

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MARCH 1, 2005
Substitute Page

Item 1 Minutes

Submittal of (1) the Minutes from the October 26, 2004, November 9, 2004, December 7, 2004 and February 1, 2005 Cabinet Meetings; and (2) Corrected Minutes from the April 13, 2004 Cabinet Meeting.

(See Attachments 1, Pages 1-82)

RECOMMEND APPROVAL

Substitute Item 2 The Harbors Community Association/Centex Homes Lease Modification

REQUEST: Consideration of an application for the modification of a five-year sovereignty submerged lands lease to (1) change an 18-slip revenue-generating docking facility into an 18-slip private residential docking facility; (2) decrease the preempted area of the current lease from 49,329 square feet to 20,975 square feet, more or less; (3) waive the 40:1 ratio for square footage under section 18-21.004(4)(b)(5), F.A.C.; and (4) donate approximately one acre of privately-owned submerged lands.

COUNTY: Palm Beach
 Lease No. 500018816
 File Nos. 50-0229650-001 and -002

APPLICANTS: The Harbors Community Association, Inc., a Not-for-Profit Corporation and Centex Homes, a Nevada General Partnership

LOCATION: Section 15, Township 45 South, Range 43 East, in Lake Worth Lagoon, Class III waters, within the local jurisdiction of the city of Boynton Beach
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, without an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes (Slow speed year-round)

CONSIDERATION: \$10,982.52, representing (1) \$2,745.63 as the initial lease fee computed at the base rate of \$0.1309 per square foot; and (2) \$8,236.89 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C. 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.

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STAFF REMARKS: The applicants are requesting to convert an existing sovereignty submerged lands lease covering 49,329 square feet, from a revenue-generating docking facility associated with a former upland restaurant and nightclub to a private residential multi-family docking facility associated with a 51-unit townhouse community on the adjacent uplands. The applicant plans to maintain the current 18-slip docking arrangement within the lease area, but is proposing to reduce the total square footage of the existing sovereignty submerged lands lease from its current 49,329 square feet down to 20,975 square feet, for a reduction of 28,354 square feet. The facility will accommodate private recreational vessels up to 45 feet in length, with average drafts between 2 and 6 feet.

In 1964, the existing dock structures were constructed and operated as a revenue-generating docking facility, exclusively for use by patrons of the former restaurant and nightclub on the adjacent uplands. These docks provide space for up to 18 boat slips. However, the initial lease and an accompanying sketch of these structures did not specify the number of slips at the facility, and did not show the existing mooring piles located between the slips and waterward of an existing "L-shaped" terminus, thus not accurately reflecting the existing number of slips as 18. Upon subsequent renewals, the lease continued to contain this sketch, including the most recent renewal and transfer of ownership from Centex Homes to The Harbors Community Association, Inc., a Florida nonprofit corporation. The current lease, issued February 4, 2004, erroneously states that the facility has 8 slips. This was the first time the number of slips was defined in the lease. The current proposed modification will show the lease facility with the 18 existing slips.

Although originally eligible for grandfather registration, the predecessor in title of the adjacent uplands failed to register the structure prior to the state's deadline of September 30, 1984. In 1997, the Board of Trustees issued a Temporary Use Agreement for the docking facility to the then upland owner, Schgai, Inc., and the Board of Trustees ultimately issued a lease (Lease No. 500018816) for the docking facility to Schgai, Inc. Staff has determined that past agency action, including the 1997 Temporary Use Agreement and lease issued to Schgai, Inc., did not constitute a grandfather from, or other waiver of, the requirements for private residential multi-family docks contained in 18-21.004(4)(b), F.A.C., including the unit:slip and 40:1 ratios, because at the time of these authorizations the upland land uses were not residential.

Schgai, Inc., the immediate predecessor in title, had operated a restaurant and nightclub on the adjacent uplands. Over the years, the surrounding uplands have been developed for residential usage, and the restaurant and nightclub became a source of frequent complaints from adjacent homeowners concerning noise and traffic. On January 13, 2003, Centex Homes acquired the uplands, subsequently changed the land use to residential, and obtained approval for, and developed, a 51-unit townhouse development on the uplands. The restaurant and nightclub

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were demolished and removed from the property. The applicants seek to continue the use of the existing dock structure and 18 slips, with minor dock reconfigurations within the existing footprint as proposed under Environmental Resource Noticed General Permit File No. 50-0229650-001 and 002. The docking facility would be associated with an upland residential development and would be subject to the slip and square foot limitations of private residential multi-family docks, pursuant to section 18-21.004(4)(b), F.A.C.

