

**AGENDA  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
DECEMBER 7, 2004**

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**Item 1      Minutes**

Submittal of Minutes from the September 21, 2004 Cabinet Meeting.

(See Attachment 1, Pages 1-20)

**RECOMMEND APPROVAL**

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**Item 2      Naples Yacht Club, Inc. Recommended Consolidated Intent**

**REQUEST:** Consideration of an application to modify a five-year sovereignty submerged lands lease to include an additional 22,149 square feet of sovereignty submerged lands for a total preemption of 117,699 square feet.

**COUNTY:**      Collier  
                    Lease No. 111309785  
                    ERP File No. 11-0165632-001

**APPLICANT:** Naples Yacht Club, Inc., a Florida Non Profit Corporation

**LOCATION:** Section 10, Township 50 South, Range 25 East, in Naples Bay, Class II waters not approved for shellfish harvesting, within the local jurisdiction of the city of Naples  
Aquatic Preserve: No  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Yes, idle/slow speed zone

**CONSIDERATION:** \$55,187.88, representing: (1) \$16,131.63 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; (2) \$35,180.25 as lease fees in arrears, without interest, for the unauthorized use of sovereignty submerged lands from April 1, 1989 through August 23, 2004, pursuant to a temporary use agreement (TUA), which has been paid; and (3) \$3,876.00 as administrative fines for the unauthorized use of sovereignty submerged lands pursuant to the TUA, which has been paid. 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 gross rental income pursuant to section 18-21.011(1)(a)1, F.A.C.

**STAFF REMARKS:** In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Consolidated Notice of Intent to Issue" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

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**Item 2, cont.**

The lessee is requesting the modification of a five-year sovereignty submerged lands lease to add 22,149 square feet of currently unauthorized mooring area to the lease, thereby increasing the lease area from 95,550 square feet to 117,699 square feet. This expansion is in conjunction with the existing 72-slip yacht club docking facility and associated upland private yacht club. The docking facility will continue to be used for private recreational vessels. There are no existing gambling ships / "cruises to nowhere" and none will be authorized by the modified lease.

On July 3, 1984, the lessee registered the original 28-slip facility with the former Department of Natural Resources as a grandfathered structure (GSR 110053). On August 23, 1988, the Board of Trustees approved a sovereignty submerged lands lease containing 18,263 square feet, more or less, for a 13-slip expansion to the registered grandfathered facility. The registered grandfathered facility was not included in the lease at that time because, pursuant to rule, the expansion was less than 50 percent of the grandfathered structures. On September 10, 1996, the Board of Trustees approved a modified lease containing 95,550 square feet, more or less (DEP permit no. 112697659). That modified lease included new structures and the registered grandfathered structures because, pursuant to rule, the expansion was greater than 50 percent of the grandfathered structures. On August 23, 1998 and August 23, 2003, DEP renewed the lease under a delegation of authority. The lease renewal included a prohibition on gambling ships / "cruises to nowhere". Lease fees are current through August 23, 2005.

A June 3, 2003 inspection by DEP revealed the following violations: (1) mooring outside of the approved lease along the lessee's southern and eastern seawalls; and (2) four finger piers and an "L" shaped dock with overwater fueling had been constructed along the lessee's southern seawall outside of the approved lease. These structures were built without authorization from the Board of Trustees or DEP. The unauthorized structures and mooring areas preempt approximately 22,149 square feet. The former Department of Environmental Regulation issued a wetland resource permit (no. 111309785) for eight finger piers and associated boat slips and a "T" shaped fueling dock along the southern seawall on April 4, 1988. The lessee originally proposed to construct these slips on lands the lessee thought were previously deeded by the Board of Trustees (deed no. 25045). However, since the lessee had filled the entire deeded area in the early 1980s, building the proposed slips would have placed them on sovereignty, submerged lands waterward of the deeded and filled area and would have required the entire docking facility, including the grandfathered structures, to come under lease. Therefore, the lessee eliminated those slips from the 1988 lease request authorized by the Board of Trustees. However, the lessee began mooring vessels along the shoreline at this location in 1989, and subsequently constructed four finger piers and the "L" shaped dock in or around 1989 at this location without authorization from the Board of Trustees and not in compliance with the DER permit. These finger piers were subsequently shown on the lessee's docking facility survey that became part of the lease, but they were not included in the lease boundary. Through staff oversight, DEP did not identify these finger piers and mooring along the seawall as a lease violation until recently. The lessee removed the four finger piers in 2004.

On October 8, 2004, DEP and the lessee entered into a Consent Order (no. 04-0625-11-DF) and Temporary Use Agreement (TUA). The Consent Order required the lessee to: (1) ensure that no mooring of vessels occurs outside the lease or TUA boundaries; (2) obtain regulatory and proprietary authorization for the "L" shaped dock and overwater fueling; (3) initiate consultation with the Florida Fish and Wildlife Conservation Commission (FFWCC) to update and relocate the appropriate manatee signs/displays as determined by FFWCC; and (4) pay

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**Item 2, cont.**

\$3,876.00 as administrative fines and \$250 for DEP costs, which has been paid. The TUA required the lessee to pay \$35,180.25 as lease fees in arrears from April 1, 1989 through August 23, 2004, which has been paid.

To help insure future compliance with the terms of the modified lease, a special approval condition is proposed that requires the lessee, prior to receipt of a fully executed modified lease, to amend the yacht club bylaws in a manner acceptable to lessor that includes language recognizing the lessee's responsibility to comply with the lease and all permits granted by DEP.

The existing lease prohibits fueling facilities and liveaboards, but authorizes a sewage pumpout facility. The existing fueling facility on the dock subject to the TUA will be authorized by the modified lease. DEP's environmental resource permit requires a sewage pumpout facility, prohibits liveaboards, and authorizes the fueling facilities over sovereignty submerged lands. The permit also incorporates several requirements designed to prevent and/or reduce water quality impacts at the site, including: (1) development of marina operations plan; and (2) a requirement that new and future CCA-treated pilings to be wrapped with PVC sleeves to reduce leaching of CCA in the waterbody.

The pending environmental resource permit application originally included a request to replace a portion of the lessee's seawall. However, an engineering analysis demonstrated that the seawall was in danger of collapsing, thereby posing a threat to public health, safety and welfare. As a result, DEP and the lessee agreed to separate the seawall repair from the dock reconfiguration request, and DEP subsequently issued a permit (no. 11-0165632-002) for the seawall repair on August 1, 2003. That permit included a consent of use pursuant to section 18-21.005(1)(c)5, F.A.C.

