

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
AUGUST 9, 2005

Item 1 Florida Keys National Marine Sanctuary Eighth Annual Status Report

REQUEST: Acceptance of the eighth annual status report of the Florida Keys National Marine Sanctuary (FKNMS).

COUNTY: Monroe

STAFF REMARKS: On January 28, 1997, the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, approved the FKNMS Management Plan for implementation in state waters and adopted a resolution containing conditions for that approval. The annual submission of a report of the activities and conditions of the sanctuary to the Board of Trustees is one of those requirements. This is the seventh of those annual reports covering the period of July 1, 2004 through June 30, 2005. The following items describe the condition of the resources and the most significant sanctuary activities during this period.

Status of the Coral Reef: Coral reefs declined globally between 1996 and 1999 due to global coral bleaching. In the FKNMS, there was a 38 percent decline in overall coral cover from 1996 (12 percent) through 1999 (7.4 percent). From 1999 through 2003, overall coral cover did not significantly change, and coral cover varied between 7.2 percent and 7.5 percent. Between 2003 and 2004, however, there was a significant decrease in stony coral cover from 7.2 percent to 6.8 percent. The reason for the drop is not clear, but is probably due to multiple stressors, such as degraded water quality, coral diseases, physical impacts, and over-fishing. This monitoring is conducted as part of the FKNMS's long-term Water Quality Program established in 1995.

Seagrass Communities: The benthic communities at the 27 sampling sites in the Keys remain relatively stable in overall abundance of seagrasses. The monitoring of the permanent stations continues to indicate that the nearshore marine communities are changing in ways that suggest that nutrients are increasing in the system. This monitoring is conducted as part of the FKNMS's long-term Water Quality Program established in 1995.

Water Quality: In general, water quality is good within the FKNMS. There were decreases in several of the metrics used to rate water quality throughout the region. However, several significant trends of elevated nutrients continue in the nearshore waters and the 'back country' areas. Sources for these nutrients are thought to be land based, influence from the southwestern Florida Shelf, and some natural influences. This monitoring is conducted as part of the FKNMS's long-term Water Quality Program established in 1995.

Management Plan Status: The 1992 Congressional re-authorization of the National Marine Sanctuaries Act requires the review of sanctuary management plans every five years to monitor and evaluate the progress of the mission to protect the natural and cultural resources of national significance. The Board of Trustees also mandated this review in a resolution on January 28, 1997. The five-year FKNMS management plan review process began in 2001 with public scoping meetings throughout the Florida Keys. The revised draft management plan has

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undergone review by the National Oceanic and Atmospheric Administration (NOAA) headquarters, the Department of Environmental Protection, and a two-month public comment period from February through April 2005. The Revised Management Plan is targeted for final release in the fall of 2005.

Tortugas Ecological Reserve: To determine how grouper and snapper populations were doing in the Tortugas North Ecological Reserve, 42 fish-identification experts conducted an extensive survey in the summer of 2004. For 20 days, the team made 1,594 scientific dives covering 500 square miles in the reserve and unprotected areas. Results were compared to surveys of the same areas in 1999 and 2000. In 2004, divers saw 5.5 times more black grouper, and a greater number of legal sized snapper and grouper than in 1999 and 2000.

Hurricane Season 2004: In spite of serious threat from Hurricanes Ivan and Charlie, the FKNMS was fortunate in sustaining no reportable damage from these storms. The FKNMS conducted post-hurricane assessments in the Keys and the Dry Tortugas. The Keys suffered minimal damage to the reefs; the report from the assessment in the Tortugas is pending from the Environmental Protection Agency.

Dolphin Stranding: In March 2005, approximately 70 rough-toothed dolphins were stranded on the gulf side of the FKNMS, near Marathon, Florida. The FKNMS worked with NOAA Fisheries, Fish and Wildlife Conservation Commission, and numerous other agencies, community groups, and marine mammal organizations to assess the situation and implement a large-scale rescue effort. As of June 2005, 9 animals had been released to the wild, and 4 remain in rehabilitation. The cause of the stranding is still unknown, but NOAA Fisheries Office of Protected Species, plans to hold a debriefing in August 2005.

Safe Sanctuary 2005: An emergency response drill "Safe Sanctuaries," was initiated by NOAA in the FKNMS to improve the agency's ability to protect the environment of the Florida Keys and the public in case of a major incident. The drill involved the hypothetical grounding of the hypothetical M/V *Portsmith Trader*, an 800-foot cargo ship at Elbow Reef off Key Largo. In the scenario, the grounding injures coral reef habitat and submerged cultural resources, and an oil spill threatens other resources. The drill involved multiple state and federal agencies conducting actual field operations and the initiation of an Incident Command System housed out of Monroe County's Emergency Operations Center in Marathon. In all, the drill was a great success for all participants.

Florida Reef Resilience Program (FRRP): The FRRP is an effort initiated through discussions between the State of Florida, The Nature Conservancy, NOAA, and the Great Barrier Reef Marine Park Authority (GBRMPA). In 2004, at the U.S. Coral Reef Task Force meeting, Florida, NOAA, and GBRMPA formalized their commitment to reef resilience through a Memorandum of Agreement (MOA). The FRRP is designed to improve our understanding of reef health in the region, and to identify factors that influence the long-term

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resilience of the Florida Keys and Southeast Florida marine ecosystem. Ultimately, the FRRP seeks to improve ecological conditions of Florida's reefs and economic sustainability by maximizing the benefits of naturally resilient reefs while seeking to improve the condition of those that are less resilient. Partial funding for this program comes from the State of Florida's Ocean Initiative; additional funding has been secured by The Nature Conservancy.

Maritime Heritage Resources Activities: In June 2005, a team consisting of staff from the State of Florida's Division of Historical Resources, NOAA's Maritime Heritage Program, and the FKNMS conducted a 10-day field investigation of a "mystery wreck" located off the middle Keys. This was the first joint field project conducted under the Programmatic Agreement between NOAA and the State of Florida in the FKNMS. A report detailing the ship's history, overall condition, and suggestions for future research is in production.

Connectivity Conference: "Connectivity: Science, People, and Policy in the Florida Keys National Marine Sanctuary" was held August 2004 in Key West, Florida. The conference brought together more than 150 experts on coral reef ecosystems, scientists, and local stakeholders to discuss the state of the marine environment in the Keys. Topics ranged from shifting baselines, to land-based sources of pollution, tourism, climate change, and others.

New Interpretive Boat Ramp Signs: In partnership with the National Marine Sanctuary Foundation, 46 new interpretive boat ramp signs at public and private boat ramps were installed. The signs inform about the federally protected areas in the Keys, the natural resources, the different buoys, and what they can do to help. The beautiful signs have been well received.

