

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

DIVISION OF BOND FINANCE

FINANCIAL SERVICES COMMISSION, OFFICE OF
INSURANCE REGULATION

ADMINISTRATION COMMISSION

BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

STATE BOARD OF ADMINISTRATION

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Crist
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
October 14, 2008, commencing at 9:05 a.m.

Reported by:
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Registered Professional Reporter
Notary Public

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APPEARANCES:

Representing the Florida Cabinet:

CHARLIE CRIST
Governor

CHARLES H. BRONSON
Commissioner of Agriculture

BILL McCOLLUM
Attorney General

ALEX SINK
Chief Financial Officer

* * *

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1 P R O C E E D I N G S

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3 (Commenced at 10:20 a.m.)

4 GOVERNOR CRIST: We need to select an
5 individual to serve as our acting commissioner,
6 pending selection of a permanent commissioner to
7 head the Office of Financial Regulation. Is there a
8 motion?

9 CFO SINK: Yes. I so move, Governor.

10 GOVERNOR CRIST: Is there a motion to retain
11 Mr. Hager? Is that your motion?

12 CFO SINK: Oh, yeah.

13 GOVERNOR CRIST: It's been a long Cabinet
14 already. Is there a second? Go ahead.

15 CFO SINK: Just for purposes of the record,
16 we've -- all of us have interviewed some potential
17 candidates for interview for the post of interim,
18 and I think what we've all determined is that it's
19 been quite time-consuming, and we are in a time now
20 of significant stress for the financial services
21 industry.

22 And so rather than attempting to continue to
23 take all the time to search for an interim, I'm
24 going to make a motion that we appoint Alex Hager to
25 serve as the acting director until we conclude the

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1 search for a permanent director, so that we can
2 expedite the selection of the permanent director and
3 hopefully have that process done within the next 90
4 to 120 days.

5 So that we can move forward with the permanent,
6 I am making a motion that we appoint Alex Hager to
7 serve as the acting director until we find a
8 permanent replacement.

9 ATTORNEY GENERAL McCOLLUM: Second.

10 GOVERNOR CRIST: Moved and seconded. Show it
11 approved without objection. Thank you very much.

12 Our next Cabinet meeting will be Tuesday
13 October the 28th, 2008.

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1 GOVERNOR CRIST: Division of Bond Finance.

2 Ben, Good morning, sir.

3 MR. WATKINS: Good morning, Governor.

4 GOVERNOR CRIST: How are you?

5 MR. WATKINS: Very well, thank you. Cabinet
6 members. Item Number 1 is approval of the minutes
7 of the September 16th meeting.

8 CFO SINK: Move it.

9 ATTORNEY GENERAL McCOLLUM: Second.

10 GOVERNOR CRIST: Moved and seconded. Show the
11 minutes approved without objection.

12 MR. WATKINS: Item Number 2 is a resolution
13 authorizing the competitive sale of up to 200
14 million in Public Education Capital Outlay Bonds for
15 school construction.

16 ATTORNEY GENERAL McCOLLUM: Move it.

17 CFO SINK: Second.

18 GOVERNOR CRIST: Moved and seconded. Show it
19 approved without objection.

20 MR. WATKINS: Item Number 3 is a report of
21 award on the competitive sale of \$157,950,000 in
22 Florida Forever Revenue Bonds. The bonds were
23 awarded to the low bidder at a true interest cost of
24 approximately 4.65 percent.

25 CFO SINK: Move it.

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1 COMMISSIONER BRONSON: Second.

2 GOVERNOR CRIST: Moved and seconded. Show it
3 approved without objection.

4 MR. WATKINS: If I may, Governor, just a very
5 brief update on activities that we're engaged in
6 relative to the credit markets.

7 GOVERNOR CRIST: Thank you.

8 MR. WATKINS: What we have done is communicated
9 with all of the agencies who are recipients of the
10 borrowings that we do for the various capital outlay
11 programs and estimated that we have adequate funding
12 on hand through the end of the calendar year.

13 We are also on a daily basis monitoring market
14 conditions. So if market conditions normalize, we
15 would be in a position to move forward with the bond
16 issues that we currently have scheduled.

17 We are also doing contingency planning in the
18 event that markets do not normalize over the near
19 term, that we would be in a position to evaluate the
20 best way to access credit on a going-forward basis.

21 And we are hopeful that the extraordinary
22 federal intervention is going to have the desired
23 impact in the credit markets and eliminate the fear
24 and restore confidence so people will --
25 institutional investors and market participants will

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1 continue dealing with each other.

2 So, in short, we are hoping for the best and
3 planning for the worst.

4 GOVERNOR CRIST: Any questions or comments?

5 Ben, we appreciate your leadership, you and your
6 team. You're doing an extraordinary job, and we're
7 all grateful. All of Florida thanks you.

8 MR. WATKINS: Thank you, sir.

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1 GOVERNOR CRIST: Office of Insurance
2 Regulation, Commissioner McCarty. Good morning,
3 Commissioner.

4 MR. McCARTY: Good morning, Governor, members
5 of the Commission. Our first agenda item is the
6 adoption of the minutes for the Financial Services
7 Commission on July 29th and August 12th.

