

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JANUARY 31, 2008

Item 1 Minutes

Submittal of the Minutes from the September 19, 2007, October 2, 2007, October 16, 2007 and November 14, 2007 Cabinet Meetings.

(See Attachment 1, Pages 1-54)

RECOMMEND APPROVAL

Item 2 Palmer Ranch, LLC Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for a five-year sovereignty submerged lands lease to contain 22,014 square feet, more or less, for a proposed private docking facility (13 slips over sovereignty submerged lands and 6 slips in an adjacent man-made canal).

COUNTY: Collier
 Lease No. 110032365
 ERP File No. 11-0196577-001

APPLICANT: Palmer Ranch, LLC, an Illinois Limited Liability Company

LOCATION: Sections 18 and 19, Township 52 South, Range 27 East, in Coon Key Pass, Class II Outstanding Florida Waters, not approved for shellfish harvesting, within the local jurisdiction of Collier County.
Aquatic Preserve: Rookery Bay-Cape Romano, Resource Protection Area 1 and 3
Outstanding Florida Waters: Class II
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Idle/slow speed zone

CONSIDERATION:

Lease Fee: \$3,887.13, representing (1) \$3,109.70 as the initial lease fee computed at the base rate of \$0.14126 per square foot; and (2) \$777.43 as the initial 25 percent surcharge payment. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C. Fees may be revised upon receipt of an acceptable survey.

Public Interest: \$320,000 worth of public access improvements and public land management improvements. This has been addressed as a special approval condition.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization

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to use sovereignty submerged lands under chapters 253 and 258, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

Project Synopsis

The applicant is proposing to construct a 19-slip private docking facility, with 13 slips over 22,014 square feet of sovereignty submerged lands and 6 slips in the man-made canal, adjacent to an undeveloped upland property. The proposed docking facility will accommodate private recreational vessels ranging in lengths from 20 to 60 feet with a maximum draft of 5 feet.

Background

As originally proposed, the project entailed nineteen 60-foot-long boat slips on sovereignty submerged lands along with the other activities on the uplands and in the man-made canal that are presently proposed. Six of those slips would have been located over sponges and other resources that constitute a Resource Protection Area 1 pursuant to chapter 18-20, F.A.C. The project was redesigned to eliminate those six boat slips (the area between Lease Areas A and B on the lease survey), thereby reducing impacts to sovereignty submerged land resources. The project has also been designed to minimize impacts to mangroves along the shoreline.

The upland property is commercially zoned and presently undeveloped except for a wastewater lift station that operates under a Department of Environmental Protection (DEP) wastewater collection permit. Upland development will include two restrooms, a swimming pool and deck, a 16-space paved parking lot, and a gravel cart path.

Project Detail

The docks will be floating concrete docks attached to fixed wooden access walkways by aluminum gangways. The boat slip mix at the leased docking facility will include 11 private recreational vessels up to 60 feet long, one up to 30 feet long, and one up to 20 feet long. Vessel drafts will not exceed 5 feet. An additional six slips will be located in an adjacent man-made canal (not sovereignty submerged lands). Those slips will be for private recreational vessels up to 20 feet long with drafts not to exceed 3.5 feet. The applicant intends to sell the right to use all of the boat slips on sovereignty submerged lands. A special approval condition requires the applicant to develop and implement a DEP-approved wet slip user agreement disclosing the lease requirements to slip users. Another special lease condition specifies that the docking facility will be subject to modification, including a reduction in size and associated lease area, if the upland use changes from commercial to residential.

The applicant proposes to dredge 325 cubic yards of material in the adjacent man-made canal. Since none of the dredging will be located on sovereignty submerged lands, no dredge fee is required.

Public Interest

The portion of the docking facility on sovereignty submerged lands is located in an aquatic preserve; therefore, the proposed lease must be shown to be in the public interest, pursuant to

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section 258.42, F.S., and section 18-20.004(1)(b), F.A.C. DEP is of the opinion that the project is in the public interest in light of the following proposals by the applicant: (1) donation of \$320,000 worth of public access improvements and public land management improvements, tentatively divided as follows: (a) \$200,000 worth of design, permitting and site development (including construction) for a proposed public educational/recreational facility within the Rookery Bay National Estuarine Research Reserve (RBNERR). The facility will include a public canoe/kayak launch that will provide non-motorized boating access to the Rookery Bay Aquatic Preserve at the northwest corner of County Road 951 and Capri Boulevard; (b) \$120,000 worth of side scan sonar mapping services to RBNERR to map seagrasses in the vicinity of the project; and (2) installation and maintenance of educational displays at the site regarding the aquatic preserve and marine ecosystems. Item (1) includes flexibility for DEP to assign a portion of either donation to the other half of Item (1) if all funds from (a) or (b) are not required to complete the respective portion of the applicant's public interest proposal. Item (1) is addressed as a special approval condition and item (2) is addressed as a specific condition in the environmental resource permit (ERP).