Spiegel Grove: In tropical storm force winds as a result of Hurricane Dennis, the 510 foot Spiegel Grove flipped to an upright position in 130 feet of water. The ship was sunk in 2002 as a permitted artificial reef in the FKNMS. The Sanctuary is examining why the ship did not remain stable in a relatively minor storm as previous analyses had indicated.

(See Attachment 1, Pages 1-30)

RECOMMEND APPROVAL

Item 2 BOT/National Park Service Management Agreement/Dry Tortugas National Park

WITHDRAWN FROM THE MAY 3, 2005 AGENDA

Item 2, cont.

REQUEST: Consideration of a management agreement between the Board of Trustees and the National Park Service for certain submerged lands located within Dry Tortugas National Park.

COUNTY: Monroe

LOCATION: Submerged lands surrounding several small islands (keys), flats, and shoals located in the Gulf of Mexico near the western extremity of the Florida Keys, at approximately latitude twenty-four degrees thirty-eight minutes south, longitude eighty-two degrees fifty-two minutes west of Greenwich.

STAFF REMARKS: The State of Florida Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and the U. S. Department of the Interior (DOI), National Park Service (Service), have a long-standing disagreement concerning which party owns the submerged lands within the Dry Tortugas National Park (Park). This disagreement has prevented the Service from fully implementing its management plan because it has not finalized the implementing regulations for the Park. Under the proposed Management Agreement, the parties agree to disagree about who owns the submerged lands so the Service can finalize its implementing regulations for protecting the resources of the Park.

The history of this issue goes back to Florida's statehood. Title to lands below the mean high water line vested in the State of Florida upon entry to the United States on March 3, 1845. See, e.g., Pollard's Lessee v. Hagan, 44 U.S. 212, 230 (1845); Martin v. Waddell's Lessee, 41 U.S. 367, 410 (1842). The Submerged Lands Act of 1953 confirmed the states' ownership of submerged lands, with the exception of lands expressly granted by a state, lands expressly retained by the United States when the state entered the union, or "any rights the United States has in lands presently and actually occupied by the United States under claim of right." 43 U.S.C. § 1313(a).

On May 7, 1822, Congress passed an act appropriating funds to build lighthouses at various places within the United States, including the Dry Tortugas Islands. 3 Stat. 698 (1822). Subsequently some of the Dry Tortugas Islands were used for military purposes. By a September 17, 1845, Executive Order, Florida's Governor executed a deed of cession to the United States for the Dry Tortugas Islands, stating that these lands were reserved before statehood by the United States for military purposes. By a January 4, 1935, Executive Order, President Roosevelt established the Fort Jefferson National Monument on the Dry Tortugas Islands, confirming the intention to reserve the Dry Tortugas Islands for lighthouse purposes pursuant to the Act of May 7, 1822, but revoking all other previous Executive Orders and military reservations concerning the Dry Tortugas.

On October 26, 1992, Congress established the Park and abolished the Fort Jefferson National Monument. Title II, Pub. L. 102-525. By referring to a 1980 map, the 1992 law establishing

Item 2, cont.

the Park could appear to include adjacent submerged lands within the Park boundary. However, staff believes such an expansive ownership claim is unjustified, and that any express reservation, grant, or claim of right held by the United States only applies to uplands.

The purpose of the proposed Management Agreement is to allow the Service to manage submerged lands within the Park, in accordance with the management plan attached to the Management Agreement, without any relinquishment of the Board of Trustees' ownership. Nothing in the Management Agreement may be construed as an admission by either party regarding ownership of the submerged lands. In other words, the parties would agree to disagree about the ownership issue, while providing for management of the submerged lands in a manner to ensure the protection and preservation of significant natural and cultural resources.

Currently, no oil and gas leases occur in the Park or the Ecological Reserves. Staff of the DOI, Bureau of Land Management, stated that currently no oil and gas leases exist, and no onshore oil and gas leases have occurred historically in the Dry Tortugas. In the past, federal oil and gas leases have occurred in federal waters both north and northwest, and southeast of the Park and reserves. In 1959, 23 leases were issued in federal waters southeast of the Tortugas by the DOI in what is currently known as the Straits of Florida Planning Area. These exploratory wells were subsequently drilled with no commercial hydrocarbon finds. All 23 leases have terminated. In 1984 and 1985, 73 oil and gas leases were issued by the DOI north of the Tortugas in the eastern Gulf of Mexico. Two Exploration Plans were submitted for this area. In 1988, Florida determined that these plans were inconsistent with the Florida Coastal Management Program. This finding was upheld on appeal by the U.S. Department of Commerce. Subsequently, the lease holders filed suit against the federal government. In 1995, the 73 leases were relinquished to the federal government as part of the litigation settlement. There are currently no active oil and gas leases offshore southwest Florida in the eastern Gulf of Mexico or the Straits of Florida.

Historically, state water leases have occurred east of the Tortugas and some exploratory wells have been drilled. These state water leases were issued in 1944, 1951, and 1955, and wells were drilled on them in 1947 through 1962. These leases were terminated in 1954, 1961, and 1964, at the expiration of the lease term, or were relinquished to the state.

In collaboration with staff, the Service has developed a management plan for the Park. The Service's general policy is to issue management plans and regulations only for lands that it owns. It claims that it owns the submerged lands as well as the uplands in the Park, as referenced by the 1980 map; however, staff disagrees that the Service owns the submerged lands in question.

The Service developed the management plan in a parallel, collaborative process with the National Oceanic and Atmospheric Administration's (NOAA's) planning for the Tortugas Ecological Reserve. This collaboration included coordinated schedules, joint scoping

Item 2, cont.

meetings, and joint public meetings. During October and November 1998, the Service conducted four public scoping meetings in four Florida locations. Hundreds of public comments were received. A *Federal Register* notice initiated the beginning of the formal public comment period on the draft plan. Public meeting on the draft plan were held in five Florida locations. Of the 6,104 comments received during the public comment period, 97 percent supported the Service's proposed action. In January 2001, the *final General Management Plan/ Environmental Impact Statement* was announced in the *Federal Register*. The Service received more than 5,000 comments. On July 27, 2001, after considering all of the comments, the Secretary of the Interior approved the final management plan and signed the "Record of Decision."

The management plan uses a zoning approach to manage the approximately 100 square nautical miles of the Park. Fifty-four square nautical miles would be in a "Natural/Cultural Zone." Appropriate activities in this zone would include scuba diving, snorkeling, boating, wildlife viewing and recreational fishing. Forty-six square nautical miles of the Park will be in a "Research Natural Area." Activities within this zone would be restricted to non-manipulative research, education and other activities that do not detract from the area's research values. Nonconsumptive activities such as scuba diving, snorkeling, wildlife viewing, and boating would be allowed. Recreational fishing would not be allowed.

