

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
DECEMBER 9, 2008
2nd Substitute Page

Item 1 Minutes

Submittal of the Minutes from the October 14, 2008 Cabinet Meeting.

(See Attachment 1, Pages 1-13)

RECOMMEND APPROVAL

**2nd Substitute Item 2 Gulf Power Company Recommended Consolidated Intent/Lease
Renewal/ Modification**

REQUEST: Consideration of application for (1) renewal and modification of a five-year sovereignty submerged lands lease to increase the preempted area from 43,714 square feet to 526,904 square feet for barge mooring areas; and (2) issuance of a consent of use for (a) replacement of an existing seawall along 438 linear feet of shoreline at the Governor's Bayou site; and (b) installation of 10 new mooring dolphins.

COUNTY: Escambia and Santa Rosa
Lease No. 170000581
Application No. 17-0066040-007-DF

APPLICANT: Gulf Power Company (Gulf Power)

LOCATION: Sections 25 and 30, Township 01 North, Range 30 West, in Governor's Bayou and the Escambia River, Class III Waters, Unclassified Shellfish Harvesting Area
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$94,275.56 representing: (1) \$76,692.99 as the initial annual lease fee computed at the base rate of \$0.145554 per square foot; and (2) \$17,582.57 as the 25 percent surcharge payment for the additional areas. 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.

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 that require authorization to use sovereignty submerged lands.

2nd Substitute Item 2, cont.

Project Synopsis

Gulf Power has applied for a lease renewal/modification to: (1) expand the existing preempted area in Governor's Bayou by a total of 257,994 square feet; and (2) include an additional sovereignty submerged lands lease area on the Escambia River preempting 225,196 square feet. The total preempted area will be 526,904 square feet to be used in conjunction with Gulf Power's Crist Plant (Plant), an electricity producing facility.

Background

Gulf Power received its first permit for construction of a barge mooring area from the U. S. Army Corps of Engineers in 1957 and received its first sovereignty submerged lands license in 1972 for 15,530 square feet in Governor's Bayou. A lease modification was issued by Division of State Lands in 1991 for 43,714 square feet. The lease was renewed in 1996 and 2001, expired in 2006, and lease fees are current. Over time, Gulf Power required a larger mooring area for its barges to accommodate increased coal deliveries to provide increasing power generation and began to pre-empt a larger area for additional barges. Currently, Gulf Power is operating under a Temporary Use Agreement (TUA) for the additional 72,286 square feet in Governor's Bayou.

Gulf Power is adding a scrubber at its Plant location to reduce its air emissions. With the installation of this scrubber, limestone is needed to operate the scrubber. As a byproduct, gypsum will be produced and will be sold elsewhere. The limestone and the gypsum, as well as fuel coal, will be transported by barges to and from the Plant. Therefore, there is a need for larger mooring areas to accommodate the additional barge traffic.

Governor's Bayou Site

For the Governor's Bayou site, Gulf Power is the sole upland owner. The project as proposed will increase the barge mooring area to accommodate 2-barge widths on the northern side of the existing facility and to increase the barge mooring area to a 4-barge width on the eastern side of the existing facility. Gulf Power has stated that barges used to transport materials, to and from the facility, are 195-feet-long by 35-feet-wide with an approximate draft of 9 feet, when fully loaded. The water depths range from approximately 10 to 15 feet. The proposed lease area will hold a maximum of 34 barges at one time. There are currently 10 existing mooring dolphins. Gulf Power is proposing to add one additional mooring dolphin along the westernmost edge within the proposed lease area.

Gulf Power proposes to replace the existing seawall, which is not straight enough to support the transport of the barges back and forth along the seawall. Also, due to its instability, the existing seawall will be replaced with a new seawall 3 feet waterward of the mean high water line (at the face of the old seawall) pursuant to section 18-21.005(1)(c)5, F.A.C. The length of the seawall is approximately 438 linear feet.

To adjust for the maximum number of barges that could potentially occupy the lease area on Governor's Bayou, the barge mooring area crosses into the navigational channel. Currently, Gulf Power receives approximately 56 barges a week and will haul approximately 4 barges of gypsum out per week. With the additional lease area on the Escambia River, the lease area at Governor's Bayou will not routinely be fully occupied by the maximum number of barges allowed (34 barges).

2nd Substitute Item 2, cont.

Escambia River Site

Gulf Power is also proposing to include a separate additional sovereignty submerged lands lease area on the eastern side of the Escambia River just below the main channel where there is a split from Thompson's Bayou. Several alternative mooring locations along the Escambia River were considered for the additional sovereignty submerged lands lease area, but were rejected because they would cause a blind spot for other boating vessels or the water depths were not adequate. The proposed lease area will accommodate mooring of 3 barges wide with the aid of nine proposed mooring dolphins. Barges used to transport materials are 195-feet-long by 35-feet-wide with an approximate draft of 9 feet when fully loaded.

At the Escambia River site, the upland parcel is co-owned by the Northwest Florida Water Management District (District) and an individual, each with 50 percent ownership. Gulf Power is acquiring riparian rights usage from the District and the individual. DEP's Office of General Counsel reviewed and approved the draft upland riparian easement agreement on June 26, 2007. The individual signed a final upland riparian easement agreement with Gulf Power on August 26, 2008. The District will sign its final upland riparian easement agreement with Gulf Power after DEP issues the Recommended Consolidated Notice of Intent. This has been addressed as a special approval condition.

This new lease area will preempt a total of 225,196 square feet. The water depths range from 10.4 feet to 15.8 feet. The proposed lease area will hold a maximum of 24 barges at one time. This proposed lease area is the secondary holding area to the Governor's Bayou site. In the past, tugs delivering barges to the Plant have temporarily beached or moored barges along various locations of the Escambia River. This secondary barge holding area is intended to alleviate the use of temporary mooring areas all along the Escambia River.