8 COMMISSIONER BRONSON: Motion on Item 1.

9 ATTORNEY GENERAL McCOLLUM: Second.

10 GOVERNOR CRIST: Moved and seconded. Show the
11 minutes approved without objection.

12 MR. McCARTY: Agenda Item Number 2 is request
13 for approval for publication of Proposed Rule
14 690-137.001, regarding annual and quarterly
15 reporting requirements. Florida law requires
16 insurance companies to file annual and quarterly
17 statements to ensure national uniformity.

18 The Legislature has authorized the Financial
19 Services Commission to adopt the annual reports by
20 the National Association of Insurance Commissioners.
21 This rule is being amended to adopt the latest
22 version of the manual and the practices and
23 procedures manual for 2008.

24 GOVERNOR CRIST: Is there a motion?

25 ATTORNEY GENERAL McCOLLUM: Second. Whatever.

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1 Move it. I'll move it.

2 CFO SINK: Second.

3 GOVERNOR CRIST: I think we have a move and a
4 second. And show it approved without objection.

5 MR. McCARTY: Agenda Item Number 3 is request
6 for approval for publication, Proposed Rule
7 690-138.001. It's the financial condition examiners
8 handbook. This requires the Office to examine
9 insurance companies' transactions, books and records
10 and accounts. This rule is being amended to replace
11 the 2007 handbook with the 2008.

12 CFO SINK: Move it.

13 COMMISSIONER BRONSON: Second.

14 GOVERNOR CRIST: Moved and seconded. Show it
15 approved without objection.

16 MR. McCARTY: Agenda Item Number 4 is request
17 for approval for publication of Proposed Rule
18 690-157.302, .303 and .304, concerning long-term
19 care rates. Florida law provides that rates charged
20 to insureds for renewal of existing long-term care
21 insurance policies may not exceed the new issue
22 rates.

23 This was put into place by the Florida
24 Legislature to ensure the prevention of death
25 spirals. We remember a few years ago, long-term

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1 care policies, those books were closed, which means
2 there were no new lives coming in, and we saw
3 spiraling rates going out of control. Most of these
4 people oftentimes are in their seventies and
5 eighties.

6 What this law does is requires that if those
7 books are closed, that the rate cannot exceed the
8 new business rate. So it's a consumer protection to
9 prevent death spirals. This rule adopts the updated
10 new business rate for 2009 and 2010.

11 GOVERNOR CRIST: Is there a motion?

12 CFO SINK: Move it.

13 ATTORNEY GENERAL McCOLLUM: Second.

14 GOVERNOR CRIST: Moved and seconded. Show it
15 approved without objection.

16 MR. McCARTY: Agenda Item Number 5 is request
17 for approval for publication Rule 690-197.006,
18 relating to administrator's annual report form.
19 Florida law requires each administrator must file an
20 annual statement as to the financial condition of
21 the administrator to the Office of Insurance
22 Regulation. This rule adopts the forms to be used
23 in the filing of these annual reports.

24 ATTORNEY GENERAL McCOLLUM: Move it.

25 CFO SINK: Second.

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1 GOVERNOR CRIST: Moved and seconded. Show it
2 approved without objection. Thanks for the great
3 work, Commissioner.

4 MR. McCARTY: Thank you, Governor and members
5 of the Commission.

6 GOVERNOR CRIST: Yes, sir.

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1 GOVERNOR CRIST: Administration Commission,
2 Lisa Saliba. Good morning, Lisa.

3 MS. SALIBA: Good morning, sir. Good morning,
4 members. Today we have three items. The first item
5 is requesting the approval of the minutes from the
6 September 30th, 2008 meeting.

7 COMMISSIONER BRONSON: Motion on Item 1.

8 ATTORNEY GENERAL MCCOLLUM: Second.

9 GOVERNOR CRIST: Moved and seconded. Show it
10 approved without objection.

11 MS. SALIBA: Item 2, you have before you a
12 draft order vacating a final order in part and
13 remanding in part. We're requesting authorization
14 to remand the case to the Division of Administrative
15 Hearings for further proceedings pursuant to the
16 opinion of the First District Court of Appeal.

17 We do have some speakers today on this issue.
18 And if I could just take a moment to frame this for
19 you, the Commission in 2006 issued an order relating
20 to the case of Don and Pamela Ashley versus State of
21 Florida, et al.

22 The case was appealed in the First District
23 Court. The Court is remanding a portion of that
24 final order previously issued. And we are asking
25 the Division of Administrative Hearings to review

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1 some land use definitions for consistency.

2 And the speakers that we have today include
3 Mr. Ross Burnaman, who is representing Pamela
4 Ashley; Mr. Don Ashley, who is a petitioner;
5 Mr. Shaw Stiller, general counsel of DCA; and
6 Mr. Bryan Duke, representing St. Joe.

7 We have asked all of these speakers to limit
8 their comments to three minutes. We have two
9 additional speakers who will be limited to one
10 minute. They are not part of the petitioning
11 parties. Mr. Andrew Smith, with the Apalachicola
12 Riverkeeper organization, and Ms. Linda Raffield
13 with the Seafood Workers Association.

14 The first speaker we'll invite up today is Mr.
15 Ross Burnaman.

16 GOVERNOR CRIST: Good morning.

17 MR. BURNAMAN: Good morning, Governor Crist,
18 Commissioners. Ross Burnaman representing Pamela
19 Ashley. The Ashleys' house is located on the
20 Ochlockonee River, right across from the state park.
21 So when you're going south on Highway 319, if you
22 look to the east, you'll see their house.