Also, pursuant to 18-21.004(4)(b), F.A.C., the number of slips allowed for 51 residential units is 21. Thus, no waiver of this rule is required for the continued use of the existing 18 slips. With regard to the preempted area limitation of the 40:1 ratio as stated in section 18-21.004(4)(b)5, F.A.C., the applicants' frontage is approximately 158 feet, thereby limiting the applicants to a lease area of approximately 6,320 square feet of sovereignty submerged lands. This limitation requires the destruction of a portion of the existing dock structure and allows no more than 8 slips. Accordingly, the applicants seek a waiver of the 40:1 ratio to authorize the existing structure based on the following considerations:

(a) The applicants have reduced the amount of preempted area to the minimum necessary for the existing structures. This has resulted in a square footage reduction from the existing lease amount of 49,329 square feet to a total of 20,975 square feet. This is more than a 57 percent reduction in preempted area; however, this is still more than three times the amount allowed under the 40:1 rule.

(b) Centex Homes will donate to the Board of Trustees approximately one acre of formerly sovereignty submerged lands in Lake Worth Lagoon, now owned by Centex Homes and located less than 1½ miles north of the project site. These submerged lands contain viable, high quality seagrass communities consisting of shoal grass (*Halodule wrightii*) and Johnson's seagrass (*Halophila johnsonii*). These seagrasses provide important habitat and food resources for marine organisms and provide soil stabilization and nutrient uptake. The Final Recovery Plan for Johnson's Seagrass, National Marine Fisheries Service, September 2002, page 3.2-22, recommends the identification and acquisition of privately-owned submerged lands vegetated with Johnson's seagrass. The applicants contend that it is clearly in the public interest to reacquire former sovereignty submerged lands containing viable seagrass communities in an urbanized area such as Lake Worth Lagoon. Public acquisition ensures greater protection of the seagrass communities, which serve as habitat and/or food for crustaceans, fish and manatees, and provides greater protection of compatible public uses of those lands.

(c) The applicants seek only to continue usage of a dock structure that has been in existence and use since 1964. The applicants contend that it would constitute an extreme hardship on the applicants and the 51 residential unit owners to have to destroy existing, usable structures in order to meet the 40:1 ratio, which was adopted after the existing structures had been built and operated.

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(d) The applicants contend that the project's elimination of commercial uses on the uplands, in favor of residential use, has eliminated a land use that is incompatible with the adjacent residential neighborhoods and has eliminated a source of complaints from the adjacent residential neighborhoods objecting to the noise and traffic generated by the restaurant and nightclub. The applicants suggest that such conversion to residential use at this location should be encouraged rather than penalized by administration of the sovereignty submerged lands rules.

(e) Finally, maintenance of the existing docking facility serves to meet the significant demand for slips from the 51 unit owners.

Although the project exceeds the 40:1 rule by approximately 14,655 square feet, the applicants are proposing to reduce the existing lease's overall square footage of preempted area by approximately 57 percent and are not proposing to exceed the unit:slip ratio. Since all available shoreline is being used and the 40:1 ratio is being exceeded, a conservation easement along the shoreline is not being proposed. In addition, this proposal includes converting the existing 18 slips from transient use, associated with an upland restaurant and nightclub, to permanent use by upland townhouse residents. Coupled with the donation of a parcel of privately-owned submerged land, this project would be consistent with the proposed rule revisions to chapter 18-21, F.A.C., concerning the 40:1 ratio. Therefore, staff recommends approval of this project.

The existing lease prohibits fueling facilities and liveaboards but authorizes a sewage pumpout facility if it meets the regulatory requirements of the Department of Environmental Protection or local entity, whichever entity applies the more stringent criteria.

The proposed project meets the 25-foot setback to the north and a waiver has been obtained from the affected adjacent property owner to the south.