Noticing

The proposed lease was noticed pursuant to section 253.115, F.S. Forty-eight property owners were specifically noticed and nine objections were received. The objections received raised the following concerns:

- (1) the proposed canal dock's potential interference with navigation in the canal;
- (2) disagreement over the location of the applicant's northern riparian line;
- (3) the project's potential inconsistency with the setback requirement in section 18-21.004(3)(d), F.A.C.;
- (4) potential adverse impacts to manatees;
- (5) potential adverse impacts to shoreline mangroves and nearby sponges, seagrass, shrimp and fish species, eagles and other birds;
- (6) potential noise and lighting impacts to neighbors and the lack of upland screening/buffering;
- (7) potential change in upland use;
- (8) the potential use of the boat slips for overnight mooring, commercial tour boats, and other uses;
- (9) how sewage will be removed from the site;
- (10) stormwater runoff from the adjacent upland property if it is developed;
- (11) the potential lack of adequate water depth at and adjacent to the proposed docking facility; and
- (12) the lack of a public meeting to explain the project to area residents.

Additionally, Save the Manatee Club has provided a written objection to the proposed project based on its opinion that the proposed project is inconsistent with the federal Marine Mammal Protection Act. In light of the objections received, DEP determined that the proposed lease requires Board of Trustees' consideration pursuant to the heightened public concern provision of section 18-21.0051(4), F.A.C.

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DEP is of the opinion that the objections received are addressed as follows:

- (1) although the man-made canal is not sovereignty submerged lands and is thus not subject to chapter 18-21, F.A.C., navigation in the canal will be maintained by marginal mooring of vessels along the canal dock and by the proposed maintenance dredging of the canal by the applicant at the proposed marginal boat slips in the canal, and by the docking facility in the canal extending less than 25 percent of the width of the canal. Additionally, navigation is an issue that must be addressed by the U.S. Army Corps of Engineers (Corps) prior to any permit being granted for the project by the Corps;
- (2) the riparian line was established after extensive discussion between the applicant's surveyor and DEP's Bureau of Survey and Mapping, and the project is within the applicant's riparian area;
- (3) the northernmost portion of the project is within 25 feet of the mouth of the canal. DEP has not been able to conclusively determine the ownership of the man-made canal, other than the canal's dedication to the public as part of the recorded subdivision plat. Therefore, there is no entity to provide a setback waiver other than Collier County, which has provided a local comprehensive plan consistency letter for the project;
- (4) concerns regarding potential manatee impacts have been addressed through the Florida Fish and Wildlife Conservation Commission (FWC) recommendations that will be incorporated into the ERP;
- (5) the project has been designed to minimize impacts to shoreline mangroves to the greatest extent practicable, and the project has been modified to avoid nearby sponges and seagrass, and shrimp and fish species will be protected through maintenance of water quality through the general and specific conditions of the ERP, and the FWC has not raised any concerns regarding adverse impacts to bird species;
- (6) potential noise and lighting impacts to neighbors and the lack of upland screening/buffering are local land development code issues to be addressed by local governments;
- (7) any change in upland use depends in part on the zoning of the property by the local government regulatory agency, and will require a lease modification. If such changes include upland development activities, such changes will also require a modification to the ERP to address stormwater issues;
- (8) overnight occupancy of boats will be authorized by the lease and ERP, although liveaboards will be prohibited. Although the applicant desires commercial tour boats to be authorized, the lease and ERP prohibit commercial tour boats and other commercial vessels to address the objection received. Other uses of boat slips not specifically authorized by the lease and ERP will require a modification to those authorizations;
- (9) the ERP requires installation, use and maintenance of a sewage pumpout facility, and the facility will be connected to the upland sewage system, and the local sewage treatment entity has provided written verification that it has the capacity to accept such sewage;
- (10) stormwater runoff from the upland development will be treated prior to discharge, and is addressed in the ERP. Any potential future upland development that may generate additional stormwater runoff beyond that which is addressed through the ERP will require a modification to the lease and the ERP;

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- (11) the applicant has provided bathymetric data showing adequate water depth on sovereignty submerged lands at the project site, and adequate water depths in the canal will be provided by the proposed maintenance dredging that qualifies as an exempt activity pursuant to section 403.813(2)(f), F.S. Additionally, quadrangle maps and navigational charts show navigation aides and depths of at least six feet between the project site and Gullivan Bay to the south and the Big Marco River to the north; and
- (12) the project was noticed pursuant to section 253.115, F.S., and entities receiving notice were provided adequate opportunity to review the application file.

Permit Summary

DEP's ERP will prohibit liveboards and fueling facilities and authorize a sewage pumpout facility. The ERP will incorporate several requirements designed to prevent and/or reduce water quality impacts, including stormwater management for the proposed upland parking lot and golf cart paths and implementation of a marina operations plan. As a result, DEP is of the opinion that the project has addressed long-term secondary and cumulative impacts from this project.