Project Detail

All mooring dolphins and barges, at both sites, will be marked and lit at night and in conditions of reduced visibility in compliance with U. S. Coast Guard regulations. This has been addressed as a special lease condition.

Water quality sampling results met state standards except fecal coliform. Historic water quality data indicates that the exceedances in fecal coliform may be affected by possible upstream runoff sources above the Governor's Bayou where it veers off from the Escambia River. Gulf Power utilizes tugs to maneuver the barges within the waters of the Governor's Bayou, the Escambia River, as well as other more distant water bodies. The tugs only remain at the Plant site temporarily and on-site restrooms are available in the uplands for the tug captains. Therefore, a sewage pumpout facility is not required. The project was reviewed by DEP's hydrographic engineer who determined that the project met the requisite 96 hour flushing time and on October 8, 2008 stated no objections to the project.

2nd Substitute Item 2, cont.

Noticing

DEP required Gulf Power to publish a “Notice of Application”. This notice was published in the *Pensacola News Journal* on February 16, 2008, and DEP received no objections. Section 18-21.004(1)(m), F.A.C., requires adjacent property owners within 500 feet to be notified. However, it was not necessary to notify the adjacent property owners, as they were participants in the application process.

Solutia, Inc., located upriver from the Plant, and its barge operating company, Kirby, were notified of the project to request comments as they also utilize the Escambia River. They initially expressed concerns regarding the proposed width of the Escambia River sovereignty submerged lands lease area. Their concern was that Gulf Power’s lease area might pose a navigational hazard on any tugs and barges traversing the Escambia River’s navigational channel. Gulf Power and the two companies met to discuss the concerns and the proposed project. An agreement was reached between all parties regarding the operation of the barge mooring area along the Escambia River and both entities have stated in writing that they no longer have concerns regarding the proposed lease area.

Permit Summary

DEP’s wetland resource permit does not allow pumpout receptacles, fueling facilities, or liveboards.

Commenting Agency

On August 29, 2008 the project site was inspected by the Florida Fish and Wildlife Conservation Commission (FWC). To address possible navigation concerns, FWC requested that Gulf Power seek partnership with Escambia County’s Division of Marine Resources to apply for review and approval from FWC for the creation of a No Wake - Idle zone (Zone) for Governor’s Bayou, beginning at the south entrance of the bayou and extending north along the Plant seawall to just north of the Plant’s intake area. Establishing this boating safety area will aid in reducing the speed at which vessels operate in the Governor’s Bayou area adjacent to the Plant and allow for ample opportunity to react and adjust for either on-coming vessel traffic or barges docked. Once the Zone is approved by FWC, the area will be marked by Escambia County with the proper navigational signage. After the Zone is in place, education efforts will inform boaters to use caution while traversing the Zone. Enforcement actions by FWC would further address safety concerns.

FWC stated the Escambia River site should be able to accommodate the additional mooring of barges, 3 to 4 abreast, while not restricting either recreational or commercial traffic.

Comprehensive Plan

Local government comprehensive plans have been adopted for these areas pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plans are in compliance. The proposed action is consistent with the adopted plans according to letters received from Escambia County and Santa Rosa County.

2nd Substitute Item 2, cont.

(See Attachment 2, Pages 1-40)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$94,275.56**

Substitute Item 3 **City of Naples Recommended Consolidated Intent/Lease**

REQUEST: Consideration of an application for a ten-year sovereignty submerged lands lease containing 183,489.64 square feet (4.21 acres), more or less, for a managed, municipal mooring field.

COUNTY: Collier
 Lease No. 110338375
 OGC No. 05-1002-11-DF (f/k/a Application No. 11-0142842-003)

APPLICANT: City of Naples (City)

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

CONSIDERATION: The proposed mooring field qualifies for a waiver of lease fees pursuant to section 18-21.011(1)(b)7, F.A.C., which states that fees shall be waived for government entities that are either not-for-profit or non-profit uses when the revenues are used for operation and maintenance of the structure and the activity is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor.

STAFF REMARKS:

Project Synopsis

The City is requesting authorization for a 183,489.64-square-foot (4.21-acre) mooring field consisting of two lease areas: (1) North Mooring Area with 84,614.40 square feet (1.94 acres); and (2) South Mooring Area with 98,875.24 square feet (2.27 acres).

Substitute Item 3, cont.

Background

The City has a history of non-compliance regarding the proposed mooring field. On June 29, 1998, the City applied to DEP for authorization to install 10 mooring buoys/anchors (file no. 11-0142842-001). DEP denied that request for lack of information on March 17, 1999. On March 10, 2000, the City again applied to DEP for authorization to install mooring buoys/anchors (file no. 11-0142842-002). DEP denied that request for lack of information on January 11, 2001.

On January 25, 2005, DEP discovered that the City installed eight mooring anchors, buoys and connecting chains in 1998 and four mooring anchors, buoys and connecting chains in 2000, all without a regulatory permit from DEP or proprietary authorization from the Board of Trustees. The violation did not entail adverse environmental impacts to sovereignty submerged lands.

On August 16, 2005, DEP executed Consent Order No. 05-1002-11-DF and Temporary Use Agreement (TUA) No. 110338375. The Consent Order required the City to: (1) pay \$1,000 in civil penalties; (2) pay \$500 for DEP costs and expenses; (3) pay a \$1,500 environmental resource permit application fee; (4) pay \$10,000 as an administrative fine for the unauthorized use of sovereignty submerged lands; and (5) enter into a TUA for the unauthorized structures and associated preempted area. The City paid the penalties, fees and administrative fines on August 25, 2005. The TUA authorized the City to preempt 183,490 square feet of sovereignty submerged lands for use of the mooring field if a tropical storm/hurricane threatened south Florida, and required the City to submit an ERP application and lease application with sufficient information to allow DEP to deem the application complete no later than December 1, 2005. Since the mooring field qualifies for a waiver of lease fees pursuant to section 18-21.011(1)(b)7, F.A.C., no lease fees in arrears were assessed for this preemption of sovereignty submerged lands.