The 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.

The Environmental Resource Noticed General Permit (50-0229650-001 and -002) does not authorize sewage pumpout facilities, liveaboards, or authorize fueling facilities. There are no seagrasses/resources at the site. Federal authorization for the minor dock modification was obtained under the State Programmatic General Permit and no further Corps of Engineers' permitting authorization is necessary.

Palm Beach County is a designated manatee county without an approved manatee protection plan. The Florida Fish and Wildlife Conservation Commission (FFWCC) recommended approval of the project if the following conditions were met: (1) the number of slips shall

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remain the same as existing (18), (2) the Standard Manatee Construction Conditions shall be followed for all in-water construction, and (3) within 30 days prior to completion of construction, the permittee shall install and display Permanent Manatee Signs that provide information on the characteristics of manatees and the potential threat to this endangered species from boat operation. The number, type, and procedure for installation should be determined by the Imperiled Species Management Section, 6A, 620 S. Meridian Street, Tallahassee, FL 32399-1600 (phone 850/922-4330). Permittee agrees to install and replace the signs in the event the signs fade or become damaged, and maintain these signs for the life of the facility. The recommendations of FFWCC regarding protection of manatees are included as special lease conditions.

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. The applicants must obtain a local building permit for the minor dock modification upon issuance of all state and federal approvals.

(See Attachment 2, Pages 1-11)

RECOMMEND WITHDRAWAL

Substitute Item 3 Searcy Option Agreement/Agency Designation/Management Policy Statement Confirmation/ Searcy Estates Florida Forever Project

REQUEST: Consideration of (1) an option agreement to acquire 600 acres within the Searcy Estate Florida Forever project from Ashburn P. Searcy and William N. Searcy as Co-Executors and Co-Trustees; (2) designation of the Florida Department of Agriculture and Consumer Services, Division of Forestry as the managing agency; and (3) confirmation of the management policy statement.

COUNTY: Wakulla

LOCATION: Section 27, Township 02 South, Range 05 West

CONSIDERATION: \$1,398,000

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Substitute Item 3, cont.

| <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>(08/17/04)</u> | <u>(08/17/04)</u> | | | | |
| Searcy | 600 | \$1,560,000 | \$1,450,000 | \$1,560,000 | * | \$1,398,000** (90%) | 120 days after BOT approval |

* Family acquired property in multiple transactions since 1948.

** \$2,330 per acre

Noted Features of Subject Property:

- Vacant-naturally wooded inholding of the Apalachicola National Forest
- 9,003 feet fronting on east side of the Ochlocknee River
- Zoned Agricultural - 1 dwelling per 20 upland acres; 1 dwelling per 40 per wetland acres
- Upland Area - 4 11 acres (61%)
- Wetland Area - 18 9 acres (31%)
- Highest and best use - passive recreational and /or agricultural
- Land locked on date of value with access assured by owner before closing
- Property was appraised as though it has legal access

STAFF REMARKS: The Searcy Estate Florida Forever project is a "B" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. At the time negotiations began and concluded, the Project was an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees. After the Board of Trustees approves this agreement, 100 percent of the project will have been acquired.

All mortgages and liens will be satisfied at the time of closing. There is a hunt club lease on the property that will be extinguished prior to closing. The owner has contacted the lessee in writing to inform them of the expiration of the lease, which will be on April 24, 2005. There are minor improvements made to a hunt camp area of the property; however, these improvements are personal property and will be removed prior to closing. There is an outstanding 50 percent oil, gas, and mineral reservation in favor of a third party; however, the surface right of entry has been barred by the Marketable Records Title Act.

There is a 6-acre out parcel within this property. At closing, the seller will grant an access easement to the owner of the out parcel. The subject property currently does not have legal access. However, the seller has guaranteed legal access, at no cost to the state, prior to closing. One easement will be provided by an adjoining private owner. The second easement will be provided by the U. S. Department of Agriculture, Forest Service (USFS). These two access easements will be transferred with the property to the Board of Trustees at closing. The minor improvements, outstanding oil, gas and mineral reservation, and the proposed easements were considered by the appraisers in the valuation of the property and found to have no impact on value. The Florida Department of Agriculture and Consumer Services, Division of Forestry (DOF), the future managing agency, can manage the property with these conditions.