Commenting Agency

The recommendations of FWC regarding the protection of manatees have been addressed in the ERP and/or lease. Collier County is a designated manatee county with an approved manatee protection plan (MPP). FWC has stated that the proposed project is consistent with the MPP. FWC has also stated that use of the proposed docking facility in the area over sovereignty submerged lands by boats with a 5-foot vessel draft would not significantly impact submerged aquatic vegetation in that mooring area and the ingress/egress area. In addition to the FWC recommendations, a special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between the applicant and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Collier County and approved by FWC, and/or any speed zones established by Collier County and approved by FWC.

Comprehensive Plan

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

(See Attachment 2, Pages 1-50)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$3,887.13**

Item 3 Leeward LLC Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for (1) modification of a five-year sovereignty submerged lands lease to (a) combine two existing leases into one lease; (b) increase the term from five to ten years; and (c) increase the preempted area from 67,657 square feet to 251,781 square feet, more or less, for a proposed reconfigured commercial docking facility with (108 slips all or partially over sovereignty submerged lands and 20 slips over privately-owned submerged lands; and (2) authorization for the severance of 7,080 cubic yards of sovereignty material.

COUNTY: Lee
Lease No. 360025905 (f/k/a Hansen Marine Ways)
ERP File No. 36-0148146-002

APPLICANT: Leeward LLC, a Florida limited liability company (Leeward)

LOCATION: Section 34, Township 43 South, Range 25 East, in the Orange River, Class III waters, within the local jurisdiction of Lee County
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: Yes
Manatee Protection Speed Zone: Idle/slow speed zone

CONSIDERATION: \$47,328.95, representing: (1) \$24,896.61 as the initial lease fee computed at the base rate of \$0.14126 per square foot, discounted 30 percent because 90 percent of the slips are open to the public for rent on a first-come, first-served basis; (2) \$6,502.34 as the initial 25 percent surcharge payment for the additional area; and (3) \$15,930.00 for the severance of 7,080 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard, pursuant to section 18-21.011(3)(a)2, F.A.C. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C. Fees may be revised upon receipt of an acceptable survey and legal description.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

Project Synopsis

The proposed project consists of combining two existing sovereignty submerged lands leases into one ten-year lease and constructing a 128-slip commercial docking facility, with 108 slips over, or partially over, 251,781 square feet of sovereignty submerged lands and 20 slips over privately-owned submerged lands. The docking facility will accommodate private recreational boats, commercial tour boats, commercial fishing boats, and rental boats. Boat sizes will range in lengths from 30 to 80 feet, with drafts of less than 5 feet.

Item 3, cont.

Background

Lease No. 360025905, f/k/a Hansen Marine Ways

This site has operated as a commercial marina / boat repair business since 1886. On August 25, 1985 the former Department of Natural Resources registered the docking facility as a grandfathered structure (GSR No. 360059). On October 8, 1997, the Department of Environmental Protection (DEP) issued a five-year sovereignty submerged lands lease containing 94,823 square feet to the former lessee (A. Ernest Hansen, Trustee) pursuant to a delegation of authority. DEP subsequently renewed the lease pursuant to a delegation of authority. The leased facility accommodated liveaboards from the 1950s until Leeward purchased it and the upland riparian property on August 1, 2005.

DEP site inspections on April 25, 2003 and September 9, 2003, revealed several lease violations had occurred. Leeward, DEP, and the former owner/lessee entered into Consent Order No. 03-1622-36-DF and a Temporary Use Agreement (TUA) on August 15, 2005 to resolve the former owner/lessee's lease non-compliance. Leeward is currently in compliance with the terms and conditions of the Consent Order and TUA. The Lease was renewed and modified by DEP on November 30, 2007 pursuant to a delegation of authority to reflect the change in upland ownership to Leeward and the requirements of the Consent Order and TUA. The lease authorizes mooring of commercial and recreational vessels in conjunction with upland marina sales and service, without fueling facilities, with a sewage pumpout facility, and without liveaboards. The lease expires on October 8, 2012.

On August 11, 2005, DEP issued a Butler Act Disclaimer (No. 40223 [5467-36]) to the former owner/lessee for 36,157.22 square feet of submerged lands, of which 13,663.20 square feet was within the former lease area. DEP also determined that approximately 56,903 square feet of submerged lands, of which 39,771.67 square feet was within the landward portion of the original lease area, had been dredged from privately-owned uplands and therefore is not sovereignty submerged lands. As a result of the DEP ownership determinations, Leeward owns approximately 93,060 square feet of submerged lands at the site. The portion of the existing marina on sovereignty submerged lands currently preempts 48,315 square feet. The existing marina currently includes approximately 102 wet slips (56 over sovereignty submerged lands and 46 over privately-owned submerged lands). All of the slips over sovereignty submerged lands are available for rent to the general public on a first-come, first-served basis for periods of one year or less.