Recommendations from the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding manatee protection include: (1) compliance with manatee protection construction conditions; and (2) installation and maintenance of a manatee informational display at the fuel dock and at the main pier. These recommendations have been addressed in the specific conditions of the environmental resource permit or as special lease conditions in the lease. Additionally, Collier County has adopted and implemented a manatee protection plan. FFWCC has stated that the proposed project appears to be consistent with the approved manatee protection plan. Additionally, a proposed special lease condition will require the lessee to ensure that the renter of any slip at the docking facility enters into a signed agreement, between the lessee and the renter, stating that the slip renter agrees to comply with the speed zones contained in the Collier County Manatee Protection Plan, or any revisions adopted by Collier County and approved by FFWCC, and/or any speed zones established by the city of Naples and approved by FFWCC.

The current modified lease request was not required to be noticed due to an exemption for lease modifications, pursuant to section 253.115(5)(i), F.S.

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

(See Attachment 2, Pages 1-30)

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**Item 2, cont.**

**RECOMMEND      APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITION, SPECIAL LEASE CONDITIONS, AND PAYMENT  
OF \$16,131.63**

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**Item 3      National Marine Manufacturers Association Recommended Consolidated  
Intent**

**REQUEST:** Consideration of an application for a modification of a existing five-year Class IV special event, sovereignty submerged lands lease to increase the preempted area from 211,679 square feet to 327,055 square feet, more or less, for a proposed expansion of a commercial temporary docking facility associated with the annual Miami International Boat Show.

**COUNTY:**      Miami-Dade  
Lease No. 130019833  
File No. 13-0146662-005

**APPLICANT:** National Marine Manufacturers Association  
Miami International Boat Show

**LOCATION:**      Section 31, Township 53 South, Range 42 East, in Biscayne Bay, Class III  
Waters, within the local jurisdiction of the city of Miami  
Aquatic Preserve: Yes, Biscayne Bay – Card S ound (RPA 2)  
Outstanding Florida Waters: Yes  
Designated Manatee County: Yes, with an approved Manatee Protection Plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone Area: Slow speed year round outside of  
ICWW; Slow speed November 15 – April 30, 30 mph rest of year within the  
ICWW

**CONSIDERATION:** \$3,882.27, representing 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. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The special event lease fee may be adjusted based on five percent of the gross rental income generated over sovereignty submerged lands, pursuant to section 18-21.011(1)(d)1, F.A.C.

**STAFF REMARKS:** In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this “Recommended Consolidated Notice” contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a “Consolidated Notice of Intent to Issue” that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a “Consolidated Notice of Denial.”

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**Item 3, cont.**

The lessee is proposing to modify the current special events lease to accommodate an increase in the number of vessels participating in the annual Miami International Boat Show from 105 to 154. Specifically, the lessee is proposing to expand the temporary, commercial docking facilities (slips and area) that are adjacent to its current lease area to be used for the public display of vessels at the show. The existing lease authorizes the preemption of approximately 211,679 square feet of sovereignty submerged lands. The lessee is proposing an expansion of 115,376 square feet for a total lease area of 327,055 square feet (~7.5 acres). The overall show area includes the lessee's existing submerged lands lease area and the proposed expansion area, as well as, the lease area of another facility (Biscayne Bay Yachting Center/Lease No. 130009916). The overall boat show will display 376 vessels, 154 of which are to be located within the Class IV special event lease area. The 154 vessels to be moored within the special events lease area are predominately yachts ranging from 25 to 80 feet in length.

On January 26, 1999 the Board of Trustees issued National Marine Manufacturers Association, a five-year, 30-day special event, sovereignty submerged lands lease for the Miami International Boat Show that preempted 87,478 square feet. On January 25, 2000, the Board of Trustees issued a modified lease to expand the lease area to 212,376 square feet for the boat show. On June 24, 2003, the environmental resource permit was extended until February 4, 2009, to coincide with the lease term.

The lessee plans to construct and subsequently remove the temporary docks and all associated structures for the currently proposed annual Miami International Boat Show, as well as, the events running from 2004 to 2009. The shows will run for six days and then the facilities will be dismantled. The time of preemption (i.e. for installation of the structures, the show, and the removal of structures) will not exceed 30 days each year. Boat brokers and exhibitors will lease mooring space from the lessee. The lessee is required to report the gross rental income collected from the special event to the Division of State Lands as part of the annual certification required for its lease, pursuant to section 18-21.011(1)(d)3, F.A.C. The lessee has satisfied the financial assurance requirements of section 18-21.0082(2)(b), F.A.C., as the lessee has demonstrated substantial compliance with the terms of the lease for the boat shows authorized under this existing lease for the past five years.

The proposed temporary and existing docks will be used as a centralized sales center for public display of vessels by various brokers. The exhibitors will lease mooring space from the lessee. Test drives will take place in the morning on show dates, with manatee information packages distributed to anyone who test-drives a vessel. Liveboards are prohibited during the special events lease. The boat show shall be served by upland restroom facilities that are open 24 hours a day and are designated and operated in accordance with the requirements of the appropriate county and state health agencies. Vessel sewage pumpout facilities are prohibited at the boat show and the lessee shall notify all slip occupants in writing of the availability and requirement to use the sanitary facilities provided on the uplands. The discharge of marine toilets from vessels moored at the boat show is prohibited by the permit.

There are seagrasses located in the area of the proposed expansion. To ensure that the resources are unaffected by the proposed boat show, the permit has been conditioned to require a pre- and post-show seagrass survey along with an annual July/August seagrass survey. Since the boat show takes place during the normally dormant period of seagrasses, a summer time survey is being required. If the seagrass surveys indicate that the operation of the boat show or the installation of pilings is causing a significant impact to the seagrasses, the boat shows layout, operation, or construction procedure shall be changed or modified to eliminate this impact and a mitigation plan shall be submitted to offset the impact from the prior show. If the impacts to seagrasses can not be significantly reduced or eliminated, the Environmental Resource Permit and Special Events Lease may not be renewed or extended. DEP shall have the sole determination on whether significant impacts to seagrass have occurred and both DEP and the lessee/permittee shall determine whether the shows layout, operation, and/or

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**Item 3, cont.**

construction procedure needs to be changed or modified to allow the current configuration to continue.