On April 11, 2006, DEP and the City entered into a Modification to Consent Order No. 05-1002-11-DF. The modification required the City to enter into a second TUA (executed on April 11, 2006) addressing the submission of an Environmental Resource Permit application and lease application no later than April 1, 2006, with sufficient information to allow DEP to deem the application complete no later than August 1, 2006. The City complied with the requirements of the modified Consent Order and second TUA. A site inspection, performed on September 21, 2006, revealed the facility to be in compliance with the terms and conditions of the TUA.

On July 21, 2008, DEP and the City entered into another Modification to Consent Order No. 05-1002 and a third TUA providing the City with regulatory authorization to install the mooring buoys and anchor lines and to operate the facility, and temporary authorization to use sovereignty submerged lands for the mooring field until July 21, 2009. DEP's consent order: (1) contains general and specific conditions that would typically be included in an environmental resource permit to maintain water quality; (2) prohibits fueling of vessels in the mooring field; (3) requires sewage pumpout facilities at the nearby City marina; and (4) prohibits liveaboards (consistent with the lease). The definition of "liveaboard" in the lease and ERP shall be consistent with any future changes to the definition of "liveaboard" as made and approved by the Board of Trustees. The City is in compliance with the requirements of the modified Consent Order and third TUA.

Substitute Item 3, cont.

Project Detail

Each mooring area currently provides mooring buoys (one anchor, chain and buoy per one vessel) for six private recreational vessels up to 43 feet long and with drafts of 5 feet or less except during tropical storm and hurricane conditions, when vessels are restricted to 34 feet long.

Although there are no significant benthic resources at the project site, the anchor chain design allows each anchor chain to continually scour the submerged bottom and thus create turbidity and eliminate potential for resource colonization of the submerged bottom. Therefore, DEP recommends that the City convert its chain connection to an alternative system used by other mooring fields in the state that avoids such scarification. To allow the City sufficient time to accomplish this conversion, a special lease condition requires the City to convert any anchor chain connection to one that does not scour the bottom either upon failure of the chain or prior to the end of the initial ten-year lease term, whichever occurs first. DEP is also concerned that the City's existing pyramid anchors may not be as effective as an alternative anchoring methodology such as helical screws to keep each mooring in place during tropical storms and hurricanes. Most other mooring fields in the state use helical screws as the preferred anchoring device, and these devices have proven to be effective during tropical storms and hurricanes. Therefore, DEP recommends that the City convert its anchors to an alternative system such as helical screws. To allow the City sufficient time to accomplish this conversion, a special lease condition requires the City to convert any anchor with a helical screw upon failure of the anchor or prior to the end of the initial ten-year lease term, whichever occurs first. This conversion will also require the City to obtain a Fourth Consent Modification from DEP and may require the City to obtain a modified permit from the U.S. Army Corps of Engineers.

The mooring field will be open to the public on a first-come, first-serve basis as defined in section 18-21.003(25), F.A.C. As such, preference will not be given to City residents over non-City residents. If such preference is determined by DEP audits of the City's records, the City will be required to apply for a standard lease and will be assessed an annual lease fee pursuant to rule. Although vessel traffic in the mooring field is anticipated to be by patrons of those areas, navigation through those areas by non-patrons will not be prohibited.

The City's mooring field management plan (Plan) provides background information, design, operational rules and procedures, and objectives for the City's oversight and management of the entire mooring field via the City's dockmaster. A special lease condition will incorporate the Plan into the lease. The Plan will require the City to: (1) enforce the provisions of the sovereignty submerged lands lease and any permits granted; (2) provide administration for the operation, maintenance, and security of the mooring field and waterside amenities; (3) assign moorings; (4) prepare records and reports as they relate to management of the mooring field; (5) maintain the mooring field and dockmaster facilities; and (6) ensure that all mooring field patrons execute a mooring sublease agreement during normal business hours, or for those vessels arriving after normal business hours, at the start of business the following day. This sublease agreement will bind the users to the rules and regulations as provided in the Plan. Only authorized and operational vessels, those capable of maneuvering under their own power, and those in compliance with the United States Coast Guard regulations and safety standards will be allowed within the mooring field. Daily patrols and a daily vessel inventory by the City's dockmaster and City law enforcement officers will assist in ensuring compliance with the Plan.

Substitute Item 3, cont.

The City proposes to prohibit liveaboards vessels in the mooring field. A liveaboard is defined in sovereignty submerged lands leases as “a vessel docked at the facility and inhabited by a person or persons for any five consecutive days or a total of ten days within a 30 day period. If liveaboards are authorized, in no event shall such liveaboard status exceed six months within a 12 month period, nor shall any such vessel constitute a legal or primary residence.” Therefore, the Plan limits overnight/transient vessels to stays of no more than four consecutive days or a total of eight days in a 30-day period. If in the future the City proposes to allow liveaboards, the City will be required to apply for a modification to the lease and receive a modified lease prior to allowing liveaboards to use the mooring field.

The Plan also requires that upon entering the mooring field, all vessel operators will empty their sewage holding tanks into the sewage pumpout facility located at the City Marina and all Y-valves shall be sealed in the non-overboard position. No pumpout of sewage will be allowed except into the City Marina sewage pumpout facility. The Plan also prohibits major repairs or refitting of vessels, including any activity that could result in a deposition of materials into the waterway or within the mooring field.