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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. 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 prior to closing. The seller shall reimburse the purchaser for the cost of title insurance.

The Searcy Estate lies in a gap that, when filled, will help with the continuity and manageability of the Apalachicola National Forest. DOF will coordinate a prescribed burning regime with the National Forest so as to minimize individual impacts that may be associated with managing this tract separately. Although the site offers habitat for only one Florida Natural Areas Inventory listed species (The Florida black bear), it contains potential foraging habitat for the red cockaded woodpecker and provides watershed protection for the Ochlocknee River, which contains three protected species. Eighty-two percent of the site is rare species habitat and it should be managed to maintain and enhance that habitat.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate DOF as the managing agency for this site. The site will be managed as a non-contiguous addition to Lake Talquin State Forest. USFS is considering assuming management responsibilities for incorporation into the National Forest system, but staff doesn't know how long it will take to resolve the associated issues.

Section 259.032(9)(e), F.S., requires that the Board of Trustees, concurrent with its approval of the initial acquisition agreement within a project, "evaluate and amend, as appropriate, the management policy statement for the project as provided by section 259.035, F.S., consistent with the purposes for which the lands are acquired." The management policy statement for this project was included in the 2005 Florida Forever Annual Report adopted by the Board of Trustees on February 16, 2005. Staff recommends that the Board of Trustees confirm the management policy statement as follows:

Generally, the addition of this tract to the Apalachicola National Forest (ANF) will aid in protecting and preserving habitats utilized by multiple wildlife species including black bear, and with proper management could aid in the conservation of rare and imperiled species such as the red-cockaded woodpeckers (RCW) and gopher tortoise. The Ochlocknee River flood plain is a known travel corridor for black bear and the addition of this tract to ANF will ensure that another

Substitute Item 3, cont.

piece of the corridor remains undeveloped and intact. None of the pine stands observed on the area appeared old enough to provide cavity trees for RCW's at this time. The closest known RCW cluster to this tract is approximately 1.5 miles, suggesting the area is not currently used as a foraging area either. However, it could be utilized as RCW population expands on ANF. The scrubby sand hill habitats presently provide limited habitat for gopher tortoises but the use of prescribed fire would improve the habitat immensely for gopher tortoises and their commensally associated species.

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

(See Attachment 3, Pages 1-41)

RECOMMEND APPROVAL

**Substitute Item 4 Six Option Agreements/Conservation Easements/Survey Waiver/
Pinhook Swamp Florida Forever Project**

**DEFERRED FROM THE AUGUST 24, 2004 AGENDA
DEFERRED FROM THE AUGUST 10, 2004 AGENDA
DEFERRED FROM THE MAY 11, 2004 AGENDA**

REQUEST: Consideration of (1) six option agreements to acquire perpetual conservation easements over 9,409.17 acres within the Pinhook Swamp Florida Forever project from six landowners; and (2) authority to waive a complete boundary survey.

COUNTY: Columbia

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

CONSIDERATION: \$1,931,580

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| <u>PARCEL</u> | <u>ACRES</u> | APPRAISED BY Candler (07/27/04) | APPROVED <u>VALUE</u> | SELLER'S PURCHASE <u>PRICE</u> | TRUSTEES' PURCHASE <u>PRICE</u> | OPTION <u>DATE</u> |
|-----------------------|------------------------|---------------------------------------|---------------------------|--------------------------------------|---------------------------------------|--------------------------------|
| Keen (1) | 1,620.43 | \$205,000 | \$205,000 | *** | \$200,900**** (98%) | 120 days after BOT Approval |
| Carter/Nowicki (2) | 2,376.57 | \$323,000 | \$323,000 | \$308,400* | \$316,540**** (98%) | 120 days after BOT Approval |
| Carter Jr. (3) | 1,073.03 | \$590,000 | \$590,000 | \$194,200** | \$578,200**** (98%) | 120 days after BOT Approval |
| Griffin (4) | 1,620.45 | \$319,000 | \$319,000 | *** | \$312,620**** (98%) | 120 days after BOT Approval |
| Espenship (6) | 1,620.45 | \$319,000 | \$319,000 | *** | \$312,620**** (98%) | 120 days after BOT Approval |
| Espenship, III (7) | 1,098.24 | \$215,000 | \$215,000 | *** | \$210,700**** (98%) | 120 days after BOT Approval |
| TOTALS | <u>9,409.17</u> | | <u>\$1,971,000</u> | | <u>\$1,931,580</u> | |