The proposed project is located in the Biscayne Bay – Card Sound Aquatic Preserve. In accordance with section 258.397, F.S., and section 18-18.006(3)(b), F.A.C., the proposed project should be approved only if the Board of Trustees determines that the applicant has demonstrated extreme hardship and that the project is in the public interest. The Board of Trustees approved this boat show on November 23, 1993, January 26, 1999, and again on January 25, 2000, in this same location and found it met extreme hardship. Staff finds that this project meets the extreme hardship test for the following reasons: (1) the Biscayne Bay Yachting Center Marina is the only existing commercial docking facility in proximity to the Intracoastal Waterway and the Atlantic Ocean with the capacity to accommodate the size and number of exhibit vessels for the show; (2) it is not feasible to show the boats out of the water since they range in size up to 80 feet in length; (3) The show has been occurring at this location for the past 25 years; and (4) the show is conducted at an existing facility which offers the ability to support the show and avoids the larger construction of a new temporary facility. The expansion is necessary in order to keep up with the demand to show more vessels and retain the title of “Largest and Most Prestigious Show in the World”. The maximum time that the boats are in the water is 12 days and this offers little potential for environmental harm.

Staff is of the opinion that the proposed project is in the public interest for the following reasons: (1) the lessee will provide displays to educate the general public about environmental issues, such as the importance of seagrasses, the use of marked channels to avoid harming shallow submerged land resources, and the importance of safe boating; (2) the lessee’s show will have a positive economic impact on the city of Miami, Miami-Dade County and the State of Florida, producing a positive economic impact in excess of \$598 million; (3) the lessee invites environmental agencies and groups to operate informational booths during the show to facilitate public education; (4) the lessee conducts various public service seminars during the show on topics such as boating safety and boat licensing; (5) the lessee provides local schools exhibit space at the show for fund-raising activities for school projects; (6) the lessee provides the DEP with a half-page advertisement in the boat show directory; and (7) the lessee donates to the Biscayne Bay Environmental Enhancement Trust Fund for the planting of mangroves within the Biscayne Bay – Card Sound Aquatic Preserve.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the existing environmental resource permit and are included in the existing lease as special lease conditions. These permit conditions and all other special lease conditions in the existing lease will remain in effect for the lease modification and renewal.

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

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan is in compliance. A local permit has been applied for. Past shows have received one-year permits for the proposed actions which has therefore been determined to be consistent with the adopted plan.

(See Attachment 3, Pages 1-20)

**RECOMMEND APPROVAL SUBJECT TO THE PAYMENT OF \$3,882.27**

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**Item 4**      **Riverwalk Hotels, LLC Recommended Consolidated Intent**

**REQUEST:** Consideration of an application for a three-month sovereignty submerged lands lease containing 194,403 square feet, more or less, for the installation of two temporary docks to providing mooring for a maximum of 76 recreational vessels during the 2005 Super Bowl in Jacksonville.

**COUNTY:**      Duval  
                    Lease No. 160229902  
                    Application No. 16-206605-001-EI

**APPLICANT:** Riverwalk Hotels, LLC

**LOCATION:**    Section 44, Township 02 South, Range 26 East, in the St. Johns River, Class III Waters, within the local jurisdiction of the city of Jacksonville  
                    Aquatic Preserve: No  
                    Outstanding Florida Waters: No  
                    Designated Manatee County: Yes, with an approved manatee protection plan  
                    Manatee Aggregation Area: No  
                    Manatee Protection Speed Zone: Yes, 300-foot slow speed, channel exempt

**CONSIDERATION:**    \$7,952.30 representing the initial lease fee, prorated for the lessee's period of use, computed at the base rate of \$0.1309 per square foot including the initial 25 percent surcharge payment, or six percent of the gross rental income derived from the use of state lands pursuant to section 18-21.011(1)(a)1, F.A.C., whichever is greater. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. Information provided by the lessee in the determination of the adjusted lease fees shall be certified as true and accurate by a Certified Public Accountant.

**STAFF REMARKS:** In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activities, which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

The applicant is proposing the installation of two temporary floating docks to provide mooring for vessels and patrons attending the 2005 Super Bowl in Jacksonville. The temporary floating docks and leased area will be designed to accommodate vessels ranging in size from 40 to 100 feet in length with drafts of 4 to 7 feet. There is no wetland vegetation or submerged aquatic resources within the proposed lease area. Structures shall be placed such that impacts to historical and cultural resources are avoided.

The two temporary floating docks will each be comprised of a 500-foot-long by a 10-foot-wide access dock and a 100-foot-long by 12-foot-wide terminal platform. The west pier shall include 41 wet slips, and the east pier 35 wet slips. Water depths are: adjacent to the boardwalk, -4.0 feet mean low water; and terminal end, -23.8 feet mean low water. As such adequate water depths exists within the proposed lease area and dredging will not be required.

The proposed docks will be constructed of foam floats in a steel or aluminum frame with wood lined sides. They will be anchored by steel pilings. Pilings or helical anchors will also be installed in front of the opening of the slips to aid in securing the vessels while moored. The

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**Item 4, cont.**

docks will extend from an existing pedestrian boardwalk and will terminate no less than 225 feet from the southern edge of the navigable channel. All vessels moored at the temporary docks will be liveaboards. Electricity and water will be provided along with a portable sewage disposal system for vessels moored at the marina which will discharge into a city maintained system on the upland. Fueling facilities are not proposed.

The United States Coast Guard (USCG) and other law enforcement agencies will implement a heightened security zone extending from the Fuller Warren Bridge to the Mathews Bridge in downtown Jacksonville the week prior to, and day of the Super Bowl. Particular attention will be paid to boat traffic in the area. Vessels that moor at the facility will arrive prior to the Super Bowl game and their movement restricted until sometime after the date of the game. Therefore the 76 vessels will arrive at the facility and will likely remain moored for the event period and departing at its conclusion. The USCG has requested that the applicant provide USCG with a draft rental agreement, between the applicant and patrons of the proposed facility, and has requested that the draft rental agreement include terms and conditions which require that the patron comply with USCG restrictions on vessel movement during the Super Bowl event.

The applicant will post a bond in an amount sufficient to cover the cost of removing the docking structures once the events have concluded. Removal of the structures shall be a condition of the DEP Environmental Resource Permit and included as a special lease condition.