23 They're sandwiched between the so-called
24 conservation, residential and the rural village.
25 These are the two categories that the First District

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1 Court of Appeal determined were mixed use. And that
2 was an error in your final order.

3 Together these two land use categories and the
4 associated map amendments constitute 6.6 square
5 miles of land in some of the most pristine and
6 important wildlife habitat in the state of Florida.

7 So we're supporting the staff recommendation
8 with respect to the remand. We won on appeal, after
9 all. And, Governor Crist, I remind you that you are
10 the one who seconded the motion, with respect to the
11 December 2006 Cabinet meeting when this came up, to
12 retain 11.12 and 11.13, which are two policies in
13 the future land use element of the comprehensive
14 plan.

15 Those policies were added as a quid pro quo for
16 approving the Summer Camp development. And they
17 require the assessment of eight key areas on St.
18 James Island. Those assessments have never been
19 done.

20 And so while we're here supporting the remand,
21 we're also suggesting that you, the Administration
22 Commission, should signal and telegraph Franklin
23 County that they ought to get cracking on doing the
24 overlays for St. James Island that was promised to
25 the citizens as a result of that Summer Camp.

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1 Now, that was something that was discussed at
2 length at the last Cabinet meeting. And, Governor
3 Crist, you were the one who seconded the motion to
4 retain the conclusion of law 103 with respect to
5 those policies.

6 Now, Franklin County has not moved forward on
7 those, just like they haven't done their evaluation
8 and appraisal report that was due. Well, they
9 finally did it, but it was late. And they haven't
10 done their water supply plan. That is definitely
11 late. Water is a key issue there.

12 And so when this comes back, I'm confident that
13 the Division of Administrative Hearings is going to
14 find that these two land use categories are mixed
15 use and they don't meet the 9J-5 rule criteria. So
16 we're going to be back here before you in a few
17 months for another final order of not in compliance
18 with respect to these two policies.

19 Franklin County has just voted to send their
20 transmittal version of their EAR-based amendments to
21 DCA for review. It's a perfect time for Franklin to
22 do what it promised to its residents. And I think
23 you should send them a clear signal here today.

24 I yield the balance of my time to Don Ashley.
25 Thank you.

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1 GOVERNOR CRIST: Thank you, sir. Good morning.

2 MR. ASHLEY: Good morning, Governor. Thank
3 you. I see you've moved up a seat since I was here
4 in 2006, and I don't know if that gives
5 encouragement to General McCollum or maybe all of
6 the seats that are up there.

7 I do thank you for letting us come back again
8 and talk about this issue. It's not often that
9 citizens get to come and speak to our leaders. If
10 there had been any other way to try to resolve this,
11 we would have tried to do it without taking your
12 valuable time.

13 And I wouldn't be here if this just had to do
14 with our home, our children or our grandchildren.
15 We're really here because we think there's good
16 public policy that is a potential in this case, and
17 we don't want that to be lost, because I've taken
18 the time to read your Century Commission reports.

19 I've taken the time to spend seven years in
20 these growth management trenches. I've served on
21 just about every local civic committee or group that
22 would be looking at these kinds of issues. So we've
23 paid some dues here.

24 And I will apologize to you if this starts to
25 sound like a sermon. But if we considered that each

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1 day of the week was one year we've spent in these
2 growth management trenches, this is Sunday, and that
3 is a long time to try to get a point across that
4 when a deal is made with citizens about growth
5 management and promises them citizen participation,
6 that promises them that we'll have a new day in
7 Florida with better community benefits that can be
8 agreed at the same time that development is
9 approved, then the State of Florida, when it has a
10 stake in a deal like that, needs to keep its word.

11 And I just -- I just want to tell you, your
12 staff has been great. They've listened to us
13 intently. I'm really impressed that they will
14 listen to citizens when they come and try to make a
15 constructive presentation.

16 Pamela -- if I can just show you where we're
17 talking about. And I'm going to go as fast as I
18 can. This is St. James Island.

19 GOVERNOR CRIST: Can you -- thank you. I was
20 going to ask that it be on the screen.

21 MR. ASHLEY: Up just a little bit so they can
22 see the map of Florida. The little red spot on the
23 map, that's St. James Island, six miles south of
24 Sopchoppy, 52,000-acre island.

25 If you'll just look quickly, you'll see the

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1 Alligator Harbor Aquatic Preserve. That's the
2 eastern end of Apalachicola Bay, an incredibly
3 sensitive ecological area, an incredibly significant
4 environmental area for the State of Florida.

5 What kicked this off was the Summer Camp deal
6 to allow St. Joe to build Summer Camp on both sides
7 of the Florida State Marine Lab. When that moved
8 through without the comp plan being in effect in
9 Franklin County, the deal was the citizens would get
10 better planning and we would get a St. James Island
11 overlay plan that guided future growth.

12 It simply didn't happen. And that's why we
13 challenged originally this transmittal of the comp
14 plan. We prevailed. We came back to you. You
15 passed remedial amendments.

16 It was necessary for us to challenge the
17 remedial amendments because they still didn't meet
18 state law. Two days before we were to go back to
19 administrative court, they decided to settle. And
20 good thing, because we would have prevailed again.

21 We then decided that we knew these types of
22 developments, if you'll put the second -- the types
23 of developments that were attached to that comp plan
24 transmittal, that they didn't meet state law that
25 had to do with mixed use development, so we decided

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1 to appeal to the First District Court.