- * On 2/25/02 240.50 acres were purchased at \$1,282 per acre
- ** On 7/14/99 501.81 acres were purchased at \$281 per acre; On 2/25/02 36.60 acres were purchased for \$53,200
- *** Inherited Property over 5 years ago
- **** Keen Leased Fee Value \$956,000; \$590 per acre; Trustees Purchase Price is 21% of the leased fee value
- **** Carter/Nowicki Leased Fee Value \$1,256,000; \$529 per acre; Trustees Purchase Price is 26% of the leased fee value [233.9 acres fee values at \$800/acre = \$187,000 (RD) plus 2,142.67 acres Leased Fee at \$499/acre = \$1,079,000 (RD)]
- **** Carter Jr. Fee Value \$1,717,000; \$1,600 per acre; Trustees Purchase Price is 34% of the fee value
- **** Griffin Leased Fee Value \$1,161,000; \$716 per acre; Trustees Purchase Price is 27% of the leased fee value
- **** Espenship Leased Fee Value \$1,100,000; \$679 per acre; Trustees Purchase Price is 29% of the leased fee value
- **** Espenship III Leased Fee Value \$1,119,000; \$1,019 per acre; Trustees Purchase Price is 19% of the leased fee value

NOTE:

The original Pinhook Swamp item that was deferred from the May 11, 2004 Agenda contained seven ownerships totaling 11,585.90 acres. The Approved Values for those seven parcels totaled \$5,142,000 or \$444/acre/average. The proposed Trustees' Purchase Price was \$4,711,000 or \$407/acre/average. Six of the seven parcels were negotiated at 92% and the seventh one was at 82% of the Approved Values.

The current agenda item contains six ownerships. Parcel number 5 of 1,620.47 acres (Grant/Lord) was withdrawn from consideration due to unsuccessful negotiations with the property owner. Also, 549.66 acres of the original parcel number 3 (Carter, Jr.) was excluded from the proposed acquisition due to the existence of a long-term land/timber lease that expires in year 2022. Parcel number 2 was reduced by 6.60 acres (non-contiguous parcel). The six ownerships in the current agenda item contain a total of 9,409.17 acres. The Approved Values for those six parcels total \$1,971,000 or \$209/acre/average and the proposed Trustees' Purchase Price is \$1,931,580 (98%) or \$205 per acre/average.

The subject properties were reappraised subsequent to the May 2004 deferral after an unrecorded Timber Agreement (land lease) with numerous modifications between the owners and Rayonier was discovered in May 2004. This agreement expires on December 31, 2017. This agreement was carefully considered by the appraiser and reviewer and its impact is reflected in the final estimates of Market Value.

STAFF REMARKS: The Pinhook Swamp project is a "B" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. The project contains 215,216 acres, of which 118,628.99 acres have been acquired, are protected by conservation easements or are under agreement to be acquired or protected by conservation

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easements. After the Board of Trustees approves this agreement, 87,177.84 acres, or 41 percent of the project, will remain to be acquired.

The conservation easements proposed for acquisition will be acquired subject to a lease currently owned by Rayonier Timberlands Operating Company LP, (Rayonier) which expires December 31, 2017. The lease to Rayonier is on parcels 1, 4, 6, and 7 and all but 233.9 acres of parcel 2. Parcel 3 and the remainder of parcel 2 are not encumbered by the lease. A total of 8,102.23 acres are encumbered by this lease, which conveys the timber on the property together with the complete and exclusive use and control of said lands, and the exclusive right to manage, control and operate the aforesaid lands. Rayonier also holds a right of first refusal if any interest in the land is proposed for sale. Rayonier's right of first refusal to acquire these easements will be eliminated before closing. Under the provisions of the lease Rayonier has a duty to replant 625 to 700 pine seedlings per acre on portions of the property that are high and dry and plantable and neither the grantors nor Rayonier may enter into oil, gas or mineral leases without the joinder of the other.