The City of Jacksonville (City) obtained an easement from the upland riparian owner for the construction of a pedestrian walkway parallel to the riparian shoreline for the use of the general public. The upland owner maintained its riparian rights to ingress and egress the river through the City easement. The City of Jacksonville has however raised concern over possible liability issues regarding the applicant's use of the boardwalk in its ingress and egress to the proposed facility.

DEP's environmental resource permit does authorize the temporary liveaboards. No fueling will be allowed at the facility. Portable sewage pumpout is authorized in DEP's environmental resource permit.

The Florida Fish and Wildlife Conservation Commission recommends in a letter dated November 12, 2004, that states that the project does not appear to be inconsistent with the Duval County Manatee Protection Plan, and its recommendations regarding protection of manatees are being addressed in the environmental resource permit and special lease conditions.

The project was noticed to four property owners within 500 feet of the proposed lease area as required by section 253.115(1), F.S. No objections or comments have been received to date.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. In accordance with the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. The proposed action is consistent with the adopted plan as amended according to a letter received from the City's Planning and Development Department dated November 8, 2004.

(See Attachment 4, Pages 1-26 )

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF LEASE FEES PRORATED FOR THE LESSEE'S PERIOD OF USE, OR SIX PERCENT OF THE GROSS REVENUE GENERATED FROM THE SLIP RENTAL, WHICHEVER IS GREATER**



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**Item 5**      **Walton County Board of County Commissioners/Determination/Conveyance**

**REQUEST:** Consideration of (1) a determination that a 9.94-acre parcel, more or less, of state-owned land in the South Walton County Ecosystem is no longer needed for conservation purposes, pursuant to Article X, section 18 of the Florida Constitution and section 253.034(6), F.S.; and that the property no longer needs to be preserved in furtherance of the P2000 Act pursuant to section 259.101(6)(b), F.S.; (2) a determination that the property is surplus; and (3) approval of a sales contract under which the Board of Trustees would convey the 9.94-acre parcel to Walton County.

**COUNTY:**    Walton  
                   Deed No. 31363

**APPLICANT:** Walton County Board of County Commissioners (County)

**LOCATION:** Section 34, Township 02 South, Range 20 West

**CONSIDERATION:** \$135,000 to be deposited in the Internal Improvement Trust Fund

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY		<u>PURCHASE</u>	<u>CLOSING</u>
		Keller (07/15/04)	<u>APPROVED</u> <u>VALUE</u>		
Lot 28	9.94	\$135,000	\$135,000	\$135,000	60 days after BOT approval

**STAFF REMARKS:** On May 19, 1992, the Board of Trustees acquired 18,000 acres in the South Walton County Ecosystem Florida Forever project from the Resolution Trust Corporation of which 15,181 acres became the Point Washington State Forest (Forest). This 9.94-acre parcel is one of thirteen small parcels that were a part of the acquisition but were outside the project boundary and declared surplus for the Division of Forestry's needs. On February 7, 2002, the Acquisition and Restoration Council approved the recommendation for surplus.

The Department of Environmental Protection (DEP), Division of State Lands received a request from the County to purchase the 9.94-acre subject parcel. The County owns ten acres known as McCall Park directly south of this property that is currently used for recreational purposes, specifically youth baseball fields. If this sale is approved, it will enable the County to expand its current recreational facilities at the park to a total of approximately 20 acres. DEP is currently in negotiations with private entities to exchange the remainder of the aforementioned parcels.

The deed conveyed by the Board of Trustees will contain a restriction that if this parcel is used for anything other than recreational purposes, ownership of the parcel will automatically revert back to the Board of Trustees. The appraisers took this into consideration in determining the value of the property.

In order to surplus conservation lands, 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. In this case, the parcel is not contiguous with the Point Washington State Forest making it difficult for the Division of Forestry to manage. The parcel is also located outside of the Florida Forever optimum boundary.

Pursuant to Article X, Section 18, Florida Constitution, the fee interest in real property may be disposed of only if the members of the governing board of the entity holding title determine the

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**Item 5, cont.**

property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

Pursuant to section 259.101(6)(b), F.S., the Board of Trustees must determine that such land no longer needs to be preserved in furtherance of the intent of the Florida Preservation 2000 Act.

Pursuant to section 253.111, F.S., state agencies were notified of the proposed sale and did not express any interest in the property. Pursuant to section 253.115, F.S., owners within 500 feet of the subject property were also notified and no objections or interest was expressed.

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

(See Attachment 5, Pages 1-36)

**RECOMMEND APPROVAL**

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**Item 6      Festival Fun Parks, LLC Lease Update/Determination**

**REQUEST:** Consideration of a request for (1) a determination that negotiating a reduction of lease fees paid by Festival Fun Parks, LLC, in exchange for a commitment of funds to be used on capital improvements is not contrary to public interest; and (2) approval of updating Lease No. 4022 to reflect a reduction of lease fees paid, the commitment of funds to be used for capital improvements and the terms of the lease.

**COUNTY:** Marion

**APPLICANT:** Festival Fun Parks, LLC (FFP)

**LOCATION:** Section 06, Township 15 South, Range 23 East; and Section 01, Township 15 South, Range 22 East.

**CONSIDERATION:** Six percent of gross revenues, up to and including \$17,800,000, or \$600,000, whichever is greater, to be paid on an annual basis. Lease fee shall increase to six and three-quarters percent of gross revenues greater than \$17,800,000.

**STAFF REMARKS:** The Department of Environmental Protection (DEP), Division of State Lands, received a request from the applicant to reduce the annual lease payment paid by SmartParks - Silver Springs, Inc. (Lessee). The Silver Springs Attraction (Park) is facing a financial dilemma and the Lessee is requesting a reduction in the lease payment to continue to operate the Park.

On July 21, 1992, the Board of Trustees approved that Florida Leisure Acquisition Corporation (FLAC) continue to manage the Park after the Board of Trustees' purchased Silver Springs. Subsequently, the Board of Trustees entered into a Lease and Sublease with FLAC, which was later assigned to Ogden Entertainment Services, Inc. (Ogden). On December 8, 1998,

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**Item 6, cont.**

the Board of Trustees approved Amendment One to the Lease and Sublease with Odgen, which extended the term on the lease until December 31, 2029. On November 9, 2001, the Lease and Sublease was assigned to Ogden Parks – Florida, Inc. whose name was subsequently changed to SmartParks – Silver Springs, Inc. (SmartParks). Lastly, FFP acquired SmartParks.