Lease No. 360020975, f/k/a Manatee World

This commercial marina has operated on the east end of the site since 1965. From 1965 to 1996, Manatee World was a full service marina consisting of large, high-speed powerboat sales, dry storage capacity for 100 vessels including ground and rack storage, boat repair, and 21 wet slips. Since then, the 21-slip docking facility has been used for mooring of commercial, recreational, and rental vessels in conjunction with an upland commercial marina, dry storage building (current capacity is 60 vessels), and a boat yard with fueling facilities, with a sewage pumpout facility, without liveaboards, and preempting 20,111 square feet of sovereignty submerged lands. DEP issued a five-year sovereignty submerged lands lease containing 20,111 square feet for this

Item 3, cont.

facility in 1996 and subsequently renewed the lease pursuant to a delegation of authority. DEP issued a modified lease in 2005 to reflect a change in ownership to Leeward pursuant to a delegation of authority. A January 24, 2006 inspection by DEP found the marina to be in compliance with the lease. DEP issued a renewed and modified lease on November 30, 2007 to reflect a change in upland ownership to Leeward and now contains 19,342 square feet. The lease expires on May 31, 2012. All 21 wet slips located over sovereignty submerged lands are available for rent to the general public on a first-come, first-served basis for periods of one year or less.

The existing configuration of sovereignty submerged lands and private submerged lands ownership is somewhat fragmented, thereby potentially making lease compliance complex for both DEP and Leeward. Therefore, Leeward and DEP are working to develop a submerged lands exchange that meets the applicable public interest requirement for sovereignty submerged land conveyances. If that exchange is subsequently approved by the Board of Trustees, this sovereignty submerged lands lease will be modified pursuant to a delegation of authority unless the Board of Trustees directs DEP to submit that lease modification for Board of Trustees' consideration.

Leeward proposes to redevelop its 4.63-acre riparian upland property into a commercial marina office (Steamboat Marina), restaurant, retail buildings and 140-space vehicle parking area. Adjacent to Leeward's property is a separate 14.75-acre property owned by Steamboat LLC that is proposed to be developed into a 300-unit resort hotel. The South Florida Water Management District issued an environmental resource permit (no. 36-06532-P) for that project on September 11, 2007. Leeward has provided an affidavit stating that there are no business agreements between Leeward and Steamboat LLC and between the two parcels. A resolution adopted by the Lee County Board of County Commissioners for the two projects authorizes commercial, not residential, uses at the two sites.

Project Detail

Leeward proposes to remove the existing docks and pilings and construct the 128-slip docking facility. Ninety percent of all of the boat slips located over, or partially over, sovereignty submerged lands will be available for rent to the general public on a first-come, first-served basis, pursuant to section 18-21.003(23), F.A.C., with no longer than one-year rental terms, and with no automatic renewal rights or conditions. Boat slips located entirely over privately-owned submerged lands may be rented, leased, or sold to members of the public depending on market factors. To date, DEP has not discovered any boat slips on sovereignty submerged lands at the leased facilities that have been sold.

Leeward proposes to dredge 12,170 cubic yards of material (7,080 cubic yards of material on sovereignty submerged lands and 5,090 cubic yards of material on privately-owned submerged lands) from a 213,165 square foot area to provide adequate water depth (approximately -6 feet MLW) for the vessels proposed to be moored at the modified docking facility. The dredging will increase depths in areas that are currently -3 feet to -6 feet deep at mean low water. The material to be dredged consists of sand, silt, and debris consisting of crushed shell fragments, an

Item 3, cont.

estimated 440 creosote pilings, and the remnants of three wood and metal barges sunk in the 1930s that have become colonized with mangroves. Other than the mangroves, there are no significant benthic resources in or adjacent to the area proposed to be dredged. Leeward proposes to offset the mangrove impacts by water quality benefits from removal of potential metal-laden sediments and creosote pilings. The spoil material will be disposed of at an appropriate self-contained upland site. All dredging on sovereignty submerged lands will be included in the proposed lease. Leeward does not qualify for a waiver of the dredge fee pursuant to section 18-21.011(3)(c), F.A.C.; therefore, a special approval condition requires the applicant to pay the dredge fee for the 7,080 cubic yards of material on sovereignty submerged lands to DEP prior to receipt of a fully executed modified lease.

Noticing

The lease modification request was not required to be noticed due to an exemption for lease modifications pursuant to section 253.115(5)(i), F.S. However, DEP received written objections from Save the Manatee Club, Inc., and three concerned citizens including a previous liveaboard vessel resident of the former Hansen Marine Ways facility. The concerns raised in those objections pertained to potential adverse impacts to manatees and have been addressed through the Florida Fish and Wildlife Conservation Commission (FWC) recommendations that have been incorporated into the ERP and as special lease conditions. DEP also sent notices to approximately 90 property owners within 500 feet of the proposed lease. No objections were received by the end of the comment period (January 4, 2008).