Pursuant to the attached Management Agreement, the Service will consult with staff in drafting regulations specific to the Park. If the Board of Trustees approved this Management Agreement, the DOI will begin the public process to promulgate the implementing regulations. It is the intent of the Service to take the draft implementing regulations to the Florida Fish and Wildlife Conservation Commission (FWC) for its review. After the FWC has acted, staff will bring the implementing regulations before the Board of Trustees to see if they approve of the implementing regulations. The Service must receive the concurrence from the Board of Trustees for the implementing regulations to go in effect. If the Board of Trustees does not concur with any such regulations, or updates thereto, the Service has the option to terminate the Management Agreement.

(See Attachment 2, Pages 1-50)

RECOMMEND APPROVAL

**Item 3 Atlantic Dry Dock Corp./Atlantic Marine, Inc. Consolidated Final Order/
DOA**

REQUEST: Consideration of (1) a Consolidated Final Order adopting an Administrative Law Judge's Recommended Order in Eugene and Nancy O'Donnell, et al., v. Atlantic Dry Dock

Item 3, cont.

Corporation, DEP, et al.; and (2) delegation of authority to the Secretary of the Department of Environmental Protection to sign the Consolidated Final Order.

COUNTY: Duval
Lease Nos. 161530849 and 161008809
Application No. 16-138752-008-EI

APPLICANT: Atlantic Dry Dock Corp./Atlantic Marine Inc.

LOCATION: Sections 25 and 26, Township 01 South, Range 28 East, In the St. Johns River and Sisters Creek/Intracoastal Waterway, 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, Slow Speed Shore to Shore (Sisters Creek/Intracoastal Waterway) and 300-foot Slow Speed Shoreline Buffer (St. Johns River)

STAFF REMARKS: On March 9, 2004, the Board of Trustees approved an application for (1) modification of a five-year sovereignty submerged lands lease to increase the preempted area from 278,590 square feet to 554,605 square feet for a proposed 50,000-ton-capacity dry dock facility; (2) modification of a five-year sovereignty submerged lands lease to increase the preempted area from 107,669 square feet to 302,310 square feet for a proposed 15,600-ton-capacity dry dock facility; (3) a ten-year sovereignty submerged lands private easement containing 366,744 square feet, more or less, for a proposed access channel to a large-ship berthing area; and (4) authorization for the severance of 163,641 cubic yards of sovereignty material. As a result of the Board of Trustees' approval, the Department of Environmental Protection (DEP) subsequently published a consolidated Notice of Intent to Issue the Environmental Resource Permit (ERP) and sovereignty submerged lands authorizations. The Intent was timely challenged by nearby property owners.

In January 2005, an Administrative Law Judge (ALJ) held a final administrative hearing. On May 23, 2005, in light of the evidence provided at the hearing, the ALJ issued a Recommended Order that recommended entry by DEP of a Final Order approving the application of Atlantic Dry Dock Corp./Atlantic Marine, Inc. for the ERP and sovereignty submerged lands authorization, subject to two additional conditions to be included in the ERP and sovereignty submerged lands authorizations regarding a limitation on blasting and a limitation on extension of the western pier to 80 feet. The proposed Consolidated Final Order essentially adopts the Division of Administrative Hearings Recommended Order in its entirety.

Item 3, cont.

(See Attachment 3, Pages 1-107)

RECOMMEND APPROVAL

Item 4 Yuma Exploration and Production Corporation, Inc./Bid Acceptance/Oil and Gas Lease No. 4430

REQUEST: Consideration and acceptance of a bid submitted by Yuma Exploration and Production Corporation, Inc., for a ten-year oil and gas lease.

COUNTY: Okaloosa
Lease No. 4430

APPLICANT: Yuma Exploration and Production Corporation, Inc. (Yuma)

LOCATION: Section 36, Township 03 North, Range 25 West; Sections 01 through 03, Township 02 North, Range 25 West; Sections 28 and 31 through 35, Township 03 North, Range 24 West.

CONSIDERATION: \$17,163.92 cash consideration (\$525.22 to be deposited in the Internal Improvement Trust Fund and \$16,638.70 to be paid to the Department of Transportation); a per annum rental of \$3.50 per net mineral acre, with an increase of \$0.50 every year after the second year; and a 1/6 royalty of production value if oil and gas are produced

STAFF REMARKS: The Department of Environmental Protection (DEP), Division of State Lands, received a nomination/application for lease of the state's oil and gas interest under a segment of Interstate 10 owned by the Department of Transportation (DOT) (323.08 mineral acres) and an associated crossing of the Yellow River owned by the Board of Trustees (10.2 mineral acres) in Okaloosa County (County). Section 253.51, F.S., authorizes the Board of Trustees to negotiate, sell, and convey leasehold estates in and to lands the title to which is vested in any state board, department or agency for the purpose of the development, and the production, of oil and gas, upon such terms and conditions as may be agreed upon by the contracting parties, not inconsistent with law and the provisions of chapter 253, F.S. The lease was offered by competitive bid pursuant to section 253.52, F.S., on January 13, 2004, and the only bid received was from Yuma for \$17,163.92.

Pursuant to sections 18-2.020(1)(d)1. and 18-2.020(1)(d)2.c., F.A.C., in addition to the initial cash bonus of \$17,163.92, Yuma will pay a royalty of 1/6 of production value if oil and gas are produced, and an annual rental of \$3.50 per mineral acre. After the second year of the lease, the rental will increase \$0.50 per mineral acre each year.

Item 4, cont.

This lease addresses mineral rights only, and in no way allows for the use of surface acreage, including sovereignty lands, for the drilling, either exploratory or production, of oil and gas as stated in the lease instrument. Both surface entry and bottom hole will be on privately-owned land. The Board of Trustees' mineral interests involve resources that, if present, can be produced without accessing either DOT's right-of-way or the submerged lands under the Yellow River.

While it is not necessary for Yuma to obtain a lease from the Board of Trustees for the state to receive the revenue from its reserved interest, granting the lease allows the Board of Trustees to establish the following:

1. Receipt of an annual rental fee. Without a lease, no annual revenue would be received until production starts, provided oil and gas are even found;
2. Requirements for reporting on oil and gas activities;
3. Insurance and indemnity provisions; and

Provisions for termination of the lease if production ceases or if exploration is never initiated, which would allow the Board of Trustees to rebid the lease. The bonus paid by the successful bidder is only received after a lease is bid.

Pursuant to section 253.52, F.S., a public meeting was held on December 19, 2003, at the Crestview City Hall to receive public comment. No interested parties attended. Pursuant to section 18-2.018(3)(a)8.b., F.A.C., an oil and gas lease "within three miles of the corporate limits of a municipality may be approved only if a resolution of approval has been received from the municipality." The application was approved by the City of Crestview per resolution 04-09 dated March 8, 2004.

Pursuant to section 253.115, F.S., property owners within 500 feet of the subject lease boundaries were notified and no objections were received.

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. A compliance agreement between DCA and the local government has been finalized. The proposed action is consistent with the adopted plan according to a letter received from the County.

