages 1-2)

**RECOMMEND ACCEPTANCE**

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**Item 14      DSL's Use of Private Real Estate Firms/Efficiency Efforts Status Report**

**REQUEST:** Consideration of a status report on the Division of State Lands' (DSL) use of private real estate firms and efficiency efforts.

**STAFF REMARKS:** The purpose of this item is to report the progress of DSL's efforts to use private general real estate services. On May 28, 2003, DSL presented plans for phase two of these efforts. The goals were to hire private organizations to provide real estate services such as:

- Project Evaluation and Planning
- Project Management Services
- Consulting Services
- Disposition and Marketing Services
- Auction Services
- Support Staff
- Negotiation Services
- Special Project Services
- Property Owner Education and Outreach Services

Between October, 2003 and January, 2004, contracts were awarded to seven private companies for general real estate services for DSL. Since that time, DSL's Bureau of Land Acquisition (BLA) has successfully utilized private contractors for the following:

- Plan, prepare, negotiate and process through to closing offer packages; and
- Provide real estate research analysis to assist with land acquisitions; and
- Research and provide comparable properties.

Real estate services contractors (Contractor) are currently being used on all three Florida Keys projects, which are North Key Largo Hammocks, Florida Keys Ecosystem and Coupon Bight/Key Deer Florida Forever projects. These three projects were raised to top priority in late 2003. This caused a need for a Contractor to be hired to assist with these projects. The selected Contractor, American Government Services Corporation, et al (AGS), prepared an acquisition plan as required. This plan included managing the three projects from appraisal mapping, through appraisal and negotiations to the Board of Trustees' approval. The Contractor coordinates mapping and appraisal timelines with our survey and appraisal contractors. The Contractor handles all research needed, prepares reports, negotiates with owners and prepares approval requests, such as agenda items and delegation items. Currently expenditures to AGS for this task assignment, which expires on March 1, 2005, have been \$124,062.20. This has provided the manpower needed to fully focus on these projects as well as allowed DSL agents time to work on other projects.

Additionally, AGS was awarded the research analysis task, which would provide a real estate research analyst to assist the entire bureau with land acquisitions, reporting and data entry. Currently, expenditures to AGS for this task assignment have been \$31,064.40. The task expires on February 28, 2005.

On separate occasions, Post, Buckley, Schuh & Jernigan and AGS were each issued separate assignments for the Collier County comparable properties tasks. There was a need to locate comparable properties available for purchase in the Collier County area as relocation benefits to two of the Save Our Everglades owners. Although the owners did not accept any of the properties, the services and final products provided were outstanding. Expenditures for these tasks were \$4,620.38 and \$1,018.50 respectively.

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**Item 14, cont.**

DSL's Bureau of Public Lands has utilized private contractors for the following:

- To market, negotiate and sell available Murphy Act parcels; and
- To sell property by auction.

The Murphy Act task was awarded to Dahill International Realty, Co. (Dahill) since they were in the area, familiar with Nassau and St. Johns County and had a good insight into the real estate market in those areas. The task contains approximately 143 parcels. Presently, four parcels have been approved and are being processed to close and three parcels are under contract pending legal approval. The remaining 136 parcels are being marketed. Dahill has until December 31, 2004, to complete the Murphy Act task. There have been no expenditures for this task. The task states the state must net at least the appraised market value after all fees have been paid including commission and will be reimbursed for all costs associated with the transaction including the survey and appraisal cost. Dahill will be paid a maximum of 6.5 percent commission at closing. The 143 parcels have an estimated value of \$1,763,565, which will be the minimum net to the state. Based on the seven out of 143 parcels under contract, this task has had a five percent success rate.

The public auction task was also awarded to Dahill. A public auction was required pursuant to sections 253.7823 and 253.783, F.S. because the property was purchased under Office of Greenways and Trails, former Cross Florida Barge Canal Lands. This task consisted of ten parcels in Marion County and seven of the parcels were sold at a public auction. Based on seven of the ten parcels sold at the auction, this task has had a 70 percent success rate.

Currently the projects privatized are progressing successfully. The research projects were completed in a timely and professional manner and the quality of work expectations were met or exceeded.

Having these services available enables DSL staff to effectively, efficiently and productively perform their duties of acquiring, leasing and disposing of state lands and further increases the level of customer service to the citizens of Florida.

(See Attachment 14, Pages 1-13)

**RECOMMEND ACCEPTANCE**