Permit Summary

The lease will authorize sewage pumpout facilities and fueling facilities but will prohibit liveaboards. The DEP environmental resource permit will authorize liveaboard slips on privately-owned submerged lands and will required hard-piped sewage connections to those slips. Water quality testing shows no violations of state water quality standards at the site. The permit will also incorporate several requirements designed to prevent and/or reduce potential water quality impacts, thereby resulting in a net improvement to water quality at the site. As a result, DEP is of the opinion that long-term secondary and cumulative impacts from this project will be improved as compared to historic conditions at the site, and that the proposed project will provide a net improvement to water quality in the river, thereby qualifying for issuance of an environmental resource permit.

Commenting Agency

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the environmental resource permit and as special lease conditions. Lee County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated that the proposed project is consistent with the MPP. In addition to the FWC recommendations, a special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between the applicant and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Lee County and approved by FWC, and/or any speed zones established by Lee County and approved by FWC.

Item 3, cont.

Comprehensive Plan

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

(See Attachment 3, Pages 1-65)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$47,328.95**

Item 4 DMS/Sprintcom, Inc. Sublease/Wireless Communication Antenna

REQUEST: Consideration of a request for a five-year sublease, with four additional five-year renewal terms, between the Department of Management Services and Sprintcom, Inc., for rooftop space for the installation, operation and maintenance of a wireless communication antenna and supporting electronic equipment.

COUNTY: Orange

APPLICANTS: Sprintcom, Inc. (Sprintcom) and Department of Management Services (DMS)

LOCATION: Orange County, Hurston Building - South Tower, 400 W. Robinson Street, Orlando, Florida

CONSIDERATION: \$19,200 for the first year of the sublease, escalated at four percent per annum, which is subject to a 50 percent share distribution to DMS. Total guaranteed income over the term of the lease is \$799,600.

STAFF REMARKS:

Background

In 1979, the Board of Trustees approved Lease 3020 for a 99-year term to DMS for state-owned property located at 400 W. Robinson Street in Orlando. The lease was subsequently amended in 1989 to add land to the leased property.

Project Description

DMS and Sprintcom are requesting a sublease containing 600 square feet of roof space for the installation, operation and maintenance of a wireless communications antenna on top of the

Item 4, cont.

Hurston Building, South Tower. The installation of this antenna will facilitate uninterrupted Sprintcom customer service as well as Emergency 911 (E911) service in the area. Per Federal Communications Commission regulations, all antennae must carry E911 service. The proposed sublease area is an air-conditioned facility for housing the supporting electronic equipment and standby generator. The antenna will be mounted on the exterior wall of the building's penthouse approximately 177 feet from ground level and will extend approximately 10 feet above the roof of the building.

Public Benefit

The proposed sublease will provide the following public benefits:

- prompt delivery of 911 calls to public safety organizations;
- public welfare by promoting safety of life and property;
- facilitate uninterrupted services and enhance the E911 system's public communication efforts throughout the year especially during busy hurricane seasons in Florida; and
- generate recurring revenue for the Board of Trustees over the term of the sublease.

Applicable Statutes/Rules

Section 365.172(12)(f), F.S., requires DMS to implement the E911 system. Subsequently, DMS adopted chapter 60H-9, F.A.C., entitled, "Lease or Sublease of State Owned Property for E911 System Wireless Communications Facility." Chapter 60H-9, F.A.C., allows DMS to negotiate leases and subleases for wireless communications facilities on state-owned property, and DMS has complied with the rule requirement to coordinate with the managing agency and the owner agency. DMS is the managing agency and the Board of Trustees is the owner agency for this request. Pursuant to section 365.172(12)(f), F.S., "leases shall be granted on a space available, first-come, first-served basis," therefore the competitive bid process does not apply. Sprintcom was the first entity to request a sublease for a wireless communication antenna at this location.

Section 60H-9.005(4)(c), F.A.C., states that DMS "shall negotiate reasonable fees for leasing State-owned property that reflect the market rate for the type of facility or geographic location of the property." DMS is requesting approval to enter into a sublease with Sprintcom in accordance with section 60H-9, F.A.C., and Sprintcom agrees to pay to the Board of Trustees rent in equal quarterly installments paid in advance, with the first year's payment totaling \$19,200 escalated at 4 percent per annum for the remainder of the term of the sublease. The total guaranteed income over the term of the lease is \$799,600. Negotiated lease fees were based largely on similar leases in the area.

Section 60H-9.002, F.A.C., states, "Co-location" of more than one antenna per tower is encouraged where there are multiple antennae or structure siting requests for the same location." Sprintcom agrees to submit to the Board of Trustees its 50 percent share of any revenue from subleases or licensees to third parties pursuant to section 6 of the sublease. All sublease and any sublease payments received by the Board of Trustees are subject to a 50 percent share distribution to DMS.