(See Attachment 4, Pages 1-36)

RECOMMEND APPROVAL

Item 5 **Yuma Exploration and Production Corporation, Inc./Bid Acceptance/Oil and Gas Lease No. 4463**

REQUEST: Consideration and acceptance of a bid submitted by Yuma Exploration and Production Corporation, Inc., for a ten-year oil and gas lease.

COUNTY: Okaloosa
Lease No. 4463

APPLICANT: Yuma Exploration and Production Corporation, Inc. (Yuma)

LOCATION: Section 36, Township 03 North, Range 25 West; and Sections 06 and 07, Township 02 North, Range 24 West

CONSIDERATION: \$1,168.50 to be deposited in the Internal Improvement Trust Fund; a per annum rental of \$3.50 per net mineral acre, with an increase of \$0.50 every year after the second year; and a 1/6 royalty of production value if oil and gas are produced

STAFF REMARKS: The Department of Environmental Protection (DEP), Division of State Lands received a nomination/application for lease of 19.5 mineral acres of oil and gas rights owned by the Board of Trustees by virtue of a deed reservation on 39 acres of privately-owned land. Section 253.51, F.S., authorizes the Board of Trustees to negotiate, sell, and convey leasehold estates in and to lands the title to which is vested in any state board, department or agency for the purpose of the development, and the production, of oil and gas, upon such terms and conditions as may be agreed upon by the contracting parties, not inconsistent with law and the provisions of chapter 253, F.S. The lease was offered by competitive bid pursuant to section 253.52, F.S., on July 27, 2004, with only one bid received from Yuma for \$1,168.50.

Pursuant to sections 18-2.020(1)(d)1., and 18-2.020(1)(d)2.c., F.A.C., in addition to the initial cash bonus of \$1,168.50, Yuma will pay a royalty of 1/6 of production value if oil and gas are produced, and an annual rental of \$3.50 per net mineral acre. After the second year of the lease, the rental will increase \$0.50 per mineral acre each year.

While it is not necessary for Yuma to obtain a lease from the Board of Trustees for the state to receive the revenue from its reserved interest, granting the lease allows the Board of Trustees to establish the following:

1. Receipt of an annual rental fee. Without a lease, no annual revenue would be received until production starts, provided oil and gas are even found;
2. How royalties will be calculated for the various products to be mined;
3. Requirements for reporting on oil and gas activities;

Item 5, cont.

4. Insurance and indemnity provisions; and
5. Provisions for termination of the lease if production ceases or if exploration is never initiated, which would allow the Board of Trustees to rebid the lease. The bonus paid by the successful bidder is only received after a lease is bid.

Pursuant to section 253.115, F.S., property owners within 500 feet of the subject lease boundaries were notified and no objections were received.

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) has determined that the plan was not in compliance. A compliance agreement between DCA and the local government has been finalized. The proposed action is consistent with the adopted plan according to a letter received from the County.

(See Attachment 5, Pages 1-34)

RECOMMEND APPROVAL

Item 6 BOT/Gary Cohen, as Trustee, Proposed Settlement

REQUEST: Consideration of a proposed settlement in lieu of litigation to clear title to lands in Miami-Dade County, Florida.

COUNTY: Miami-Dade
 Deed Number 31439

APPLICANT: Department of Environmental Protection (DEP), Division of State Lands, and Gary Cohen, as Trustee under the provisions of a certain Trust Agreement dated December 22, 1995 and known as Trust No. 75-LT-21 (Trustee).

LOCATION: Sections 02 and 11, Township 52 South, Range 42 East, in Dumfoundling Bay, Class III Waters, within the local jurisdiction of the city of Aventura.
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Protection Zone: Yes
Manatee Aggregation Area: No

CONSIDERATION: Quitclaim to the Board of Trustees of Trustee's interest in three parcels

Item 6, cont.

of submerged lands containing 0.65 acre, 1.03 acres, and 0.72 acre

STAFF REMARKS: On February 14, 1941, the Board of Trustees conveyed two parcels of state-owned land containing 9.84 acres and 14.07 acres, respectively, to John L. Patten by Board of Trustees' Deed Number 18594. Each parcel contained a combination of submerged lands and two spoil areas, the northernmost of which is the subject of this request. Over the years the spoil islands increased in size as a result of fill projects and natural accretion. The shoreline of the spoil islands subsequently began to adjust in response to surrounding natural forces existing in the bay, including tides, flows and wave action. There are three areas where the island increased in size as a result of accretion and fill to extend beyond the boundaries of the original conveyance. Area 1 is 0.33 acre, Area 2 is 0.17 acre, and Area 3 is 0.39 acre, for a total of 0.89 acre of accreted and filled land outside the original conveyance. Title to the filled lands vests in the upland riparian landowner pursuant to section 253.12(9), F.S.; however, it is difficult to identify the boundary between the filled lands and the accreted lands. When accretion occurs to upland parcels of land, title vests in the upland landowner; however, there is no case law that addresses title to lands accreted to formerly submerged lands such as spoil islands. The Trustee is proposing to develop the uplands for residential development, although specific plans are not available. Rather than file suit to clear title, the Trustee has offered to quitclaim to the Board of Trustees three parcels of submerged land containing 0.65 acre, 1.03 acres, and 0.72 acre, for a total of 2.40 acres, within the boundaries of the original 9.84-acre conveyance, in exchange for a quitclaim deed to the three parcels of accreted and filled land. The result will be a 2.70 to1 exchange.

Pursuant to Article X, section 11, Florida Constitution, and section 18-21.004(1)(a), F.A.C., the Board of Trustees may convey sovereignty submerged lands if the conveyance is found to be in the public interest. DEP staff recommends that the Board of Trustees make the requisite finding that this settlement and conveyance is in the public interest because: (1) the filled lands do not lend themselves to public use due to their small size and landlocked nature; (2) exotic and invasive species such as Brazilian pepper and Australian pines have established themselves on the accreted lands; (3) the Board of Trustees will receive a net increase of 1.51 acres of submerged lands that are predominantly stable or productive areas with a healthy vegetative substrate; and (4) the transaction will eliminate the time and expense associated with litigation where the Board of Trustees may not prevail.

A 10-foot-wide dock circles approximately 340 feet around the northern shore of the island. Based on the total linear footage of the island, preempted area of the dock and potential mooring area, the Trustee will not be required to obtain a submerged lands lease following conveyance of the submerged lands to the Board of Trustees. In the event the upland land use changes and additional submerged land use is desired, the Trustee will apply for the appropriate submerged lands authorization required at that time in compliance with rules and regulations in effect at the time.

Item 6, cont.

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 1-19)

RECOMMEND APPROVAL

Item 7 Alex Wilkie/Jackie Hendrickson Sales Contract/Determination

REQUEST: Consideration of (1) a determination that a 0.06-acre parcel, more or less, of state-owned land in Pasco County is no longer needed for conservation purposes, pursuant to Article X, Section 18 of the Florida Constitution and section 253.034(6), F.S; (2) a determination that the property is surplus; and (3) approval of a sales contract under which the Board of Trustees would convey the 0.06-acre parcel to Alex J. Wilkie and Jackie M. Hendrickson.