2 That's how we got back here, not because we're
3 obstructionists, not because we don't believe that
4 there's good benefit from some development in
5 Florida, but because we believe that balanced
6 growth, to really do what that Century Commission is
7 saying, which is find a sustainable Florida, find a
8 balance between economic prosperity, the protection
9 of natural resources and the provision of community
10 benefits, like affordable housing, those are more
11 than just words. Those are people. Those are
12 places. Those are things that Florida is rapidly
13 losing.

14 I'm starting into the sermon part, and I'm
15 sorry about that. But I was born in 1948 in Orlando
16 when we had three million residents, actually less.
17 This is 60 years later, 15 million Floridians later,
18 and we're still struggling with this idea of how do
19 we maintain a quality of life, how do we sustain
20 Florida.

21 In those two land use policies, 11.12 and
22 11.13, I'm not even sure that the Department of
23 Community Affairs realizes how well they capture the
24 essence of growth management. If you'll read those
25 eight key assessments, it's the citizens' short form

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1 to understanding growth management. And we're not
2 going to have better citizen participation if they
3 don't understand how growth management works.

4 It's why we asked you last time to reaffirm
5 those policies. I want to ask you again to do the
6 same. And I want to ask you -- there's a map that
7 was put forward as a vision plan for the community.
8 We have people here from the citizens advisory group
9 from Franklin County, the seafood workers,
10 Apalachicola Riverkeeper. All those people were a
11 part of this process. They know this was not our
12 community's vision. This was not the deal. This
13 was not the future of Florida.

14 We're trying to get to that point, ask you to
15 help us do it, and to add to those three Cs of
16 growth management, the consistency, the concurrency
17 and the compact development. Add credibility, add
18 community benefits, add citizen participation, and
19 then we'll have more balanced growth in the state of
20 Florida.

21 This is about oystermen, oystermen and women,
22 Apalachicola Bay, working waterfronts, folks who
23 need affordable housing so teachers and deputies can
24 live in the communities they serve.

25 We were promised those assessments and that

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1 balanced growth decisions would be made on them.
2 That's why we keep coming back. And I'm going to
3 keep coming back to ask you, please, if we're going
4 to have a map that the Century Commission recommends
5 to identify critical natural resources and pursue
6 new ways and new conservation methods to maintain
7 them, then we should start by taking away maps like
8 this and put up the map that the Century Commission
9 is recommending.

10 I'm going to write them a letter and try to
11 share seven years of what it's like for a citizen in
12 these growth management trenches and try to be
13 helpful to the State of Florida. And I thank you
14 for your time.

15 GOVERNOR CRIST: Thank you very much.

16 MS. SALIBA: Next we have Mr. Shaw Stiller with
17 the Department of Community Affairs.

18 GOVERNOR CRIST: Good morning.

19 MR. STILLER: Good morning, Governor,
20 Commissioners. Shaw Stiller, I'm the general
21 counsel of Department of Community Affairs. First
22 off, I want to let the Cabinet, the Commissioners
23 know that at the Department we admire and respect
24 citizens like Don and Pamela Ashley, who take their
25 time to try to ensure better growth in their

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1 community.

2 I, too, have been a part of this for seven
3 years. I like the compliment. I was one of the DCA
4 staffers who drafted Policies 11.12 and 11.13, and
5 we have used them as a short form. And there are a
6 lot of issues in Franklin County. As you know, it's
7 a former area of critical state concern, very
8 environmentally sensitive. It's a beautiful part of
9 Florida.

10 But we're not here about the whole ball of wax.
11 We're not here about the whole list of issues about
12 11.12 and 11.13. What's before the Commission this
13 morning is a very narrow issue. This case went up
14 on appeal to the First District on numerous grounds.
15 The First District reversed on one, holding that the
16 rural village and conservation residential future
17 land use categories were mixed-use and not
18 single-use categories.

19 What does that mean? Well, that means that
20 they have to comply with a provision in Rule 9J-5,
21 that's our implementing rule, which they weren't
22 judged against the first time because we contended
23 they were not mixed-use categories.

24 So when this goes back to the Division of
25 Administrative Hearings, very narrow issues to be

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1 considered. Number one, do the categories
2 adequately define the types of land uses that were
3 allowed. Number two, do the future land use
4 categories assign objective standards, so we know
5 how much residential, how much non-residential, how
6 much boat storage and the like will be allowed. And
7 then finally there needs to be a percentage
8 distribution among the uses.

9 Those are the only issues that are going to go
10 back to the Division of Administrative Hearings and
11 come back to the Commission probably in a couple of
12 months.

13 We fully support the order of remand as drafted
14 and look forward to working through this with
15 Franklin County and Mr. and Mrs. Ashley. I can
16 answer any questions.

17 GOVERNOR CRIST: Thank you.

18 MR. STILLER: Thank you, Governor.

19 MS. SALIBA: We have Mr. Bryan Duke
20 representing St. Joe Company.

21 GOVERNOR CRIST: Good morning.

22 MR. DUKE: Good morning, Governor and Cabinet.

23 I agree with much of what Shaw said. It's a very
24 limited issue. In December of 2006, this Commission
25 issued a final order on the comp plan that the

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1 commissioners of Franklin County approved. So it
2 was clearly their vision, and they approved it.

3 And 95 percent of that order approved what the
4 Commission did. Five percent of that was remanded
5 for remedial action, which was taken, and those
6 items have been fixed. We are now down to this one
7 minor issue.