The City marina will provide dockmaster facilities/amenities for patrons of the mooring field, which include: a dinghy dock for the temporary mooring of up to nine dinghies associated with boats moored in the mooring field; fueling facilities; convenient sewage pumpout facilities; waste receptacles; laundry facilities; and restrooms and shower facilities. The sewage pumpout facility is connected to the City’s wastewater treatment system. The City is confident that these amenities, an orderly mooring system, and water quality benefits will encourage boaters to use the proposed mooring field. The City marina is subject to sovereignty submerged lands lease (No. 110024505). That lease was most recently modified on July 1, 2008 and the City is in compliance with that lease and all fees for that lease are current through January 16, 2009.

The City will collect a rental fee from mooring field patrons and will use the revenue solely for the purposes of operation and maintenance of the mooring field. Section 18-21.011(1)(b)7, F.A.C., states in pertinent part that lease fees may be waived under the following circumstances: “a. Any revenues collected from the activity or use of sovereign submerged lands are used solely for the purposes of operation and maintenance of the structure; and b. The activity or use of sovereign submerged lands is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor.” The proposed mooring field is an adjunct to the City’s revenue-generating commercial marina. However, based upon the merits of the proposed project and information provided to the Department of Environmental Protection (DEP) by the City indicating that fees will be assessed and profits shall be used to offset costs and construction, operations, and maintenance of the mooring field, the proposed activity meets the rule requirement and therefore qualifies for the lease fee waiver. A standard lease condition will require submission of accounting data and, if the data shows that the facility has become a revenue-generating facility, payment of lease fees.

As a result of the restrictions placed on the mooring field through the specific conditions in the 2008 Consent Order Modification and the Plan, the mooring field is anticipated to help alleviate random mooring of boats and the discharge of sewage in the bay, thereby protecting sovereignty submerged land resources in the bay.

Substitute Item 3, cont.

The City does not currently prohibit mooring in the bay outside of the mooring field except for a small area of privately-owned submerged lands west of the mooring field and in nearby navigation channels. The City has agreed to assist DEP in enforcing amendments to Florida Statutes and/or Board of Trustees' rules, if adopted in the future, which prohibit mooring and anchoring on sovereignty submerged lands in the bay outside of the lease area. Once such rules are adopted, the City will enter into a mutual assistance agreement with DEP that will require City law enforcement officers to assist in the enforcement of those rules.

Commenting Agency

Recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding the protection of manatees have been addressed as specific conditions in the environmental resource permit. Additionally, Collier County is a designated manatee county with an adopted and implemented manatee protection plan (MPP) that has been approved by FWC. FWC has stated that the MPP does not specifically address mooring fields. However, FWC has also stated that the proposed project is not expected to significantly impact manatees. Further, a proposed special lease condition will require the City to ensure that each mooring field user at the mooring field facility enters into a signed agreement, between the City and the mooring field user, stating that the mooring field user agrees to comply with the speed zones adopted by the City and contained in the Collier County Manatee Protection Plan (MPP), and/or any revisions of the MPP adopted by Collier County and approved by FWC. In case of a conflict between City and MPP speed zones, the mooring field user agreement will require the mooring field user to comply with the more restrictive speed zones.

Noticing

Pursuant to section 253.115, F.S., the proposed mooring field was specifically noticed to property owners within 500 feet of the proposed project area. Approximately 55 notices were sent via certified mail. No objections were received in response to the noticing.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan is in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City.

(See Attachment 3, Pages 1-62)

RECOMMEND APPROVAL OF A FEE-WAIVED TEN-YEAR LEASE TERM FOR THE MOORING FIELD SUBJECT TO THE SPECIAL APPROVAL CONDITION AND SPECIAL LEASE CONDITIONS

Item 4 Coral Ridge Yacht Club, Inc. Quitclaim Deed

REQUEST: Consideration of request to issue a quitclaim deed of approximately 2,608.3 square feet (0.06 acres) of filled, formerly submerged, sovereignty lands in Broward County to Coral Ridge Yacht Club, Inc. the riparian owner.

COUNTY: Broward

APPLICANTS: Coral Ridge Yacht Club, Inc. (Yacht Club)

LOCATION: Section 36, Township 49 South, Range 42 East

CONSIDERATION: \$2,000

<u>PARCEL</u>	<u>ACRES</u>	<u>VALUE</u>	<u>TRUSTEES'</u> <u>SALE PRICE</u>
BOT	0.06	\$2,000	\$2,000

STAFF REMARKS:

Background

The Department of Environmental Protection (DEP), Division of State Lands (DSL) has received a request from Yacht Club to purchase approximately 2,608.3 square feet (0.06 acres) of filled, formerly submerged sovereignty lands in Broward County on the Intracoastal Waterway to resolve an overfill encroachment.

On December 2, 1946 the Board of Trustees conveyed some 15.8 acres of submerged land bordering on the Intracoastal Waterway and Mud Lake to Coral Ridge, Inc., predecessor in title to Yacht Club. Yacht Club subsequently entered into a sovereignty submerged lands lease with the Board of Trustees for 12,033 square feet of submerged lands adjacent to the filled uplands for a private docking and mooring facility. In 2006, during a site inspection, DEP's Compliance and Enforcement Section reported that the eastern edge of the Board of Trustees' deeds were located approximately 6 feet landward (westerly) of the current Mean High Water (MHW) Line of the Intracoastal Waterway, and further determined that the land between the deeds and the MHW line was never conveyed, nor included in the lease, but was filled in or near 1952. As a result, this land is considered to be filled, formerly submerged sovereignty land, subject to conveyance pursuant to section 253.12(6), F.S. and section 18-21.019(2), F.A.C.