Until January 1, 2018, grantors appear to have only the right to graze cattle on the property and certain hunting privileges. Ad valorem taxes are paid by Rayonier.

Under the proposed conservation easements and on expiration of the lease, where applicable, 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;
- Operation of motorized vehicles will be prohibited, except (1) to protect or enhance the purposes of this easement, (2) for emergency purposes, and (3) to retrieve game that has been hunted legally;
- Commercial water wells on this property will be prohibited;
- All silvicultural activities will be prohibited in wetland areas as established by the Baseline Documentation;
- 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;
- 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;
- New construction or placing of temporary buildings, mobile homes, signs, billboards or

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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 descendants 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 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, an entity in which grantor owns a controlling interest or a non-profit conservation organization regionally or nationally recognized and acceptable to grantee.

While the lease is in effect:

- Grantor shall not do or cause to be done any act or thing under the provisions of the lease that would trigger the right of lessee to acquire the property; and
- Grantor shall not do or cause to be done any act that would cause the lease to extend beyond December 31, 2017.

The proposed conservation easements will allow the owners to retain certain rights after expiration of the lease. The 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 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; with the exception of Michael Carter, Jr., who only has the right to construct one new residential structure on the property, along with access driveways and two appropriately-sized outbuildings, such as barns;
- The right to engage in silviculture except in natural areas, wetlands and open water areas; and
- The right to contest tax appraisals, assessments, taxes and other charges on the property.

While the lease is in effect:

- The right to mortgage the property;

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- The right to create a maximum of fifty wildlife enhancement food plots containing no more than five acres each;
- Rebecca Carter-Nowicki and Sara Jane Carter have the right to continue the operation of the existing deer ranch; and
- Michael Carter, Jr., has the right to continue operation of a commercial deer farm.

All mortgages and liens will be satisfied or subordinated at the time of closing. All parcels have an ingress/egress easement, which provides access to adjacent owners. 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. 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.

Title insurance policies and environmental site evaluations will be provided by the purchaser prior to closing. A survey may be provided if necessary by the purchaser.

DEP's Bureau of Survey and mapping (BSM) has reviewed the available survey data and deeds, performed a visual inspection of the site and considered the following conditions:

The parcels adjoin lands owned by the Suwannee River Water Management District on the east and U.S. Highway 441 on the west. The parcel boundaries adjoining private ownership with improvements and occupation will be inspected and may be surveyed to determine if any encroachments exist.

It is the opinion of BSM that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to its cost; therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C.

These parcels are a vital connector (last link in the chain) between Sandlin Bay, within which portions of the property to be acquired are located, and Pinhook Swamp. Both of these wetland systems serve as drainage areas for the Okefenokee National Wildlife Refuge in Southern Georgia. Parcels are within approximately two miles east of the Suwannee River, which is the boundary between Columbia and Hamilton Counties. Three of the six ownership parcels being acquired have frontage on U.S. Hwy 441. This access is favorable for future development. The Conservation Easement will restrict development as allowed by zoning (A-1, Agriculture zoning allows one dwelling unit per 20 acres). The proposed Conservation Easement prohibits cutting of wetlands timber. The parcels have a range of 42 percent to 76 percent jurisdictional wetlands.

Substitute Item 4, cont.

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.

(See Attachment 4, Pages 1-205)

RECOMMEND APPROVAL

2nd Substitute Item 5 **Cypress Gardens Adventure Park, LLC/Southern Grace Cruises, Inc. Agreement**

REQUEST: Discussion of a contractual agreement between Cypress Gardens Adventure Park, LLC and Southern Grace Cruises, Inc.

COUNTY: Polk County

STAFF REMARKS: On February 6, 2005, Chief Financial Officer Gallagher directed the Department of Environmental Protection to mediate a contractual discussion between Cypress Gardens Adventure Park, LLC and Southern Grace Cruises, Inc., in order to resolve their outstanding issues. If no resolution is reached by February 28, 2005, a discussion of said contractual agreement will be presented to the Board of Trustees.

RECOMMEND WITHDRAWAL