8 It then went to the First DCA, and the Court
9 affirmed on a multitude of issues that were raised
10 but triggered this one issue of the multi-use
11 categories and whether these are in compliance. And
12 so we're down to that issue, as Shaw explained.

13 It will also get fixed. It will get fixed by
14 the County. They will do what is necessary with the
15 support of the parties. So we're almost to the
16 final. We appreciate the time and effort. And
17 St. Joe just wants to reaffirm that we will continue
18 to work with the Franklin County community, the
19 leaders and the citizens, those who have supported
20 this and those who have opposed it, to try to make
21 sure that we act meaningfully with respect to the
22 implementation of this plan. Thank you.

23 GOVERNOR CRIST: Thank you, sir.

24 MS. SALIBA: The last two speakers we have each
25 have one minute. First is Mr. Andrew Smith. But I

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1 did fail to mention that we have in the audience
2 with us today Michael Shuler, representing Franklin
3 County, in the event there are any questions.

4 GOVERNOR CRIST: Thank you.

5 MR. SMITH: Governor and Commissioners, thank
6 you very much for this opportunity. There's a lot
7 of emotional content in this, as you can tell. And
8 for the Riverkeepers, some of it goes back to we put
9 up money for the visioning process that occurred
10 that was aborted before it finished.

11 And if you know the lesson of the widow's mite,
12 we probably put up more money than anybody because
13 we're a small organization. When that visioning
14 process came to the end, a plan was put out that
15 hadn't been vetted, that the citizens hadn't seen.
16 Even one of the commissioners said that, "We've
17 never seen those maps before." They hadn't been up
18 there.

19 So there's a sense of betrayal to us, to the
20 folks of Franklin County, because they went along
21 the process. It was copious, abundant, the amount
22 of folks that were participating in this process.
23 They really believed in it, and they fell off the
24 cliff. They're not there anymore. They're cynical
25 about the process because of the way it was dealt

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1 with.

2 The recommended order that came out of DOAH
3 says, in relation to Policies 11.12 and 11.13,
4 finally, to be in compliance, deleting the future
5 land use element plans 11.12 and 11.13 should await
6 a finding that the rest of the 2020 plan is in
7 compliance. That hasn't occurred yet.

8 So 11.12 and 11.13 are still in force. They
9 haven't been applied to the particulars that
10 occurred here that the Ashleys litigated over, and
11 they haven't been applied to large-scale plan
12 amendments that occurred since then. So I would
13 implore you to take the opportunity that you have
14 today to change the course of the resolution of this
15 case.

16 The rights haven't vested. Justice hasn't been
17 achieved. You have the opportunity to do that.
18 Thank you very much.

19 GOVERNOR CRIST: Thank you.

20 MS. SALIBA: And Ms. Linda Raffield with the
21 Seafood Workers Association.

22 GOVERNOR CRIST: Good morning.

23 MS. RAFFIELD: Good morning, Governor. Good
24 morning, Cabinet. I really don't have a whole lot
25 of words to say. I take quite a few pictures. As a

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1 matter of fact, there's over 4,000 of them on the
2 Web, of the seafood workers and exactly what we do.

3 As you see, that generation that was just shown
4 is the generation pretty much today. They'll work
5 in just about any weather they have to work in.
6 They'll endure just about anything that they have to
7 endure, because as it is right now with the seafood
8 industry, as you well know, it's very fragile. It's
9 a sustainable industry, but it is very fragile.

10 These decisions, these things that are made do,
11 by all means, have a lot to do with that industry.
12 All we ask as an association and as the people who
13 represent the working people, the Franklin County
14 Seafood Workers Association, please, please, by all
15 means, include us in these things.

16 We're not numbers. We're not statistics.
17 We're people with faces, and we matter, but
18 sometimes it just seems like we don't matter, when
19 we go before a commission or anybody else and what
20 we are saying is not heard, or maybe we don't even
21 have an opportunity to speak. Thank you, sir.

22 GOVERNOR CRIST: Thank you. We appreciate you
23 being here.

24 MS. SALIBA: The action before you is the
25 authorization to remand to DOAH on the issues that

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1 you've just heard about.

2 CFO SINK: I move it.

3 GOVERNOR CRIST: Is there a second?

4 ATTORNEY GENERAL McCOLLUM: Second.

5 GOVERNOR CRIST: Moved and seconded. Any
6 further comment? Show it approved without
7 objection. Thank you very much.

8 MS. SALIBA: Item Number 3, we request
9 authorization to enter the amended draft order of
10 remand remanding the case to the Division of
11 Administrative Hearings for further proceedings.

12 In this case, which we refer to as Vizcaya, the
13 administrative law judge applied a standard of proof
14 that we believe is inconsistent with law, and we are
15 remanding on those parts, so that the judge can
16 reweigh based upon the correct standard of proof.

17 We do have with us today Mr. Stephen
18 Darmody, representing The Vizcayan, and John Lucas,
19 representing other petitioners in the case. We have
20 given each of these presenters three minutes.

21 The others, who will not be speaking, include
22 Mercy Hospital. They agree with the staff
23 recommendation. The City of Miami withdrew all
24 exceptions and responses to exceptions on this case.
25 And TRG-MH Venture, who is also not attending,

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1 withdrew exceptions to the case. First we will hear
2 from Mr. Stephen Darmody.