(See Attachment 4, Pages 1-9)

RECOMMEND APPROVAL

**Board of Trustees
Agenda - December 9, 2008
Substitute Page Eleven**

**Substitute Item 5 Thomas Option Agreement/Department of Corrections/Mayo
Correctional Institution**

REQUEST: Consideration of an option agreement to acquire 10 acres for the benefit of the Department of Corrections from Edward B. Thomas and Lester Kemp Thomas, also known as Lester K. Thomas.

COUNTY: Lafayette

APPLICANT: Department of Corrections (DOC)

LOCATION: Section 15, Township 04 South, Range 10 East

CONSIDERATION: \$110,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Carlton (8/24/06)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Thomas	10	\$110,000	\$110,000	*	\$110,000 (100%)	120 days after BOT approval

* The property was conveyed July 20, 1996 by a Quit-claim deed. The Grantor and Grantee have the same last name and there is no information available to confirm whether transaction was a gift to Grantee.

STAFF REMARKS: This acquisition was negotiated by DOC. Funds for the acquisition were appropriated during the 2008-2009 Legislative session and are still available.

On September 27, 2007, the Board of Trustees, on behalf of DOC, received a donation of 120 acres of vacant land located north of the Mayo Correctional Institution, from Lafayette County. That donation has assisted DOC in expanding the perimeter of the correctional institution. This proposed acquisition of ten acres will complete the perimeter expansion.

The acquisition is located in the southeast corner of the current institutional boundary. The property is currently vacant and unimproved. Potential future uses for this acquisition parcel may include use as DOC staff housing and a possible work camp, with one acre potentially being used to house a volunteer fire department.

Mortgages and Liens

All mortgages and liens will be satisfied at the time of closing. In the event the commitment for title insurance, to be obtained prior to closing, reveals any encumbrances that may affect the value of the property or the proposed management of the property, staff will so advise the Board of Trustees prior to closing.

Closing Information

A title insurance commitment, a survey, and an environmental site assessment will be provided by DOC prior to closing.

Substitute Item 5, cont.

Management

This property will be managed by DOC as an addition to the Mayo Correctional Institution.

Comprehensive Plan

This acquisition is consistent with section 187.201(6), F.S., the Public Safety section of the State Comprehensive Plan.

(See Attachment 5, Pages 1-28)

RECOMMEND APPROVAL

Item 6 Allcoat, Inc. Option Agreement/FWC/Yucca Pens Unit of the Babcock-Webb Wildlife Management Area Additions and Inholdings Project

REQUEST: Consideration of an option agreement to acquire 37.6 acres within the Florida Fish and Wildlife Conservation Commission's Yucca Pens Unit of the Babcock-Webb Wildlife Management Area Additions and Inholdings project from Allcoat, Inc.

COUNTY: Lee

APPLICANT: Florida Fish and Wildlife Conservation Commission (FWC)

LOCATION: Section 06, Township 43 South, Range 24 East

CONSIDERATION: \$298,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Stewart <u>(05/15/2008)</u>	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Allcoat, Inc.	37.6	\$300,800	\$300,800	\$20,000*	\$298,000** (99%)	120 days after BOT approval

* Allcoat, Inc. purchased the property on April 6, 1993.
** \$7,926 per acre.

STAFF REMARKS: This acquisition was negotiated by the Florida Fish and Wildlife Conservation Commission (FWC) and is eligible for funding under its Florida Forever Additions and Inholdings Program.

Project Description

The property lies along the eastern boundary of the Yucca Pens Unit of the Babcock-Webb Wildlife Management Area (Babcock-Webb WMA) and is on the current FWC Additions and Inholdings acquisition list. The property is also within the Charlotte Harbor Flatwoods Florida Forever Project. This acquisition will provide lands that increase the prescribed burning buffers

Item 6, cont.

to the Babcock-Webb WMA and aid in buffering the project from fragmentation and residential development. This property will help to ensure the survival of imperiled species such as the Red-cockaded woodpecker, a federally listed endangered species; the Eastern Indigo snake, a federally and state-listed threatened species; and the gopher tortoise, a state-listed threatened species. Additionally two rare and endangered plant species are found in this type of habitat: Florida beargrass which runs through the Babcock-Webb WMA and one of the largest known populations of beautiful (squirrel-tail) paw-paw in Florida.

This acquisition provides the following benefits meriting acquisition under FWC's Additions and Inholdings Program: conservation of lands designated as Strategic Habitat Conservation Areas, conservation of habitat for imperiled species, additional habitat important to native wildlife, lands that will increase prescribed burning buffers, lands with wetland resources important to wildlife, and lands important for fish and wildlife based public outdoor recreational use.

The property is primarily characterized by a mixture of pine flatwoods, fresh water marsh, wet prairie and associated cypress wetlands located on the northern county line of Lee County, one mile west of Highway 41 (Tamiami Trail) and six miles east of Burnt Store Road. The parcel lies approximately seven miles south of the town of Punta Gorda in Charlotte County and five miles north of North Fort Myers in Lee County.

This property is an important element of FWC's acquisition plans to conserve fish and wildlife resources in this region of Florida and will help to ensure the survival of wildlife like the gopher tortoise, wood stork, crested caracara, Eastern Indigo snake and other fish and wildlife resources. Additionally, the acquisition of this property will aid in fulfilling the goals of FWC's Gopher Tortoise Management Plan.

Mortgages and Liens

All mortgages and liens will be satisfied at the time of closing. The property does not have legal access. Access to the property can be obtained through its southern and western boundary that adjoins FWC's Babcock-Webb WMA. There is a reservation with right of entry, of a one-half interest in the oil, gas, and other minerals rights, which encumbers the entire 37.6 acres. The lack of legal access and the outstanding reservation were considered by the appraiser in the valuation of the property. The future managing agency, FWC, has determined that the property can be adequately managed with these existing conditions. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing.