FFP is the largest family entertainment center and water park operator in the U.S. with 32 parks and over 12 million visitors annually. Over the past few years, FFP's profit margins averaged between 18.1 and 23.5 percent. The Park's profit margin in the year 2002 was 11.3 percent (partial year); 2003 was 7 percent; and 2004's forecast is predicted to be at 5.3 percent.

Under the current terms of the lease, the Lessee pays the Board of Trustees the greater of a base fee of \$1,060,000 that is adjusted annually by the Consumer Price Index (CPI), or six and three quarters percent of the gross revenues collected by the attraction annually. Since 1999, the lease payments have increased to a high of \$1,252,657 in 2004 as a result of the CPI adjustment. The new fee structure would cap the lease payment at \$1,068,000 unless revenue increased to over \$17,800,000 per year.

FFP has determined that in order to increase business and gross revenues at the Park, they will need to make long delayed capital improvements on the property. These delays have occurred in large part because there has been no continuity of management at the Park. Because management has changed hands three times since 2000 and due to the extremely high lease payments, a systematic approach to the repair of some of the existing infrastructure was never developed. FFP has provided a facility repair list of necessary structural repairs totaling approximately \$1,173,000. These costs were determined by bids from private contractors and through internal staff estimates on the smaller items. If the change in lease fees is approved, FFP has agreed to dedicate a minimum of \$250,000 annually over five years, beginning in 2006, to go towards completing those repairs. Current year revenue has been dedicated to hurricane repairs. All of the items on the facility repair list are relating to the infrastructure of the Park that will revert back to the Board of Trustees upon termination of the lease.

The subject lease contains special conditions in the instrument that have been completed and are no longer applicable to the current lessee. Along with amending the payment terms in the lease and adding the capital improvement requirements, DEP staff is requesting to amend the terms of the lease to reflect the current status of the property. Changes to the lease include, but are not limited to the following:

- disallowing any new live animal exhibits at the Park;
- including a broader definition of exotic plant species to be removed by lessee;
- revising the default period from one year to six months;
- requiring the removal of the obsolete on-site sewage treatment facility within two years;
- eliminating the requirement for an escrow account for funding building demolition because the terms of the lease provide for demolition if required;
- removing the 'final installation of purchase price' paragraph that refers to a transaction that has been completed between FLAC and the Board of Trustees; and
- allowing the fee to be paid semi-annually.

Pursuant to section 18-2.018(2)(i), F.A.C., the decision to authorize the use of Board of Trustees-owned uplands requires a determination that such use is not contrary to the public interest. The Board of Trustees, by virtue of its prior approval of Lease No. 4022, has already

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Item 6, cont.

determined that a lease for the tourist attraction is not contrary to the public interest. Additionally, the continued existence and success of the Park, which is one of Florida's original tourist attractions and "Nature's Theme Park," is in the best interests of the public.

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

(See Attachment 6, Pages 1-82)

**RECOMMEND APPROVAL**

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Item 7      **Conservation Easement Policy**

**REQUEST:** Consideration of a policy regarding conservation easements

**STAFF REMARKS:** Pursuant to section, 259.041(11)(a), F.S., it is the intent of the legislature that public land acquisition agencies develop programs to pursue alternatives to fee simple acquisition and to educate private landowners about such alternatives and the benefits of such alternatives.

During the October 26, 2004, Board of Trustees meeting, Commissioner Bronson suggested the following points be brought forth for discussion and consideration:

- The goal of the state in negotiating conservation easements is to obtain the rights needed to protect the sensitive resources at the lowest possible cost, while ensuring the landowner will be able to continue working the land.
- There has been much discussion of changing the balance of rights under these easements and the relevant statutory provisions dealing with that issue. In some cases, landowners will agree to place more rights with the state, while others will not. The test for proposed easements is not whether the landowner signs over the majority of rights to the state, but whether the proposed easement contains the conditions to ensure protection of the resource the state seeks to protect at a reasonable cost.
- In negotiating easements, Department of Environmental Protection (DEP) should make further efforts to address areas of concern to the Board of Trustees in conservation easements.

When a project is proposed for addition to the Florida Forever acquisition list, it is frequently proposed as a conservation easement. In evaluating the proposal, before it is approved for inclusion on the list, staff visits the site and, along with Florida Natural Areas Inventory and with the guidance provided in section, 259.105, F.S., determines the appropriateness of a conservation easement by evaluating all the natural and historic resources. The exact resources the state proposes to protect are identified for each project and, even more specifically, for each conservation easement to make sure that a conservation easement will be able to protect these resources.

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Item 7, cont.

The following are some of the points considered in evaluating the appropriateness of a conservation easement for each property:

- Determination of whether the site has been managed historically in such a way as to protect important natural or cultural resources sought for inclusion in projects purchased through the Florida Forever program, and is continuing such management likely to afford such protection in the future;
- Consideration of the resources identified for protection that will be incorporated into the conservation easement;
- Identification of management techniques that would be desirable to enhance resource protection, and whether or not those changes would be practicable for the landowner;
- Determination if public access to the site would be necessary to achieve the objectives of the program on a particular proposal. If so, an easement is not likely to suffice;
- Determination if changes in land uses on the surface may potentially have adverse affects on the objectives of the easement. For example, where surface or ground water quality protection is the goal, would more intensive agriculture have the potential for adverse affects;
- Determination if restrictions of future land uses on the property may render the landowner's continued financial stability in doubt;
- Determination if existing land uses can remain viable without further alteration of existing protected natural areas. If no, consideration is given to what extent could such additional alterations be allowed without endangering the objectives of the easement; and
- Determination whether major restoration is needed to render the site's habitat or other desirable resources viable and sustainable. If so, the conservation easement is unlikely to suffice.

If a property's resources cannot be protected by a conservation easement, then DEP, Division of State Lands (DSL) advises the landowner that they cannot proceed with the conservation easement. DSL may elect to pursue a fee simple acquisition provided landowner is willing to sell in fee simple.

If the resources can be protected through a conservation easement, the seller is contacted and requested to complete an Owner's Rights Retained Questionnaire (Questionnaire). At the same time DSL staff advises the landowner about the resources that will need to be protected and the rights that will be acquired through the conservation easement. A purpose statement from the project evaluation that the Acquisition and Restoration Council approves for each project will be incorporated into each Questionnaire prior to submitting to the landowner. The purpose statement clearly states the conservation objective purposed for the subject property.