COUNTY: Pasco

APPLICANTS: Alex J. Wilkie and Jackie M. Hendrickson

LOCATION: Section 33, Township 24 South, Range 16 East

CONSIDERATION: \$5,500 to be deposited in the Internal Improvement Trust Fund

		APPRAISED BY			
<u>PARCEL</u>	<u>ACRES</u>	Lobban	PURCHASE	CLOSING	
		(04/23/05)	<u>PRICE</u>	<u>DATE</u>	
Wilkie	0.06	\$ 5,000	\$ 5,500	90 days after	
				BOT approval	

STAFF REMARKS: On December 11, 2000, the Board of Trustees accepted a donation of 137 acres from Pasco County. The lands are managed by the Division of Recreation and Parks (DRP) as part of the Werner-Boyce Salt Springs State Park. The subject 0.06-acre parcel is part of the 137 acres donated by Pasco County. Because DRP no longer needs to manage this 0.06-acre parcel as part of the state park, the Acquisition and Restoration Council (ARC) declared the subject parcel surplus on June 4, 2004.

Mr. Alex Wilkie's driveway, which was in place prior to the Board of Trustees accepting the

Item 7, cont.

donation, encroaches on the subject parcel. There is also an eroding seawall on the subject parcel. Mr. Wilkie attempted to get permitting to repair the seawall, but because he does not own the subject parcel, the permitting was not granted. Mr. Wilkie and Ms. Hendrickson are now requesting to purchase the subject parcel.

The Board of Trustees must make the determination that the property is no longer needed for conservation purposes pursuant to Article X, Section 18, Florida Constitution, and section 253.034(6), F.S. In this case, the subject parcel is part of a larger parcel that includes a canal and a small parcel of platted upland on the southeast corner of the tract. This parcel is located on the east side of the canal, while the rest of the state park is located on the west side of the canal. DRP is the current manager and they have determined that this small parcel has no value for access to the remaining state lands and no apparent environmental value. DRP has agreed to release this parcel from lease and has no objection to it being surplus.

Pursuant to sections 253.034(6)(f)1. and 253.111, F.S., state and county governments were notified of the proposed sale and did not express any interest in the parcel. The subject parcel is not located within the city limits, so local government noticing was not applicable.

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 7, Pages 1-23)

RECOMMEND APPROVAL

Item 8 Miami-Dade County Conveyance

REQUEST: Consideration of a request to convey approximately 172.94 acres to Miami-Dade County.

COUNTY: Miami-Dade
Deed Number 31446

APPLICANT: Miami-Dade County (County)

LOCATION: Section 31, Township 51 South, Range 41 East

CONSIDERATION: Release of deed restriction on three parcels of Board of Trustees' land containing 19.86, 24.94, and 10 acres, respectively

Item 8, cont.

STAFF REMARKS: Pursuant to Chapter 63-62, Laws of Florida (1963), the Board of County Commissioners of State Institutions acquired approximately 227 acres at no cost from the County for development of a new Sunland training center. The Landmark Learning Center (Center) was subsequently built on the property. In 1970, the Board of Trustees acquired title to the Center and leased the facility to the Department of Health and Rehabilitative Services, now Department of Children and Families (DCF), under Board of Trustees' Lease Number 2509. Over the years portions of the property have been subleased for public uses not authorized in the original law, including a fire rescue station (0.82 acre), a juvenile facility with access route (19.86 acres), and a distribution warehouse for non-perishable goods and supplemental office space (24.94 acres). In 2004, all of the Center lands, except the juvenile facility, fire rescue station and warehouse areas, were released by DCF and leased to the recently created Agency for Persons With Disabilities (APD) under Board of Trustees' Lease Number 4486 (182.12 acres).

APD recently began efforts to close the Center and surplus the property when it discovered that the deed from the County included a deed restriction that mirrored the language in the 1963 law, limiting use of the property to a Sunland training center. Neither the 1963 law nor the County deed contain reverter language in the event the property fails to be used as a Sunland training center; however, the County has indicated it would like to reacquire the APD lands and the fire rescue station. It is interested in continuing APD programs on the site, as well as locating other County operations to the Center lands. The County's Department of Human Services and Department of Parks and Recreation have expressed an interest in the site. Pursuant to section 253.111, F.S., the County has requested title to the fire rescue station, which is located on approximately 0.82 acre, and the 182.12 acres, more or less, under Lease Number 4486 to APD for the Center. Section 253.111, F.S., provides for conveyance to the County at the property's appraised market value. Appraisals of the 182.12-acre APD lease area prepared by L. Glenn Johnson, MAI, and J. Mark Quinlivan, MAI, determined that the Center lands would be worth between \$33 million and \$39 million (Quinlivan - \$33,920,000; Johnston - \$39,490,000) if they were not encumbered with the deed restriction, which severely limits its use. However, with the deed restriction these lands have no value.

The County has offered, as consideration for the Center lands, to release the deed restriction on the juvenile facility, warehouse site, and an additional 10-acre parcel that will be made available for other state agency use. The warehouse facility and juvenile facility also have no value with the deed restriction, but without the deed restriction have been valued at \$3,355,000 and \$361,000, respectively, by L. Glenn Johnston, and \$3,170,000 and \$360,000, respectively, by J. Mark Quinlivan. Title to these properties would remain with the Board of Trustees and would no longer have any restriction on use. The Board of Trustees would also gain unrestricted use of an additional ten acres for future government use. The ten acres was included in the appraisal of the APD lease area; therefore, no separate value is available, but a prorated value of the APD lease area results in an estimate of between \$1.86 and \$2.17 million. The Board of Trustees will end up with clear title to property valued in excess of \$5 million.

Item 8, cont.

DSL staff recommends approval of the conveyance to the County for the following reasons:

1. The Board of Trustees could continue use of the property, but the juvenile facility, fire rescue station, and warehouse are not in compliance with the deed restriction;
2. The majority of the property is surplus, and APD has not been funded for maintenance of the 60-building facility;
3. The Center lands have no value with the deed restriction in place;
4. The County wants the property and is prepared to continue existing APD programs, along with other public uses;
5. Conveyance will avoid any litigation with the County if APD closes the Center and the County enforces the deed restriction;
6. It is uncertain how the courts would rule if the County did seek to enforce the deed restriction;
7. The Board of Trustees will receive clear title to the juvenile facility, warehouse, and an additional 10-acre parcel; and
8. The value of the juvenile facility, warehouse, and 10-acre parcel will increase in value to over \$5 million once the deed restriction is removed;

The Board of Trustees' mineral, metal and petroleum interest has not been reserved pursuant to section 253.03(3), F.S., which states that the provisions of section 270.11, F.S., requiring the Board of Trustees to reserve unto itself certain oil and mineral interests in all deeds of conveyances executed by the Board of Trustees, shall not have application to any lands that inure to the Board of Trustees from other state agencies, departments, boards, or commissions under the terms and provisions of this act.