Closing Information

A title insurance commitment and an environmental site assessment will be obtained by FWC prior to closing.

Item 6, cont.

Management

The parcel will be managed by FWC as part of the Babcock-Webb WMA for natural resource conservation, restoration, and fish and wildlife 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 1-23)

RECOMMEND APPROVAL

2nd Substitute Item 7 **Panuska Option Agreement/Conservation Easement/Monitoring Agency Designation/Management Policy Statement Confirmation/Promise Ranch Florida Forever Project**

WITHDRAWN FROM THE MAY 13, 2008 AGENDA

REQUEST: Consideration of (1) an option agreement to acquire a perpetual conservation easement over 1,489.17 acres within the Promise Ranch Florida Forever project from Robert T. Panuska, as Trustee of the Robert T. Panuska Trust; (2) designation of Department of Environmental Protection, Office of Environmental Services as the monitoring agency; and (3) confirmation of the management policy statement.

COUNTY: Lake

LOCATION: Sections 14 through 16 and 21 through 23, Township 18 South, Range 26 East

CONSIDERATION: \$7,000,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY:		<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>OPTION DATE</u>
		Goodman (06/09/08)	Clayton (06/09/08)				
Panuska	1,489.17	\$11,200,000	\$12,700,000	\$12,700,000	\$3,236,900*	\$7,000,000** (55%)	120 days after BOT approval

* The seller assembled the property in five separate transactions from July 7, 2000 to June 11, 2004. The June 11, 2004 transaction did not reflect market value as the property was involved in foreclosure.

** \$4,700 per acre; Fee value is \$17,900,000; Conservation Easement Purchase Price is 39% of the fee value.

STAFF REMARKS: The Promise Ranch project is on the Florida Forever A list and is in the Less-Than-Fee category of the Florida Forever Priority List approved by the Board of Trustees on September 16, 2008. The project contains 1,489.17 acres, of which no acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, the project will be complete.

2nd Substitute Item 7, cont.

Project Description

A less-than-fee acquisition of the Promise Ranch Florida Forever project would meet Florida Forever goals of increasing the amount of forest land available for sustainable management by protecting 358 acres of forest, and by protecting, restoring and maintaining the quality and natural functions of land, water and wetland systems of the state.

This project was added to the Florida Forever list on February 16, 2005, as a proposed conservation easement. The conservation easement will enable the property to be protected from future development in this rapidly growing area. The property has over one mile of frontage on Lake Yale. Lake Yale is more than 4,000 acres in size and is part of the Harris Chain of Lakes. One of the most significant natural features of the property is a series of basin marshes associated with Lake Yale. Species with the greatest conservation need located on the property are the Lake Eustis pupfish, Florida sandhill crane, bald eagle, wood stork, and short-tailed snake. Rare animals documented or reported on the property are the Eastern diamondback rattlesnake, Eastern indigo snake, gopher tortoise, osprey, Sherman's fox squirrel, and Florida black bear. As referenced in the appraisal, there is an active eagle's nest on the property. The following conservation areas are within a four mile radius: Ocala National Forest, Seminole State Forest, three St. John's River Water Management District properties (Emeralda Marsh Conservation Area, M.O. Williams parcel, and Pine Meadows Conservation Area), and four Lake County properties (Flowing Waters Preserve, Ocklawaha Picnic grounds, Tanner Preserve, and Sawgrass Island Preserve).

The property is currently being managed by the landowner, Mr. Panuska, in accordance with two separate management plans designed to preserve and restore the land, and increase the wildlife on the property. Mr. Panuska currently schedules tours of the property for diverse groups, including 4H groups and groups of local school children, through Trout Lake Nature Center. He also schedules regular visiting/work sessions to develop an inventory of the plants and wildlife at the ranch with such groups as the Native Plant Society (Beautyberry Chapter), the Audubon Society, and wildlife habitat experts from Florida Fish and Wildlife Conservation Commission, and the United States Department of Agriculture. Mr. Panuska is actively working to restore and improve the property through prescribed fire, timber thinning and restoring disturbed areas.

Prohibited Uses

Under the proposed conservation easement, the property will be restricted in perpetuity by the provisions of the easement, a summary of which includes, but is not limited to, the following prohibited uses:

- dumping of soil, trash, liquid or solid waste (including sludge), or unsightly, offensive, or hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants will be prohibited;
- exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, lime rock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand, and similar substances will be prohibited, except as reasonably necessary to combat erosion or flooding, or except as necessary and lawfully allowed for the conduct of allowed activities;

2nd Substitute Item 7, cont.

- activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation will be prohibited, unless otherwise provided for in the easement;
- acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portions of the property having historical or archaeological significance will be prohibited;
- removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation, including but not limited to cypress trees, will be prohibited except as specifically provided for in the reserved rights section of the easement;
- planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council or its successor will be prohibited;
- commercial or industrial activity, or ingress, egress or other passage across or upon the property in conjunction with any commercial or industrial activity including but not limited to swine, dairy and poultry operations and confined animal feed lot operations will be prohibited;
- new construction or placing of temporary or permanent buildings, mobile homes or other structures in, on or above the ground of the property except as may be necessary by grantor for maintenance or normal operations of the property or during emergency situations will be prohibited or as may otherwise be specifically provided for in the reserved rights section of the easement;
- motorized vehicles will be prohibited except on established trails and roads unless necessary: (i) to protect or enhance the purposes of this Easement, (ii) for emergency purposes, and (iii) to retrieve game that has been hunted legally;
- areas currently improved for agricultural activities as established by the baseline documentation may continue to be used for those activities; areas that are currently in improved pasture as depicted in the baseline documentation shall not be converted to more intense agricultural use; lands that are depicted in the baseline documentation as being natural areas shall remain natural areas;
- actions or activities that may reasonably be expected to adversely affect threatened or endangered species shall be prohibited;
- any subdivision of the land except as provided for in the reserved rights section of the easement shall be prohibited;
- signs, billboards, or outdoor advertising of any kind erected or displayed on the property, except that grantee may erect and maintain signs designating the property as land under the protection of grantee will be prohibited;
- commercial water wells on the property will be prohibited;
- cutting of cypress trees anywhere on the property will be prohibited;
- mitigation bank pursuant to section 373.4135, et seq., F.S., will be prohibited; and
- activities that would cause an increase in phosphorous loading in Lake Yale, and any activities that would be contrary to the provisions of the Basin Management Action Plan adopted under the provisions of section 403.067, F.S., will be prohibited.