Once the landowner has completed the Questionnaire and returns the document to DSL, staff then drafts a conservation easement that will protect the needed resources while providing the landowner with the negotiated rights they requested to be retained. Staff has found that as the landowner sees the results of the negotiations in writing, he/she usually likes to adjust the rights being retained; therefore, the process can get drawn out. Many times lengthy negotiations are required to complete a conservation easement that satisfies both DSL and the landowner. Once the conservation easement is complete, the appraisal map and appraisals are requested to determine the easement value prior to making the landowner an offer to purchase the easement. A purchase price is then negotiated between DSL and the landowner.

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**Item 7, cont.**

To date, DSL has protected 328,090 acres through conservation easements in the amount of \$214,095,456.

(See Attachment 7, Pages 1-4)

**RECOMMEND APPROVAL**

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**Item 8      Lightsey Option Agreement/Conservation Easement/Bombing Range Ridge/Brahma Island Florida Forever Project**

**REQUEST:** Consideration of an option agreement to acquire a perpetual conservation easement over 1,063.40 acres within the Bombing Range Ridge/Brahma Island Florida Forever project from Cary D. Lightsey and Layne L. Lightsey.

**COUNTY:** Osceola

**LOCATION:** Sections 13 and 24, Township 30 South, Range 30 East; Sections 17 through 20, Township 30 South, Range 31 East

**CONSIDERATION:** \$3,000,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>OPTION DATE</u>
		<u>Sutte (05/18/04)</u>	<u>Catlett (05/18/04)</u>				
Lightsey	1,063.40	\$3,150,000	\$3,000,000	\$3,150,000	*	\$3,000,000** (95%)	120 days after BOT approval

\* Family owned property since the 1950's

\*\* Price per acre \$2,821; Fee Value is \$4,850,000; Conservation Easement Value is 65% of the Fee Value.

**STAFF REMARKS:** The Bombing Range Ridge 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 44,439 acres, of which 9,460 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 33,915.66 acres, or 76 percent of the Bombing Range Ridge Florida Forever 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;
- The exploration for and extraction of oil, gas, minerals, pent, muck, limestone, etc. by the grantor will be prohibited (see third-party note in paragraph four of these staff remarks), except as necessary to combat erosion or flooding or as necessary and lawfully allowed for the conduct of allowed activities;
- Acts or uses detrimental to natural water flow and to the preservation of any historical, archeological or cultural area will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation except in areas designated as agricultural in the Baseline Documentation or as otherwise specifically provided in this easement will be prohibited;
- New construction or placing of temporary or permanent structures or buildings on the

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Item 8, cont.

property will be prohibited except as may be necessary for maintenance, normal operation or emergency situations or as otherwise provided herein;

- Commercial water wells on the property are prohibited;
- Agricultural improved areas (663.6 acres) may continue to be used for agricultural activities, but more intense agricultural use of improved pasture will be prohibited, and natural areas shall remain natural areas;
- The Board of Trustees will have the right of first refusal, in the event the owner intends to sell the property to a third party other than a lineal descendant or an entity in which the grantor owns a controlling interest and the right to purchase the property from the estate or trust of the grantor or from a third party if a third party receives the property as a gift or devise;
- Commercial timber harvesting is prohibited; and
- Subdivision of the property is prohibited.

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 right to engage in certain non-commercial, passive, resource-based recreation not inconsistent with the purpose of the easement. In addition, the owner reserves hunting and fishing rights related to the property and may lease and sell privileges of such rights;
- The right to continue to stock non-native game animals;
- The right to conduct controlled and prescribed burns with proper authorization;
- The right to construct additional barns, pens and agricultural buildings in agricultural areas, so long as such structures do not exceed up to 50,000 cumulative square feet, and reconstruct existing barns and fences for agricultural uses;
- The right to maintain the owner's current agricultural business in improved areas;
- The right to retain and maintain the grass airfield;
- The right to drill one new water well for agricultural purposes;
- The right to maintain the existing roads, water holes, barge landing, and docking facility;
- The right to maintain the commercial cattle operation and existing food plots for game; and
- The right to build a 5,000-square-foot dwelling, which shall be located at least 150 feet from any wetland area.

All mortgages and liens will be satisfied or subordinated at the time of closing. There is a flowage easement in favor of the South Florida Water Management District (SFWMD) and a perpetual conservation easement in favor of the Board of Trustees around the outside of the island. An undivided one-half interest in the oil, gas and mineral rights over approximately 1,500.2 acres is owned by Consolidated-Tomoka Land Company. The appraiser has advised that the reservation has no impact on value. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy, a survey, an environmental site assessment and baseline documentation report will be provided by the purchaser prior to closing.

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**Item 8, cont.**

Public acquisition of this project will conserve and protect significant habitat for native species and endangered and threatened species, and provide areas, including recreational trails, for natural resource-based recreation. This project connects Avon Park Air Force Range, Lake Kissimmee State Park and SFWMD land. It provides critical habitat for at least 20 rare animals, including red-cockaded woodpeckers, snail kites, Florida scrub jays and grasshopper sparrows. The scrub ridge is a recharge area for water resources adjacent to the project that include the Kissimmee River, Lake Rosalie, Tiger Lake, Lake Walk-in-Water and several creeks and marshes.

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 Land section of the State Comprehensive Plan.

(See Attachment 8, Pages 1-51)

**RECOMMEND APPROVAL**

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**Item 9      TNC (BR Bar Ranch) Assignment of Option Agreement/Conservation Easement/Panther Glades Florida Forever Project**

**REQUEST:** Consideration of the acceptance of an assignment of an option agreement to acquire a conservation easement over 565 acres within the Panther Glades Florida Forever project from The Nature Conservancy (BR Bar Ranch).

**COUNTY:** Hendry

**LOCATION:** Sections 08, and 09, Township 47 South, Range 32 East

**CONSIDERATION:** \$643,540.40 (\$626,020.00 for the acquisition; \$17,520.40 for the assignment of the option agreement)

		APPRAISED BY:			SELLER'S	TRUSTEES'	OPTION
<u>PARCEL</u>	<u>ACRES</u>	Holden <u>(01/29/04)</u>	Clayton <u>(01/29/04)</u>	APPROVED <u>VALUE</u>	<u>PURCHASE</u> <u>PRICE</u>	<u>PURCHASE</u> <u>PRICE</u>	<u>DATE</u>
BR Bar Ranch	565	\$677,840	\$565,000	\$677,840	*	\$643,540.40** (95%)	20 days after BOT approval

\* Property has been in the family for over 60 years

\*\* \$1,139 price per acre. Conservation Easement Value is 46% of the Fee Value of \$1,470,000.