Item 4, cont.

Comprehensive Plan

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

(See Attachment 4, Pages 1-68)

RECOMMEND APPROVAL

Substitute Item 5 Ely/Keys Properties, LLC Option Agreement/Survey Waiver/Florida Keys Ecosystem Florida Forever Project

REQUEST: Consideration of (1) an option agreement to acquire 1.21 acres within the Florida Keys Ecosystem Florida Forever project from John S. Ely, Partner, Keys Properties, LLC; and (2) the authority to waive the survey requirement.

COUNTY: Monroe

LOCATION: Section 03 and 04, Township 66 South, Range 33 East

CONSIDERATION: \$330,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Benson <u>(08/21/05)</u>	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
14445	1.21	\$330,000	\$330,000	\$72,000*	\$330,000** (100%)	224 days after BOT Approval
14452-14454						

* The property consisted of six lots and was purchased by the individual (Mr. Ely) in February 1991 for \$130,300 and was later transferred from the individual to Keys Properties, LLC in December 2003 by warranty deed in the amount of \$72,000, which was not an arms length transaction. The Board of Trustees will be acquiring four of the six lots.

** \$272,727 per acre.

Noted Features of Subject Property:

The subject properties are platted canal-front lots in a residential neighborhood in Coco Plum Beach Subdivision, Marathon. Zoning is residential.

Parcel 14454 is accessible from a paved residential street and was valued with a highest and best use for a canal-front home site.

The remaining three lots front platted but unimproved streets and are valued with a highest and best use for future development of canal-front home sites.

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 28, 2007. The project contains 11,863 acres, of which 6,504 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 5,359 acres, or 45 percent of the project, will remain to be acquired.

Substitute Item 5, cont.

Delegation of Authority

On February 16, 2005, the Board of Trustees delegated authority to the Secretary of the Department of Environmental Protection (DEP), or designee, to (1) extend offers and approve any contract for the sale and purchase of land pursuant to section 259.041(1), F.S., at \$7,000 over, or up to 125 percent, per parcel of the current appraised value, whichever is greater, when the purchase price per parcel does not exceed \$100,000; (2) recognize and appraise as Rate of Growth Ordinance parcels those parcels that previously qualified for Rate of Growth Ordinance designation; and (3) allow payments in lieu of litigation to settle claims by private landowners to lands that appear to be sovereignty lands, such payments not to exceed \$1,000 per parcel.

Project Description

The unique hardwood hammocks of the Florida Keys, forests of West Indian plants that shelter several extremely rare animals, are being lost to the rapid development of these islands. The Florida Keys Ecosystem project will protect all the significant unprotected hardwood hammocks left in the Keys and many rare plants and animals, including the Lower Keys marsh rabbit and Key deer. It will also help protect the Outstanding Florida Waters of the Keys, the recreational and commercial fisheries, and the reefs around the islands, and also give residents and visitors more areas for enjoying the natural beauty of the Keys.

Encumbrances

All mortgages and liens will be satisfied at the time of closing. There is a development order outstanding on three of the four lots, a Declaration of Restrictions and Easements are outstanding but are not enforceable and there is a reservation of oil, gas and mineral rights in favor of the State of Florida. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for these and any other title issues that arise prior to closing.

Survey Waiver

It is the opinion of DEP's Bureau of Survey and Mapping 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 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.

Closing Information

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

Management

The parcels will be managed by the City of Marathon. DEP's Office of Greenways and Trails (OGT) may need to use all or part of these parcels as a rest stop/trailhead, canoe/kayak launch, or an access point for the public to utilize as part of the Florida Keys Overseas Heritage Trail (FKOHT) and the Florida Circumnavigational Saltwater Paddling Trail. City of Marathon will

Substitute Item 5, cont.

coordinate with OGT to incorporate these uses (when appropriate) into the land management plan and will coordinate a schedule for implementation with OGT. In addition, OGT may need to use these parcels for mitigation for wetlands impacts resulting from construction of the FKOHT (pending approval of the South Florida Water Management District). If OGT determines these parcels are feasible for any of the above uses, then City of Marathon will include the use(s) in the land management plan based upon an agreement with OGT. Cost incurred by OGT's use will be paid for by OGT.

Comprehensive Plan

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 5, Pages 1-24)

RECOMMEND APPROVAL

Item 6 LLR-11 Limited Partnership Option Agreement/FWC/Three Lakes Wildlife Management Area Additions and Inholdings Project

REQUEST: Consideration of an option agreement to acquire 1,652 acres within the Florida Fish and Wildlife Conservation Commissions' Three Lakes Wildlife Management Area Additions and Inholdings project from LLR-11 Limited Partnership, a Florida Limited Partnership.

COUNTY: Osceola

APPLICANT: Florida Fish and Wildlife Conservation Commission

LOCATION: Sections 25 and 36, Township 29 South, Range 32 East; and Section 01, Township 30 South, Range 32 East.