3 GOVERNOR CRIST: Good morning.

4 MR. DARMODY: Good morning, Governor. How are
5 you?

6 GOVERNOR CRIST: I'm fine. How are you today?

7 MR. DARMODY: Members of the Cabinet, as Lisa
8 said, my name is Steve Darmody. I do represent The
9 Vizcayans, which is a philanthropic group that was
10 formed to support Vizcaya.

11 GOVERNOR CRIST: Beautiful property.

12 MR. DARMODY: Yes, sir. As you may know,
13 Vizcaya, though all of Florida is a treasure, if it
14 has a jewel in that treasure box, it's Vizcaya.
15 Vizcaya generally serves as the host to visiting
16 dignitaries; the president, Queen Sofia, President
17 Reagan, Pope John, II.

18 And there's a reason for that. It's truly a
19 unique property. It's a national historic landmark.
20 But the tragedy of its current existence is that it
21 was recently designated as one of the 11 most
22 endangered national historic landmarks in the
23 country. And that designation comes from the
24 National Trust for Historic Preservation.

25 And the question you might ask would be why.

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1 And the why, Governor, is the subject of three
2 lawsuits, one of which is before you. And the good
3 news for The Vizcayans is that they've won two of
4 those. And this is one of the two that they've won.

5 This lawsuit is about land use, has to do with
6 whether multifamily, high-density residential
7 property close to Vizcaya that would impinge upon
8 the gardens of Vizcaya is appropriate, compatible
9 with the neighborhood, consistent with the Miami
10 City comprehensive plan.

11 We argued that it wasn't. The judge found on
12 limited grounds that the City of Miami had not
13 gotten the requisite data and analysis to support
14 the decision. We argued further that he should have
15 found it not compatible.

16 In his order he relied upon the wrong legal
17 standard. And your staff has done a wonderful job
18 ferreting out the issues and drafted a recommended
19 order.

20 We'll go back to DOAH and we'll fight the
21 remaining issues, but I want to take this
22 opportunity to let you know what's at stake because
23 the issue that remains is a lack of compatibility
24 with respect to Vizcaya. And if DOAH does not find
25 a lack of compatibility, our architects are saying

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1 that that development could march across the piece
2 of property and have that effect on Vizcaya.

3 So what's being remanded to DOAH is not a
4 simple burden of proof issue. It's a question of
5 compatibility in the long-term and whether Vizcaya
6 will suffer further damage.

7 Now, we'll go back and we'll argue that he was
8 right, Judge Johnston was right to find that we
9 lacked data and analysis to support the change, but
10 that he was wrong in applying the fairly debatable
11 standard rather than the preponderance of the
12 evidence, and that if he had applied the right
13 standard, he would have found that it was not
14 compatible and, therefore, inconsistent with Miami's
15 comprehensive plan.

16 And we'll eliminate the risk of what you're
17 looking at on your screen now, which we would view
18 as a tragedy, and just further exacerbate the
19 situation that has caused Vizcaya to be one of the
20 11 most endangered national historic landmarks.
21 Thank you.

22 GOVERNOR CRIST: Thank you very much.

23 MS. SALIBA: And Mr. John Lucas.

24 MR. LUCAS: Good morning, Governor, members of
25 the Cabinet. My name is John Lucas, and I have the

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1 privilege of representing Grove Isle and a number of
2 other neighbors that are located in close proximity
3 to the property that was the subject of this land
4 use designation change, specifically Constance
5 Steen, Jason Bloch and Glencoe Neighborhood
6 Association.

7 We have reviewed -- well, first let me say, I
8 do concur with Mr. Darmody's comments. Mr. Darmody
9 and I, as co-petitioners and counsels, have been in
10 lock step on every issue, including one of the most
11 significant issues in this case, which as he noted
12 was compatibility.

13 We have had the opportunity to review the
14 proposed draft order of remand. And while we concur
15 with remand at this time, we wish to state on the
16 record that we expressly reserve the right and do
17 not waive in any way any of the exceptions that we
18 have raised to the administrative order in the DOAH
19 proceedings.

20 It is our hope that this land use designation
21 change will not come back before you, as the City of
22 Miami and the developer have withdrawn, as was noted
23 by staff, the exceptions as well as their responses
24 to our exceptions. And it has been advised to us by
25 Mercy Hospital that it is their intention that the

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1 land use designation be restored to the original
2 designation, which hopefully will bring this matter
3 to an end. I thank you very much for your time and
4 appreciate your attention.

5 GOVERNOR CRIST: Thank you.

6 MS. SALIBA: The action before you is a remand
7 to DOAH. But as Mr. Lucas stated, the Commission --
8 for the record, the Commission does reserve any
9 ruling over the exceptions filed and not
10 specifically addressed in the remand.

11 ATTORNEY GENERAL McCOLLUM: I move Item 3.

12 CFO SINK: Second.

13 GOVERNOR CRIST: Moved and seconded. Show it
14 approved without objection. Thank you.

15 MS. SALIBA: Thank you.

16 GOVERNOR CRIST: Thank you for coming.

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1 GOVERNOR CRIST: Board of Trustees, the great
2 Secretary Mike Sole. Secretary, how are you this
3 morning?