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

(See Attachment 8, Pages 1-61)

RECOMMEND APPROVAL

**Item 9 Chai Investments Company, N.V., Conservation Easement Amendment/
Green Swamp Florida Forever Project**

REQUEST: Consideration of authorization to amend the original terms of a conservation easement in the Green Swamp Florida Forever Projects.

COUNTIES: Polk

Item 9, cont.

LOCATION: Sections 08 and 17, Township 25 South, Range 25 East; and Sections 31 and 32, Township 43 South, Range 30 East

STAFF REMARKS: Pursuant to delegation granted to the Secretary of Department of Environmental Protections on June 22, 1999, to approve all contracts for purchase of property valued at less than \$250,000 provided that each member of the Board of Trustees be provided ten days written notice prior to the execution of any contract for purchase of property valued between \$50,000 and \$250,000, a conservation easement was granted by Chai Investments Company, N.V. on April 26, 2004. The grantor's reserved rights stipulated the right to construct three new residential structures on the property, along with access driveways and appropriate-sized outbuildings such as barns, as more particularly described hereinafter. Each of the three residential structures shall be limited to 5,000 square feet; and have no more than two related outbuildings limited to 2,000 square feet each. The new residential and outbuildings impacts shall be limited to 2.5 contiguous acres each, including new access driveways, all of which shall be located at least 150 feet from any wetland area as identified in the Baseline Documentation.

After the original grantor, Chai Investments, Inc., sold the property to the current owner, it was discovered that the configuration of the property precluded the construction of the three allowed residences under the existing terms of the easement. The only upland area that is not within 150 feet of a wetland is a pasture in the southeast corner of the property that can only be accessed by a jeep trail from adjacent property. Consequently, the current owner has requested an amendment to the easement that would allow new residences to be constructed along the existing paved Hacienda Trail running across the northern portion of the property and which intersects State Road 33. This request involves removing the requirement that new construction be more than 150 feet from an existing wetland. Polk County will only allow construction of residences in areas designated Zone X.

The grantor's reserved rights are hereby amended to the right to construct three new residential structures on the property, along with access driveways and appropriate-sized outbuildings such as barns, as more particularly described hereinafter. Each of the three residential structures shall be limited to 5,000 square feet and have no more than two related outbuildings limited to 2,000 square feet each. The new residential and outbuilding impacts shall be limited to 2.5 contiguous acres each, including new access driveways. Each residence shall be located only in that area designated as Zone X lying adjacent to Hacienda Trail. The new watering holes for cattle allowed in Article IV.C. may be located within the 2.5-acre residential homesites, provided, however, that new and existing watering holes, including those within the residential homesites, shall not exceed 0.1963 acre, being one percent of the improved pasture area as allowed in Article IV.C., and as described in the Baseline Documentation.

The Division of State Lands (DSL), Office of Environmental Services, has reviewed and

Item 9, cont.

approved this amendment. DSL's Bureau of Appraisal has indicated that there will be no impact on value.

(See Attachment 9, Pages 1-22)

RECOMMEND APPROVAL

Item 10 **Board of Public Instruction of Monroe County, Florida, Option Agreement/Managing Agency Designation/Management Policy Statement Confirmation/Harris School Florida Forever Project**

REQUEST: Consideration of (1) an option agreement to acquire 1.96 acres within the Harris School Florida Forever project from the Board of Public Instruction of Monroe County, Florida; (2) designation of Studio Key West, Inc., as the managing agency; and (3) confirmation of the management policy statement.

COUNTY: Monroe

LOCATION: Section 05, Township 68 South, Range 29 East

CONSIDERATION: \$5,412,000

<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>(08/18/04)</u>	<u>(08/18/04)</u>				
Harris School	1.96	\$6,600,000	\$6,400,000	\$6,600,000	\$3,900*	\$5,412,000** (82%)	150 days after BOT approval

* Seller purchased the property in 1905

** \$2,761,224.49 per acre

Noted Features Of Subject Property:

- Historic two-story concrete school dedicated in 1909, contains approximately 17,600 square feet.
- Six ancillary one-story school buildings, built from 1957 through 1977.
- Located in historic Old Town Key West.
- Potential site for 31 residential units, which would entail renovation of the historic school and additional new construction.
- Zoning and land use (same designation in Key West) are Historic Neighborhood Commercial and Historic High Density Residential.

STAFF REMARKS: The Harris School Project was an "A" group project on the Florida Forever Full Fee Project List when negotiations began October 2004. In anticipation of a mutual agreement to purchase, the project was removed from the Florida Forever project list approved by the Board of Trustees on February 16, 2005. The project contains 1.96 acres, of

Item 10, cont.

which these are the only to be acquired. After the Board of Trustees approves this agreement, the project will be complete.

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to 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.

The Board of Public Instruction of Monroe County, Florida; has requested that closing occur 150 days after the Board of Trustees' approval. This will allow time to relocate the Monroe County Association for Retarded Citizens who are currently residing at the Harris School Property.

Due to the proposed renovations being completed over the next three years, and the fact that the Board of Trustees will be taking title to the property which contains hazardous materials, namely lead-based paint, asbestos, and possibly underground fuel storage tanks that were typically used in the early 1900's, both parties have agreed to hold 15 percent of the purchase price in escrow.

An environmental site assessment has been performed, and the escrowed funds represent approximately three times the estimated clean-up cost of the known hazardous materials located on the property. If for any reason Studio Key West, Inc., does not conduct the clean-up and the Monroe County Board of Public Instruction does not comply with its contractual obligation to clean-up the hazardous materials located on the property, the escrowed funds will be available for the Board of Trustees to conduct the clean-up.

At the seller's request, the option agreement includes a requirement that the deed contain reverter language which shall provide that if (a) Studio Key West, Inc., or some other entity that is not a party to the option agreement does not commence the repair, remodeling, or removal of the buildings located upon the property within one year of the date of closing, and (b) the seller pays to the purchaser a sum equal to the total of the purchase price paid for the property by purchaser and purchaser's closing costs, including specifically, but not by way of limitation, the cost of the environmental site assessment, survey and survey review, and title insurance (including title insurance premium), title shall revert to the seller. If the property has not reverted to the seller within 13 months after the date of closing, the reverter shall expire and terminate.

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

Item 10, cont.

Located in the City of Key West, protection of this site from more intensive development will increase the city's open-space offerings. Acquisition of this site also meets the Florida Forever goal of preserving significant archeological or historic sites. The Harris School was Monroe County's first public high school. It was dedicated in 1909, and is considered the second most significant structure within the Key West Historic District, which is listed on the National Register of Historical Places.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate Studio Key West, Inc., as the managing agency for this site. The site will be managed as an artists community in the spirit of the McDowell Colony and Yaddo and continue the long tradition of art and culture in the Key West community.