**STAFF REMARKS:** The Panther Glades 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 57,604 acres, of which 22,536 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 34,503 acres, or 60 percent of the Panther Glades Florida Forever project, will remain to be acquired.

Pursuant to a multi-party acquisition agreement entered into between the Department of Environmental Protection's (DEP) Division of State Lands (DSL) and The Nature Conservancy (TNC), TNC has acquired an option to purchase an easement over this 565-acre parcel from BR Bar Ranch. After this acquisition is approved, the Board of Trustees will acquire the option from TNC for \$17,520.40, which represents agreed upon compensation to TNC for overhead associated with acquiring the option. The Board of Trustees may then exercise the option and



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Item 9, cont.

purchase the easement. The assignment of the 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.

The oil, gas and mineral rights and an associated right of entry onto the property is currently owned by members of the Collier family. The landowner has contacted Collier Resources Company, the family's agent and the company has stated in writing that the Colliers will not grant the landowner a waiver of surface exploration rights.

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, and hazardous materials will be prohibited;
- Exploration by the grantor for and extraction of oil, gas, minerals, peat, muck, limestone, etc., by means of surface exploratory and extractors operations will be prohibited, except as reasonably necessary to combat erosion or flooding or except as necessary and lawfully permitted for the conduct of permitted activities. (The oil, gas and mineral rights and an associated right of entry onto the property are currently owned by a third party – the Collier family);
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife preservation will be prohibited, unless otherwise provided in the easement;
- Acts or uses detrimental to the retention of land or water areas in their natural, scenic and wooded condition will be prohibited;
- Acts or uses detrimental to the preservation of any historical, archaeological or cultural area 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;
- Except for domestic pasture grasses needed to support permitted cattle grazing activity and approved by the Institute for Food and Agricultural sciences, the planting of nuisance exotic or non-native plants will be prohibited;
- Commercial and industrial activities will be prohibited, except as may be incidental to the exercise of grantor's reserved rights;
- New construction or placing of temporary or permanent buildings, mobile homes, signs, billboards or other advertising or other structures in, on or above ground will be prohibited, except with prior notice to and approval of grantee and as may be necessary by grantor for maintenance or normal operations of the property, or during emergency situations and except as permitted in Article V, E, or otherwise specifically provided for in the easement;
- 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, unless necessary to (1) protect or enhance the conservation values of the property, (2) for emergency purposes, (3) for cattle ranching purposes, (4) to retrieve game that has been legally hunted and in conformance with the easement and (5) for grantor's riding pleasure on established roads and trails;
- There shall be no more intense agricultural use of the property than currently exists except as may be specifically reserved to grantor any conversion of non-agricultural areas to agricultural use will be prohibited;
- Actions or activities that adversely impact threatened or endangered species will be prohibited;

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**Item 9, cont.**

- Any subdivision of the land will be prohibited;
- The cutting of cypress trees on any area of the property will be prohibited;
- Dairy, swine, poultry, feedlot and citrus production or row crops will be prohibited; and
- The Board of Trustees will have the right of first refusal to purchase the property or any interest therein, in fee if the grantor proposes to sell the property or any interest therein to a third party other than a lineal descendant, and the right to purchase the property from the estate or trust of grantor, or from a third party if a third party other than a lineal descendant receives the property as a gift or devise.

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 right to observe, maintain, photograph, fish, hunt and introduce and stock native fish or wildlife;
- The right to conduct controlled or prescribed burning provided that the owner shall obtain and comply with a prescribed fire authorization from the regulatory agency having jurisdiction;
- 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, up to 150 percent of existing size, all existing buildings and structures depicted in the baseline documentation;
- The right to maintain the existing commercial cattle operation;
- The right to engage in silviculture practices within existing agricultural and silvicultural areas;
- The right to retain and maintain existing improved pasture; and
- The right to conduct ecotourism operations, including hiking, non-motorized biking and horseback riding.

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 and to resolve them appropriately. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and any other title issues that arise prior to closing.

A title insurance policy, a survey, an environmental site assessment and baseline documentation report will be provided by the purchaser prior to closing.

The Panther Glades ecosystem contains tremendous conservation significance in terms of biological diversity and economic importance. The Panther Glades project is important to many wildlife species, particularly those that require extensive areas of habitat to maintain viable populations. This project, adjoining the Big Cypress Seminole Indian Reservation, would expand the contiguous area reserved for such species habitat, with a mix of ecosystems. The ecosystem encompassed by the proposal is a large landscape and watershed in south-central Hendry County that includes portions of both the Big Cypress and Kissimmee Billy Strand.

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 Land section of the State Comprehensive Plan.

(See Attachment 9, Pages 1-64)

**RECOMMEND APPROVAL**

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**Item 10 Plum Creek Timberlands, L.P., Partial Assignment of Option Agreement/ Conservation Easement/Volusia Conservation Corridor Florida Forever Project**

**REQUEST:** Consideration of the acceptance of a partial assignment of an option agreement to acquire a perpetual conservation easement over 9,013 acres within the Volusia Conservation Corridor Florida Forever project from Plum Creek Timberlands, L.P.

**COUNTY:** Flagler

**LOCATION:** Sections 10, 12, 13, 15, 16, 22 through 27 and 32 through 35, Township 13 South, Range 30 East; Sections 02 through 04, 10, 11, 14 and 15, Township 14 South, Range 30 East

**CONSIDERATION:** \$3,997,198

		APPRAISED BY:			SELLER'S	TRUSTEES'	OPTION
PARCEL	ACRES	Rogers (08/22/04)	Wagner (08/22/04)	APPROVED VALUE	PURCHASE PRICE	PURCHASE PRICE	DATE
Plum Creek	9,013	\$4,370,000	\$3,910,000	\$4,370,000	*	\$3,997,198** (91.4%)	12/09/04

\* The property was purchased in multiple transactions since the 1940s.

\*\* \$480 per acre; Fee Value is \$8,962,824; Conservation Easement Value is 49% of the Fee Value.