2nd Substitute Item 7, cont.

Owner's Rights

The proposed conservation easement will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- the right to observe, maintain, photograph, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding; the right to own, the hunting and fishing rights on the property and grantor may lease and sell privileges of such rights;
- the right to continue operation of grantor's quail management plan as incorporated into the baseline documentation;
- the right to conduct controlled or prescribed burning on the property;
- the right to mortgage the property; provided, however, that the mortgagee's lien shall be inferior to and lower in priority than this easement;
- the right to contest tax appraisals, assessments, taxes and other charges on the property;
- the right to continue to use, maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches, and such other facilities on the property as depicted in the baseline documentation;
- the right to construct four new residential structures on the property, along with access driveways and appropriate-sized outbuildings such as barns; each of the four residential structures shall be limited to 5,000 square feet; and have no more than two related outbuildings limited to 2,000 square feet each; the new residential and outbuilding impacts shall be limited to 2.5 contiguous acres each, including new access driveways, all of which shall be located at least 150 feet from any wetland area as identified in the baseline documentation;
- the right to divide the property for sale or other disposition by the owner into one lot for each new residence allowed by this easement; the provisions of this paragraph shall not be construed as releasing the subdivided lots from the terms of this easement; the terms of this easement shall remain in full force and effect over the allowed subdivided lots as well as the remaining area of the property;
- the right to exclusive use of the improvements depicted in the baseline documentation;
- the right to engage in silviculture only within those areas depicted on the baseline documentation as silvicultural or agricultural areas, in accordance with the existing Forestry Stewardship Plan as incorporated into the baseline documentation and with the best management practices of the Division of Forestry of the Florida Department of Agriculture and Consumer Services;
- the right to construct or create only such new roads and firebreaks as are reasonably necessary to exercise the rights reserved under the reserved rights of this section;
- the right to have a small equestrian operation not to exceed 20 animals; fences, barns, and other additional structures may be constructed as necessary for the equestrian operation; riding trails shall be restricted to existing roads, trails and fire breaks; and
- the right to host on the property relocation of endangered or threatened species or species of special concern.

2nd Substitute Item 7, cont.

Public Access

The grantor grants to members of the public the limited right to conduct scientific studies and environmental education programs on the property provided the person or persons seeking access is a member of a legitimately recognized scientific, environmental, conservation, or educational organization; grantor shall not be required to allow this right to be exercised more than six times in a calendar year. Additionally, the grantor shall make good faith effort to allow public, private, and chartered schools or other educational organizations the opportunity to conduct educational programs or tours on the property twelve times a year. Any person or group desiring to exercise the right granted herein to conduct scientific studies or environmental education programs on the property shall make written request to the grantor at least 30 days in advance of any proposed visit, and include in the request the proposed date(s) and time(s), identity of the proposed participants, location(s), and purpose(s); grantor may require that each participant execute an appropriate liability waiver and furthermore may impose additional rules governing any such access in order to assure prevention or restoration of any environmental or other damage to the property, trash removal, use of off-road vehicles, and other reasonable rules to assure compliance with the terms of this conservation easement. The grantor is not required to provide any access that would cause him to be unable to obtain liability insurance.

Mortgages and Liens

All mortgages and liens will be satisfied or subordinated at the time of closing. The property is improved with a 24' x 90' pole barn, 54' x 85' equipment barn, set of cow pens, and two small outbuildings. The property is encumbered with an easement for road purposes, a road right-of-way, a 50-foot deed restriction affecting less than 3 acres that prohibits residential development, and an oil, gas, and mineral rights reservation. The outstanding reservation covers 80 acres and is in favor of the State of Florida for an undivided one-half interest in any petroleum products and an undivided three-fourths interest in all other mineral products. This reservation provides for the right of entry and exploration with the landowner's consent. The conservation easement prohibits the landowner from giving consent to oil, gas, and mineral exploration. The reservation also includes an easement for a 200-foot-wide road right-of-way for any state road within the 80 acres. There is no evidence that a state road ever existed on this property so this easement does not affect the property. The improvements, easements, right-of-way, deed restriction, and outstanding oil, gas, and mineral reservation were considered in the appraisers' valuation of the property. The future easement monitor, Department of Environmental Protection's (DEP) Office of Environmental Services (OES) can monitor the easement with these conditions. 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.

Closing Information

A title insurance commitment, environmental site assessment, and baseline documentation report will be obtained by the Board of Trustees prior to closing.

2nd Substitute Item 7, cont.

Management

Pursuant to section 259.032(9)(e), F.S., DEP's Division of State Lands (DSL) staff recommends that the Board of Trustees designate OES as the conservation easement monitor for this site. Section 259.032(9)(e), F.S., requires that the Board of Trustees, concurrent with its approval of the initial acquisition agreement within a project, evaluate and amend, as appropriate, the management policy statement for the project as provided by section 259.035, F.S., consistent with the purposes for which the lands are acquired. The management policy statement for this project was included in the 2005 Florida Forever Annual Report adopted by the Board of Trustees on February 16, 2005. DSL staff recommends that the Board of Trustees confirm the management policy statement as follows:

As a conservation easement or less-than-fee interest, the project will be managed by the private landowner with restrictions. The purchase of the development rights, the prohibition of the further conversion of existing natural areas to more intensive uses and limited public access will likely be the primary focus of the conservation easement.