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 2004 Florida Forever Annual Report adopted by the Board of Trustees on February 26, 2004. Staff recommends that the Board of Trustees confirm the management policy statement as follows:

Located in Monroe County in downtown Key West and consisting of approximately 2 acres, the primary concept behind this proposal is to preserve an historic site. Secondly, the applicant proposes that the old school building be restored and used as an educational arts facility and community center.

Studio Key West, Inc., proposes to rehabilitate the building for use as an artists colony and community center. The facility would provide art classes, workshops, lectures, and gallery space for Monroe County teachers and the public. This project's homage to the educational heritage of the site is that some art workshops will be provided free to Monroe County teachers. Residencies will be offered to prominent and promising artists utilizing the 1950's era buildings behind the school as studio/guest quarters. That building also contains a commercial kitchen, which would be used as a permanent internship site for high school students in the culinary arts program. This program, Pro-Start, already has 150 students enrolled, and will provide in-school and job site internships. Additionally, these students would be the in-house caterers for Harris School Activities.

This acquisition is consistent with section 187.201(18), F.S., the Cultural and Historical Resources section of the State Comprehensive Plan.

(See Attachment 10, Pages 1-58)

Item 10, cont.

RECOMMEND APPROVAL

Item 11 **The Conservation Fund Assignment of Option Agreement/Fee/Conservation Easement/Letchworth Mounds Florida Forever Project**

DEFERRED FROM THE JUNE 16, 2005 AGENDA

REQUEST: Consideration of an assignment of (1) an option agreement to acquire 109.6 acres; and (2) a perpetual conservation easement over 1,281.6 acres for a total of 1,391.2 acres, both within the Letchworth Mounds Florida Forever project from The Conservation Fund, as trustee of The Conservation Fund Charitable Trust.

COUNTIES: Jefferson and Leon

LOCATION: Sections 01, 02, 11 and 12, Township 01 North, Range 03 East; Section 36, Township 02 North, Range 03 East.

CONSIDERATION: \$4,716,500 (the Board of Trustees' share of the \$4,900,000 purchase price for the acquisition; plus \$66,500 for the purchase of the option agreement, less \$250,000 donated by the Doris Duke Charitable Foundation facilitated by The Conservation Fund).

	APPRAISED BY		APPROVED	SELLER'S	TRUSTEES'	OPTION
PARCEL ACRES	Goodman	Arline	VALUE	PURCHASE	PURCHASE	DATE
	(11/17/04)	(11/17/04)		PRICE	PRICE	
Osceola 1,391.2 Property Holdings	\$4,810,000	\$5,450,000	\$5,450,000	\$5,871,960	\$4,716,500** (87%)	08/23/05

* Seller purchased the property on 01/05/04

** For analysis purposes, the \$250,000 contribution from the Doris Duke Charitable Foundation, showing the conservation easement acquisition price as a percent of fee simple value, is applied in several scenarios in the box below:

- | |
|---|
| <ol style="list-style-type: none"> 1. Conservation easement portion: 64% for easement portion and 100% for fee portion 2. Fee simple portion: 72% for easement portion and 54% for fee portion 3. Half to fee portion/half to easement: 68% for easement portion and 77% for fee portion 4. Total property: 66% of full fee value @ \$7,000,000 5. Overall price is \$3,390 per acre |
|---|

Noted Features of Subject Property:

Property is located twelve miles east of Tallahassee and seven miles west of Monticello.

Approximately 4,137 feet of frontage on US Hwy 90; 2,395 feet fronting on Sun Ray Road; 974 feet fronting on CR158A.

Parcel contains rolling topography with elevations ranging between 80 to 150 feet above sea level.

The 109.6 acre fee portion (valued at \$5,000/acre) is contiguous to east and south boundaries of Letchworth Mounds State Park.

Item 11, cont.

STAFF REMARKS: Letchworth Mounds is an “A” group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. The project contains 1,469 acres, of which 77.8 acres have been acquired. After the Board of Trustees approves this agreement, the project will be complete.

Pursuant to a multi-party acquisition agreement between the Department of Environmental Protection’s (DEP) Division of State Lands and The Conservation Fund (TCF), as trustee of The Conservation Fund Charitable Trust, TCF has acquired an option to purchase the property from Osceola Property Holdings II, LLC. After this acquisition is approved, the Board of Trustees will acquire the option from TCF for \$66,500, which represents agreed upon compensation to TCF for overhead associated with acquiring the option. The assignment of the option agreement provides that payment to TCF is contingent upon the Board of Trustees successfully acquiring the property from the owner. The assignment of option agreement further provides that in no event will the purchase price for the option and the purchase price of the property exceed the approved value of the property.

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 or soil, will be prohibited;
- The exploration for and extraction of oil, gas, minerals, limestone, etc., by the grantor, except as necessary to combat erosion or flooding, will be prohibited;
- Acts detrimental to water conservation, fish and wildlife habitat preservation, natural water courses, extraction of existing surface or subsurface water that would be detrimental to natural water level or flow, or water purity, will be prohibited;
- Acts or uses detrimental to the preservation, structural integrity or physical appearance of any portions of the property having historical or archeological significance, will be prohibited, subject to the owners exercise of the reserved rights;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation except in areas designated for agricultural or silvicultural use in the Baseline Documentation Report, will be prohibited;
- The cutting of cypress trees, will be prohibited;
- Commercial or industrial activity, (except for grantor’s reserved silviculture rights), including but not limited to, swine, dairy, poultry operations, confined animal feed lot operations, will be prohibited;
- There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the property, except the grantor may erect and maintain reasonable signs indicating the name of the property, boundary markers, directional signs, signs regarding public access to the property, memorial plaques, temporary signs indicating

Item 11, cont.

that the property is for sale or lease, signs informing the public that products are for sale on the property, and political or religious signs;