CONSIDERATION: \$11,651,000

<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>Richards (09/08/06)</u>	<u>Catlett (09/20/06)</u>				
LLR-11 (aka Lucky L Ranch)	1,652	\$12,400,000	\$12,225,000	\$12,400,000	*	\$11,651,000** (94%)	120 days after BOT approval

* The property has been family-owned since 1949. In January 2002, the property was transferred from one family-owned corporation to another family-owned corporation by quit claim deed in the amount of \$1,950,000.

**\$7,052.66 price per acre.

Item 6, cont.

Noted Features of Subject Property:

Upland area is 910 acres +/- (55%) and wetland area is 742 acres +/- (45%).

Zoned AC-Agricultural Development and Conservation -1 residential dwelling unit per 5 acres.

Highest and Best use is continued agricultural with potential for future ranchette subdivision.

The property is perimeter fenced and cross fenced. It has both main and lateral drainage canals, but has no building improvements.

STAFF REMARKS: This acquisition was negotiated by the Florida Fish and Wildlife Conservation Commission (FWC) and was approved for funding under its Florida Forever Additions and Inholdings Program on December 6, 2007. The property is also included in the Florida Forever Osceola Pine Savannas Project.

Property Description

The property lies along the eastern boundary of Three Lakes Wildlife Management Area (WMA). This tract is primarily characterized by a mixture of improved pasture, pine flatwoods, dry prairie, fresh water marsh, wet prairie, and associated cypress wetlands. Many kinds of wide-ranging wildlife use the open range-lands, pastures, pine flatwoods, and palmetto prairies of Osceola County. This acquisition adjoins Three Lakes WMA and is within the Osceola Pine Savannas Florida Forever Project. Thus, it will help conserve a large tract within these lands, helping to ensure the survival of listed species and other native species of wildlife. Additionally, it will also provide a larger area for the public to enjoy hunting, wildlife observation, and related recreation.

Acquisition of this tract will help to ensure the survival of wildlife, such as the gopher tortoise, Florida black bear, swallow-tailed kite, crested caracara, Eastern Indigo snake, and other fish and wildlife resources. It will also aid in fulfilling the goals of FWC's Gopher Tortoise Management Plan. Since this area is experiencing increased residential development extending southward from the Kissimmee/St. Cloud area, acquisition of the ranch will also aid in buffering Three Lakes WMA from the fragmentation of wildlife habitat.

Many kinds of wide-ranging wildlife use the open range-lands, pastures, pine flatwoods, and palmetto prairies of Osceola County. Thus this tract of land is an important and integral component of FWC's acquisition plans to conserve lands within the St. John's River system.

Encumbrances

All mortgages and liens will be satisfied at the time of closing. The property was appraised assuming that there were outstanding oil, gas, and mineral interests, however, further due diligence has determined that there are no outstanding reservations that affect this property. The property is improved with various fencing and cross fencing related to the current working cattle operation. It also has main and lateral drainage canals, but no building improvements. The appraisers considered the improvements and the outstanding oil, gas, and mineral rights in their valuation of the property. The seller shall have 180 days after closing to remove, from the property, all livestock and personal property related to the cattle operation. 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

Item 6, cont.

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 these and any other title issues that arise prior to closing.

Closing Information

A title insurance policy will be provided by the seller at FWC's expense prior to closing. A survey and an environmental site assessment of the property will be provided by the purchaser at FWC's expense prior to closing.

Management

The parcel will be managed by FWC as an addition to the Three Lakes WMA for natural resource conservation, restoration, and resource-based public outdoor recreation within a multiple-use management regime.

Comprehensive Statement

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 6, Pages 1-30)

RECOMMEND APPROVAL

**2nd Substitute Item 7 TNC Sale and Purchase Agreement/Northeast Florida
Timberlands and Watershed Reserve Florida Forever Project**

REQUEST: Consideration of an agreement for sale and purchase to acquire 1,135.6 acres within the Northeast Florida Timberlands and Watershed Reserve Florida Forever project from The Nature Conservancy.

COUNTY: Nassau

LOCATION: Sections 26, 27, 35, and 37, Township 01 North, Range 24 East.

CONSIDERATION: \$9,475,000 (\$9,375,000 for the acquisition, \$100,000 for The Nature Conservancy for overhead costs. In addition, direct expenses and holding costs associated with the purchase will be reimbursed to The Nature Conservancy by the Board of Trustees, with the total cost not to exceed the approved value of \$10,200,000)

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2nd Substitute Item 7, cont.

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u> <u>VALUE</u>	<u>LANDOWNER'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>TRUSTEES'</u> <u>PURCHASE</u> <u>PRICE</u>	<u>CLOSING</u> <u>DATE</u>
		<u>Candler</u> <u>(08/24/06)</u>	<u>Grainger</u> <u>(08/24/06)</u>				
TNC (6 parcels)	1,135.6	\$9,653,000	\$10,200,000	\$10,200,000	\$967,200	\$9,475,000** (93%)	07/27/08***

* Subject property was purchased and assembled from 1988 to 2006 for \$967,200. The parent tract is approximately 1,080 acres and was acquired in 1988 and 1989. The additional 55.6 acres were acquired in 2006.