**STAFF REMARKS:** The Volusia Conservation Corridor 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 104,417 acres, of which 14,562 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 80,842 acres, or 77 percent of the project, will remain to be acquired.

The acquisition is the northern 9,013 acres of an 18,691-acre conservation easement negotiated in its entirety by the St. Johns River Water Management District (SJRWMD). The property starts at the northern boundary of the project and connects with lands previously acquired by the Board of Trustees, Volusia County and SJRWMD. When completed, the project will provide a wildlife corridor in an area experiencing rapid growth and development.

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:

- Except as allowed in the owner's reserved rights, there shall be no construction of temporary or permanent buildings, utilities, infrastructure, nor placing of mobile homes, docks, bridges, advertising signs or billboards;
- Commercial and industrial activities will be prohibited except for specifically allowed silviculture and eco-tourism;
- Construction of new roads or widening of existing roads will be prohibited;
- Dredging, construction of new ponds, dikes, or canals, any manipulation of natural water courses, and any activities or uses detrimental to water quantity or quality will be prohibited;
- There shall be no filling, excavating, dredging, mining or drilling; no removal of top soil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land except for those normal silviculture and road maintenance activities performed in compliance with best management practices (BMPs);
- There shall be no subdividing or conveyance that would result in more than a total of

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Item 10, cont.

- three separate tracts in different ownerships or that would result in a tract less than 100 acres;
- Dumping of soil, trash, liquid or solid waste and hazardous materials will be prohibited;
  - The planting of invasive exotic or non-native plants 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 or in agricultural areas will be prohibited;
  - Use of pesticides, herbicides, fertilizers unless applied according to BMPs, if applicable, or according to label instructions;
  - Intentional or grossly negligent 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;
  - Threatened or endangered species will be afforded protection in accordance with federal and State of Florida regulations;
  - Operation of motorized vehicles will be prohibited except, on established trails and roads, to protect or enhance the purposes of easement, for emergency purposes, for cattle ranching and silvicultural purposes, to retrieve game that has been hunted legally, and for the continuation of the annual Motor Trail Enduro which has a maximum number of 100 participants and maximum of 200 spectators. The Daytona Dirt Riders Association that sponsors the race carries \$1 million in liability insurance that would be payable to Plum Creek if any damage occurs to the property. To date there has not been any cause to use the insurance;
  - Agricultural areas as established by the baseline documentation may continue to be used for those activities. Areas that are currently in improved pasture as depicted in the baseline documentation shall not be converted to more intense agricultural use. Lands that are depicted as natural areas, shall remain natural areas;
  - Commercial water wells will be prohibited; and
  - The cutting of trees in any wetlands on the property except in an area denoted as Reserved Swamp Timber will be prohibited. (Rights to harvest in the reserved area were sold to a third party by Plum Creek prior to negotiation of this easement.) The reserved timber area covers 250.6 acres within the North Parcel. Harvesting in this area has been completed.

The proposed conservation easement reserves to the owner all ownership rights not specifically granted to the state, and reserves all uses not specifically prohibited by the easement and that do not conflict with the conservation purposes of the easement. The easement also lists rights reserved by the owner. The summary of owner's rights includes, but is not limited to, the following:

- The right to lease or license exclusive hunting and fishing privileges;
- The right to no more than three hunting camp areas on the property with each camp containing no more than 6,000 square feet of building;
- The right to create a maximum of fifty wildlife enhancement food plots containing no more than five acres each;
- The right to conduct commercial forestry operations, subject to conditions and restrictions set forth in the easement and in accordance with the Silviculture BMPs;
- The right to harvest up to 15 percent of the aggregate acres of the property within any calendar year of the identified upland areas;
- The right to control and restrict public access;

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**Item 10, cont.**

- The right to conduct a commercial program for eco-tourism, including the right to construct trails and boardwalks for non motorized activity only, primitive campsites, two rustic restroom facilities and footbridges. On-grade trails and boardwalks will not be constructed in wetlands;
- The right to retain all rights, benefits, privileges and credits related to carbon sequestration in the timber and soil on the property; and
- The right to engage in activities on the property, including modifications to topography, designed to create, enhance or restore the quantity or quality of wetlands or waters on the property, provided the appropriate authority properly permits such activities.

The Board of Trustees will have the right of first refusal to purchase the property or any interest therein on the same financial terms and condition of any bona fide offer received by the owner. This right of first refusal will be subject to all statutory and regulatory requirements in effect when exercised.

In the event that governmental restrictions for silviculture practices be enacted which apply restrictions more stringent on the use of the property for silviculture practices than those included in the easement, one of the following three remedies will be implemented: (1) revise the easement to allow for an alternative use of the property with restrictions necessary to achieve substantially the same goals; (2) the Board of Trustees may purchase the remainder interest in the property; and (3) the Board of Trustees may sell the easement in the property back to the landowner.

All mortgages and liens will be satisfied or subordinated at the time of closing. There is a 300-foot wide corridor owned by Florida Power and Light Company that vertically bisects both conservation easements but across which there is access. There are two hunting leases on the property. There are two separate 50 percent outstanding oil, gas, and mineral reservations in favor of third parties with surface right of entry over approximately 5,200 acres. When the appraisals were completed, it was assumed that the surface right of entry was barred by the Marketable Records Title Act. Subsequent due diligence has revealed that the reservation holders do have surface right of entry. The appraisers have determined that this access will have no measurable impact on value. The Bureau of Geology has indicated the property holds little potential for commercial development other than fill material. Improvements on the property include fencing, gates and minor hunting camp structures. The appraisers considered the power line corridor that bisects the property, the two hunting leases, the outstanding oil, gas and mineral reservations and the improvements in their valuation. 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. Because these issues were discovered during 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 these and any other 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 on the 9,013 acres prior to closing.

The opportunity exists to add land to the northern edge of an east-west corridor of environmentally significant land from the Ocala National Forest and Heart Island Conservation Area to the Tiger Bay State Forest. The project area is used by the Florida black bear and provides habitat for swallow-tailed kites, Sherman's fox squirrel, several wading birds and at

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**Item 10, cont.**

least one listed plant species. This parcel adds to a natural landscape of swamps, flatwoods and silvicultural lands that provides habitat for several listed plant and animal species.

The conservation easement will be monitored by SJRWMD.

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 1-88)

**RECOMMEND APPROVAL**