4 MR. SOLE: Governor, I'm doing well this
5 morning. Cabinet members. Item Number 1 is a
6 request for consideration of a sales contract, .29
7 acres of state-owned land to the school board of
8 Manatee County. The sale price is \$134,500. This
9 is a Murphy Act parcel. It is located in the City
10 of Palmetto. It is currently surrounded by the
11 Palmetto Elementary School, and the school board
12 plans on using that to expand that elementary.

13 GOVERNOR CRIST: Is there a motion on Item 1?

14 CFO SINK: I move it.

15 COMMISSIONER BRONSON: Second.

16 GOVERNOR CRIST: Moved and seconded. Show it
17 approved without objection.

18 MR. SOLE: Thank you. Item Number 2 is request
19 to release 9.73 acres of an easement which is
20 located adjacent to the Cary State Forest. The
21 applicant is Southern Region Industrial Realty.

22 This lease was recorded as part of a previous
23 acquisition in 2005 and 2006 to ensure that there
24 was adequate access to Cary State Forest. Based
25 upon recent knowledge, it's been determined that

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1 that easement is not needed. Division of Forestry,
2 as managing agency, has no objections to the release
3 of this easement.

4 ATTORNEY GENERAL McCOLLUM: Move Item 2.

5 COMMISSIONER BRONSON: Second.

6 GOVERNOR CRIST: Moved and seconded. Show it
7 approved without objection.

8 MR. SOLE: Item Number 3, this is a request for
9 consideration of an application for renewal and
10 modification of a five-year sovereignty submerged
11 lands lease to Water Side Enterprises, LLC. This is
12 for a 146-slip private commercial docking facility.
13 Eighty-eight slips will be used in association with
14 the upland-ownership-oriented activities associated
15 with residential units.

16 Thirty-two slips will be used, more or less, as
17 a first come, first serve, open to the public. Ten
18 are in a commercial type setting, and two of them
19 will be allowed for law enforcement officers to use
20 as they need.

21 As part of this application, previously a
22 seawall was felled and reconstructed. And
23 unfortunately, when they reconstructed that seawall,
24 they encroached slightly on sovereignty submerged
25 lands. So as a result, there will be an additional

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1 lease for that encroachment, totaling some \$24,000
2 annual lease fees.

3 GOVERNOR CRIST: Is there a motion on Item 3?

4 COMMISSIONER BRONSON: Motion on Item 3.

5 ATTORNEY GENERAL McCOLLUM: Second.

6 CFO SINK: Governor, I have a --

7 GOVERNOR CRIST: Moved and seconded. CFO.

8 CFO SINK: I just have some comments to make.

9 Do you want to vote first?

10 GOVERNOR CRIST: Sure. All in favor please say
11 aye. Aye.

12 CFO SINK: Aye.

13 ATTORNEY GENERAL McCOLLUM: Aye.

14 COMMISSIONER BRONSON: Aye.

15 GOVERNOR CRIST: All opposed, like sign.

16 Motion carries unanimously.

17 CFO SINK: Thank you, Governor. And, Secretary
18 Sole, I just -- this is a good project under the new
19 ownership. And if you've never looked out on this
20 piece of water, I think this is the place where you
21 take the -- that the airboats leave to go into the
22 Everglades. It's fantastic.

23 MR. SOLE: Yes, ma'am.

24 CFO SINK: And the idea that they're going to
25 expand and have more access for the public and

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1 boaters is certainly encouraging. But my staff
2 talked to me about this, and I do want to make some
3 points about the prior owner, because I do have a
4 point to make.

5 This property was owned before by a company
6 called Barron River.

7 MR. SOLE: Yes, ma'am.

8 CFO SINK: And let me just say, while they
9 owned the property, some of the things that happened
10 there. They illegally cut mangroves, and a lot of
11 them. They built a fueling station there without
12 getting the proper permits. They allowed boats to
13 be moored outside of their lease area.

14 And they, as Secretary Sole mentioned, they
15 illegally doubled the size or their use of this
16 sovereign submerged land because of the seawall
17 issue. And this happened over a period of years.

18 So our department did its job and identified
19 all these multiple violations. And guess what the
20 fees were? A measly \$18,000.

21 So the point that I want to make is you can go
22 and do all these illegal things and just get your
23 hand slapped and for a minor amount of money, in the
24 scheme of things, according to this operation.

25 And I think we ought to be rewarding all the

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1 good actors, the people that play by the rules and
2 don't get in trouble and don't cut down mangroves
3 and are the good operators.

4 And so I just happen to believe that we have a
5 situation in our state where we don't have
6 sufficient administrative penalties, not fees or
7 anything, but the penalties for people who are not
8 abiding by the law. And certainly we could use the
9 money for other enforcement purposes.

10 And I do want to compliment the -- I understand
11 that this -- the new operator is giving the State a
12 couple of slips so that we can park our law
13 enforcement boats to be able to do enforcement.

14 But the point is that, in my opinion, we ought
15 to be looking at all the fines and penalties we
16 charge for people who break the law. Thank you.

17 GOVERNOR CRIST: Very good. Thank you, CFO.
18 Thank you, Secretary.

19 MR. SOLE: Thank you.
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1 GOVERNOR CRIST: State Board of Administration.
2 General Milligan.

3 MR. MILLIGAN: One more time.

4 GOVERNOR CRIST: The swan song. Commissioner,
5 thanks for joining us.

6 MR. MILLIGAN: I give Mike a hard time. He
7 always seems to be up here for a long time. While
8 we've got a second and before the Governor sits back
9 down, when I was a trustee, the State Board of
10 Administration immediately followed Bond Finance in
11 the agenda.