** \$8,255 per acre.

***The Nature Conservancy will acquire the property and close on or before February 6, 2008. The Board of Trustees will close with The Nature Conservancy on or before July 27, 2008.

Noted Features of the Subject Property:

- The subject neighborhood has a mix of agricultural and rural residential uses.
- The property is zoned (OR) Open Rural, with a Future Land Use classification of (A) Agriculture.
- The property contains 708.10 acres of uplands (62.4%) and 427.5 acres of wetlands (37.6%)
- The value is based on price per gross acre.
- It has approximately 915 feet of frontage along the eastern right-of-way of US Highway 301.

STAFF REMARKS: The Northeast Florida Timberlands and Watershed Reserve project is an “A” group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 28, 2007. The project contains 146,164 acres, of which 53,890 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 92,274 acres, or 63 percent of the project will remain to be acquired.

Project Description

Public acquisition of this project will contribute to the following Florida Forever goals: (1) increase the protection of Florida’s biodiversity at the species, natural community, and landscape levels known to harbor four Florida Natural Areas Inventory (FNAI)-listed species of vascular flora and four rare animals; (2) increase the amount of open space available in urban areas, conserve spaces suitable for greenways, or outdoor recreation that are compatible with conservation purposes; (3) increase natural resource based public recreation and educational opportunities, such as camping, picnicking, nature appreciation, hiking, and horseback riding are possible; and (4) protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state; 75 to 80 percent of land is disturbed with restoration a primary objective.

This property is one of the most outstanding properties in the “A” ranked Northeast Florida Timberlands and Watershed Reserve. Among the natural communities on the property are Sandhill, Mesic Flatwoods, Floodplain Swamp/Forest, Dome Swamp, and Baygall. The majority of the property is comprised of good high quality Sandhill, a globally imperiled natural community as determined by the FNAI. The Mesic Flatwoods on site are of at least equal quality to the Sandhills. A few small areas of remnant Wet Prairie may also occur, but these are mostly disturbed through past silvicultural activities. Several large areas support an intact, older growth longleaf pine canopy. One of the other outstanding natural/hydrological features of the property is that it encompasses a portion of the headwaters of Thomas Creek. The property supports a substantial population of Gopher tortoises, as well as numerous Sherman’s fox squirrels. Because of the presence of Gopher tortoise, as well as the kinds of habitats encompassed by the property, it is likely that Eastern indigo snakes may occur on site. The acquisition of the tract will help to forge an important new conservation hub of protected lands straddling the Duval-Nassau County line.

2nd Substitute Item 7, cont.

Multi-Party Acquisition Agreement

Pursuant to a multi-party acquisition agreement (MPAA) entered into between the Department of Environmental Protection's (DEP) Division of State Lands (DSL) and The Nature Conservancy (TNC), TNC has entered into an option agreement to purchase the subject property within the Northeast Florida Timberlands and Watershed Reserve project to close no later than February 6, 2008. If this item is approved, the Board of Trustees will acquire the property from TNC for a purchase price that is the sum of TNC's expenses, to include: (1) the purchase price TNC will pay property owners; (2) DSL-approved direct expenses associated with the purchase of the parcel; (3) DSL-approved holding costs, not to exceed 0.022 percent of TNC's acquiring price plus direct expenses per day, beginning on the day that TNC acquired fee title to the parcel and ending on the day before TNC conveys title to the parcel to the Board of Trustees. (4) TNC overhead pursuant to the MPAA, not to exceed \$100,000; and (5) Seller's reimbursement of expenses in paying ad valorem taxes on the property during the period of seller's ownership of the property. In no event will the final Board of Trustees' purchase price exceed the approved value of \$10,200,000.

Encumbrances

All mortgages and liens will be satisfied at the time of closing. A reservation of one-half interest of oil, gas, and minerals covering 448.5 acres in favor of International Paper Company exists. The appraisers were instructed by DEP to base the valuation on the assumption that the oil, gas, and mineral rights encumbering the subject property will be extinguished prior to closing. There is a 100-foot strip of land crossing the property in a northeast/southwest direction encumbered by the Right-Of-Way Agreement (easement) to Florida Power and Light Company. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the 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 these and any other title issues that arise prior to closing.

Closing Information

A survey and environmental site assessment will be provided by seller prior to closing. The purchaser will reimburse the seller for the DSL-approved cost. The title insurance policy will be provided by the purchaser prior to closing.

Management

The property will be managed by the Division of Forestry as part of the Cary State Forest.

Comprehensive Plan

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 7, Pages 1-47)

RECOMMEND WITHDRAWAL