- New construction, (except for grantor's reserved rights to construct four new residential structures), mobile homes or other structures, except as may be necessary for maintenance, normal operations or emergency situations, will be prohibited;
- Temporary roads may be built to facilitate authorized logging activities and must follow Best Management Practices. Motorized vehicles will be prohibited except on established trails and roads, unless necessary: (1) to protect or enhance the purposes of the easement, (2) for emergency purposes, and (3) to retrieve game that has been hunted legally;
- Natural areas shall remain natural areas;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species, will be prohibited;
- Any subdivision of the land except as may otherwise be provided in this easement, will be prohibited; and
- Commercial water wells on the property will be 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 observe, maintain, photograph, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding, so long as the same do not constitute a danger to the grantee's employees, agents, officers, directors and invitees, and so long as such activities do not violate any of the prohibitions applicable to the property or the grantee's rights, as stated above. The grantor reserves, and shall continue to own, the hunting and fishing rights on, or related to, the property and the grantor may lease and sell privileges of such rights;
- The right to conduct controlled or prescribed burning with proper authorization;
- The right to continue to use, maintain, repair, and reconstruct all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches and such other facilities on the property as depicted in the Baseline Documentation. Those structures existing along the southern entrance to the property may be relocated or reconstructed as part of a redesign and beautification of the entrance area. If any of the now existing facilities on the property requires reconstruction or replacement due to depreciation, obsolescence, destruction or severe damage, the replacement structures may be increased in size no larger than 150 percent of the size of the original structure it replaces, as such size is documented in the Baseline Documentation, and shall be situated at the same site;
- The right to divide the property into a total of five parcels, the size of which shall be at the grantor's discretion and construction of four new residential structures, along with

Item 11, cont.

access driveways and appropriate-sized outbuildings such as barns. Each of the four residential structures shall be limited to 5,000 square feet of heated and cooled area and 1,500 square feet of overhangs, porches and other such non-heated or cooled areas; and have no more than two related outbuildings limited to 2,000 square feet each, and shall include the right to construct new access driveways serving each lot, all of which shall be located at least 150 feet from any wetland area as identified in the Baseline Documentation and the new residential and outbuilding impacts shall be limited to five acres each plus so much of the 100-acre improved pasture impacts allowed by the easement as the owners may determine. New buildings will not be placed on highly significant archaeologically items as determined by the Division of Historical Resources (DHR);

- The right to maintain an approximately 1,500-square-foot lake cabin on the property;
- The right to convert an additional one-hundred acres of improved pasture provided the additional pastures are not located in wetlands, hardwood bottom areas or any areas that have not previously been pastures or farm areas, as indicated on the Baseline Documentation Report, and owner may graze horses, donkeys, mules, and the occasional “4-H-type animals;
- The right to silviculture within areas depicted on the Baseline Documentation as silvicultural or agricultural;
- The right to convert any improved pasture or hay area to a timber plantation, which may then be harvested by the owner;
- The right to manage the property for recreational duck and quail hunting. Management may include use of herbicides for habitat restoration; temporary structures such as tree stands, quail pens, feeders, picnic areas and duck blinds;
- The right to maintain existing game food plots as indicated on the Baseline Documentation Report; and
- The right to maintain and enhance the existing ponds and streams on the property. The owner may continue to operate, maintain, or replace existing ground water wells incident to allowed uses on the property. The owner will be allowed to dig one well for each new residence as allowed in grantor’s reserved rights.

The proposed conservation easement grants certain rights to the grantee subject to the owners reserved rights. The summary of grantee’s rights includes, but is not limited to, the following:

- The right to enforce protection of the conservation values of the property;
- The right to ensure that no future residential, commercial, industrial or incidental development rights except as may be specifically reserved to the grantor in this easement. No development rights or density credits can be transferred onto the property from other property;
- Upon 14 days prior notice, twice annually, the grantee, has the right to enter the property at reasonable times in order to monitor compliance with and otherwise enforce

Item 11, cont.

- the terms of this easement;
- The right to prevent any activity or use of the property that is inconsistent with the purpose or provisions of this easement;
 - The right to ingress and egress to the property, which shall not include public access except for the purpose of scientific and educational exploration and study;
 - The right of first refusal to purchase the property if the grantor proposes to sell the property or any interest therein or portion thereof to a third party other than Hurley Booth a lineal and certain lateral or step descendants of Hurley Booth or an entity in which Hurley Booth owns a controlling interest;
 - The right to have the property maintained as reflected in the Baseline Documentation, as the property may develop through the forces of nature;
 - The right to allow qualified personnel from DHR of the State of Florida, or its successor; (1) to protect against destruction of any or all burial mounds and other archaeological sites (Sites) identified in the Baseline Documentation Report or discovered in the future; and (2) at times mutually agreeable to DHR and grantor to conduct appropriate archaeological investigation of the Sites, grantor shall also allow limited public access for up to a maximum of 25 people at any one time to the Sites for guided tours, under the control of DHR or DRP, for the purpose of interpretive tours during the months of June, July, August and September on a schedule coordinated with grantor; and
 - The right to cut and remove timber if grantor fails to cut and remove timber damaged by natural disaster, fire and/or infestation. Any such cutting and removal by grantee shall be at the expense of grantee and all proceeds from the sale of any such timber shall inure to the benefit of grantee.

All mortgages and liens will be satisfied or subordinated at the time of closing. There are outstanding oil, gas and mineral (OGM) interests that encumber some 80 acres of the property in favor of a third party. Additional due diligence is being performed to determine if the right of entry has been barred by the Marketable Records Title Act. DEP's Bureau of Geology has indicated that the prospects of oil and gas discovery on the subject parcel are considered to be low. Furthermore, due to the lack of active reserve extraction in the area, the outstanding OGM's primarily reflect a nuisance value and do not impact the property.

The appraisal map denotes easements on the property that include a 100-foot electrical transmission line easement to Florida Power Corporation and an ingress/egress easement for a portion of Sunray Road South. DEP's Bureau of Appraisal found both easements to be typical of large agricultural tracts within the neighborhood with no specific adverse impact to value. At closing, the seller will reserve ownership of a 30-foot-wide corridor (approximately 1.3 acres) for ingress and egress to its adjacent property. The seller will grant the Board of Trustees an access easement over the corridor. DEP's Division of Recreation and Parks (DRP), the future managing agency, has determined that the property can be managed and/or

Item 11, cont.

monitored with these outstanding interests and easements in place. 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, and an environmental site assessment and baseline documentation report will be provided by the purchaser prior to closing.

Letchworth Mounds is one of the highest priority archaeological sites on the Florida Forever list. The project is located along the Leon and Jefferson county lines just below Lake Miccosukee, east of Tallahassee. This property is within the southeastern extension of the "Red Hills" region, an area of special conservation interest to regional and national conservation groups attempting to preserve the wildlife and watershed values still present within historic plantation properties. Due to proximity to a growing state capital, this area is an agricultural landscape that is gradually being converted to development tracts. The Letchworth Mounds project will help protect the adjacent Letchworth Mounds State Park and additional mounds and village sites of the subject property, giving researchers an opportunity to examine the site and the public a chance to learn the history of this area. The conservation easement also protects high quality nature areas that are the primary watershed of the Lake Miccosukee southern stream outlet consisting of bottomland hardwood, cypress and gum forest, adjacent hardwood hammocks, and rolling upland pine woodlands.

The primary goal of management of the Letchworth Mounds project is to preserve significant archaeological or historical sites.

The fee portion of this acquisition will be managed by DRP and the easement portion will be monitored by DEP's Office of Environmental Services.

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

(See Attachment 11, Pages 1-91)

RECOMMEND APPROVAL