12 And I realize that meant that the Commissioner
13 had to -- in fact, in those days other people had to
14 sit around and listen. But, you know, the State
15 Board of Administration has a lot of important
16 issues. And by the time you get to us, you know,
17 the crowd is gone, you know, all the excitement is
18 over.

19 I hope maybe when Ash shows up, that maybe
20 you'd consider putting us right behind Bond Finance,
21 which is the appropriate place for it to be.

22 With that said, request approval of the minutes
23 for September 30, 2008.

24 GOVERNOR CRIST: Is there a motion?

25 CFO SINK: Move it.

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1 ATTORNEY GENERAL McCOLLUM: Second.

2 GOVERNOR CRIST: Moved and seconded. Show it
3 approved without objection.

4 MR. MILLIGAN: Request approval of fiscal
5 sufficiency of an amount not exceeding 200 million
6 State of Florida, Full Faith and Credit, State Board
7 of Education Public Education Capital Outlay Bonds.

8 ATTORNEY GENERAL McCOLLUM: So moved.

9 CFO SINK: Second.

10 GOVERNOR CRIST: Moved and seconded. Show Item
11 2 approved without objection.

12 MR. MILLIGAN: Request approval to file six
13 rules for adoption for the Florida Retirement System
14 Investment Plan. All of these rules adopt
15 legislative changes, reflect technical and
16 administrative changes.

17 CFO SINK: Move it.

18 ATTORNEY GENERAL McCOLLUM: Second.

19 GOVERNOR CRIST: Moved and seconded. Show it
20 approved without objection.

21 MR. MILLIGAN: Item 4 is for information and
22 discussion only. And I once again want to thank you
23 for giving me a chance to serve. And then,
24 secondly, I hope the market -- I don't know what
25 it's done this morning, but I hope it's doing as

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1 well as it did yesterday.

2 GOVERNOR CRIST: From your lips to God's ears,
3 General. General.

4 ATTORNEY GENERAL McCOLLUM: I was just going to
5 say, General Milligan, I assume that if, as you're
6 going out -- and we probably should be singing Old
7 Lang Syne or something here, but we do respect your
8 service, I really do. But I want to ask one
9 question.

10 Am I right that if this trend continues, the
11 market doesn't bounce back, we're likely to see
12 potential for assessments on the watch of the next
13 person that takes over, when Ash Williams comes
14 aboard, or do you still feel comfortable that the
15 pension funds and all are secure enough in the
16 investment arena that we won't have to do that
17 because of the accumulated surplus in the past?

18 MR. MILLIGAN: At this point -- and obviously
19 each year the Department of Management Services, as
20 I mentioned, I think, the last meeting, does an
21 actuarial analysis to determine what the
22 contribution rate should be.

23 It is always based on the end of the last
24 fiscal year, which in this case is last June 30th.
25 And we had 107.1 percent of our required resources

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1 to support the retirement plan, and at that point an
2 \$8.7 billion surplus.

3 And so that's what the contribution rate will
4 be based upon in the Legislature. The end of next
5 June may be a different story.

6 ATTORNEY GENERAL McCOLLUM: The point is that
7 we've got a little bit of time here, even though the
8 market may have taken a hit on our funds, to see
9 that rebound. And so those who are thinking about
10 the contribution rate, they can worry a little bit
11 about it, but they shouldn't think that suddenly
12 we're going to see an assessment right away. It's
13 going to be next year when this is evaluated, and a
14 long period of time is going to pass between now and
15 then to --

16 MR. MILLIGAN: If it occurred even then,
17 General McCollum. I'm not so sure that it would
18 occur even then, unless the market really went much,
19 much further down. But clearly this next
20 legislative session there will be no change, or
21 essentially no change in the contribution rate.

22 ATTORNEY GENERAL McCOLLUM: Well, I appreciate
23 it, General. I just wanted to -- I basically knew
24 this, but I wanted to give you the opportunity to
25 reassure those who are perhaps not so sure of that,

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1 who are employees and pension holders and so forth
2 that might make additional contributions, that
3 they -- they're not right now at risk of that.

4 MR. MILLIGAN: They certainly are not. They
5 certainly -- those that government -- that
6 participate are not in danger of any change,
7 significant change, at least, in the contribution
8 rate, and certainly the beneficiaries of the
9 retirement fund, present and future, are not in
10 danger of not receiving their benefits.

11 ATTORNEY GENERAL McCOLLUM: Well, again, I want
12 to thank you for your service, and I hope that you
13 will avail yourself to come by occasionally and give
14 us your thoughts and wisdom. Thank you so much.

15 GOVERNOR CRIST: Give us that 7-Eleven
16 perspective.

17 MR. MILLIGAN: Thank you.

18 GOVERNOR CRIST: Thank you, General. We're
19 adjourned.

20 (Whereupon, the meeting was concluded at 11:05
21 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

Reporter,

counsel

I, Jo Langston, Registered Professional

do hereby certify that the foregoing pages 4 through 44,
both inclusive, comprise a true and correct transcript of
the proceeding; that said proceeding was taken by me
stenographically and transcribed by me as it now appears;
that I am not a relative or employee or attorney or
of the parties, or a relative or employee of such attorney
or counsel, nor am I interested in this proceeding or its
outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 3rd day of November 2008.

JO LANGSTON
Registered Professional Reporter

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