Comprehensive Plan

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

(See Attachment 7, Pages 1-70)

RECOMMEND APPROVAL

**Substitute Item 8 Florida Power Corporation/Progress Energy Florida, Inc. Easement/
Marjorie Harris Carr Cross Florida Greenway/BOT Easement**

REQUEST: Consideration of (1) grant of a non-exclusive easement over approximately 27.017 acres, more or less, of the Marjorie Harris Carr Cross Florida Greenway; and (2) acquisition of an approximately 18-foot-wide by 40-mile-long perpetual easement for a public recreational trail.

COUNTY: Levy

APPLICANT: Florida Power Corporation, d/b/a Progress Energy Florida, Inc. (PEF)

LOCATION: Section 06, Township 17 South, Range 17 East

**Board of Trustees
Agenda - December 9, 2008
Substitute Page Twenty**

Substitute Item 8, cont.

CONSIDERATION:

Phase I

\$2,262,500 for the first three years of the easement to PEF (PEF Easement), of which (1) \$905,000 of this fee represents the Department of Environmental Protection (DEP), Division of State Lands' (DSL)-approved appraised value of a three-year easement that will be deposited into the Internal Improvement Trust Fund; and (2) \$1,357,500 of this fee represents the net positive benefit, which is 1.5 times the DSL-approved appraised value of a three-year easement, that PEF is required to contribute toward the design, permitting and construction of approximately 2.7 miles of paved public recreational trails on the Marjorie Harris Carr Cross Florida Greenway (CFG) beginning at Felburn Park east of U.S. Highway 19 and continuing east to Mullet Point (1.1 miles) and from the Inglis Main Dam to the northwest corner of Inglis Island (1.6 miles). Any remaining funds will be used to begin the design, permitting and construction of the Mullet Point Bridge. The bridge will connect the two paved trail segments described above.

If PEF's federal permit for the Levy Nuclear Power Plant has not been issued to PEF at the end of the initial three-year term, the term may be extended upon mutual agreement of the parties, and PEF will pay an additional easement fee to the Board of Trustees and additional net positive benefit for the construction of public recreational trails and other related facilities to be determined by DEP's Office of Greenways and Trails (OGT) for a term length mutually agreed to by DSL and PEF. These payments for the extension of the initial three year term will be deducted from the remaining easement fee and net positive benefit that PEF owes for the remaining 57-year easement term. Those payments are discussed in Phase II, below.

Phase II

Upon receipt of its federal permit for the Levy Nuclear Power Plant, PEF shall be required to pay an additional fee of \$7,415,500 for the remaining 57-year term of the PEF Easement, of which (1) \$2,965,000 of this fee represents the DSL-approved appraised value of the remaining 57-year easement term; and (2) and \$4,447,500 of this fee represents the net positive benefit, which is 1.5 times the DSL-approved appraised value of a 57-year easement. PEF shall be entitled to offset \$_____, which is the DSL-approved appraised value of an approximately 18-foot-wide by 40-mile-long perpetual easement for a public recreational trail that PEF will grant to the Board of Trustees (BOT Easement) against this additional \$7,415,500 fee. PEF shall be required to contribute the remaining \$_____ toward the design, permitting and construction of the paved public recreational trail within the easement area on the top portion of the existing rail bed on which the railroad tracks were previously located. If the DSL-approved appraised value of the BOT Easement is more than \$7,415,500, the Board of Trustees will not be required to pay the difference in cash to PEF, but the Board of Trustees will allow PEF to receive a credit that will be applied toward future net positive benefit requirements on future PEF projects over OGT-managed areas relating to the Levy Nuclear Power Plant. Prior to the Board of Trustees' acceptance of the BOT Easement, PEF will provide, at its sole cost and expense, a title commitment and subsequent owner's title policy, survey and environmental site assessment that are acceptable to DSL. The Board of Trustees' acceptance of the BOT Easement is contingent

Substitute Item 8, cont.

on DSL's review and approval of the title commitment, environmental site assessment and survey. If DSL does not approve one or more of these items and the Board of Trustees does not agree to accept the BOT Easement, PEF shall pay an easement fee of \$2,965,000 to the Board of Trustees that will be deposited in the Internal Improvement Trust Fund, and PEF shall contribute \$4,447,500 toward the design, permitting and construction of public recreational trails and other related facilities to be determined by OGT.

STAFF REMARKS: DSL received a request from PEF for a non-exclusive easement (PEF Easement) over two parcels of state-owned uplands within the Marjorie Harris Carr Cross Florida Greenway (CFG), just west of the Inglis Lock, in Levy County. The property, former Cross Florida Barge Canal (Canal) lands, was conveyed to the Board of Trustees after the deauthorization of the barge canal project. The site is managed by OGT under Board of Trustees' Lease No. 4013.

Purpose of PEF Easement

The proposed PEF Easement contains approximately 27.017 acres over, across and upon two parcels (with Parcel One containing 0.060 acres, more or less, and Parcel Two containing 26.957 acres, more or less) and will be for a term of up to 60 years. The proposed PEF Easement is needed initially for site preparation activities for PEF's proposed Levy Nuclear Power Plant that will be located on property owned by PEF approximately three miles north of the CFG. That portion of the PEF Easement that runs over, across and upon Parcel Two will ultimately be used for a barge slip and staging area for the delivery of modular components to be used in the construction of the power plant, a boat ramp and associated parking, access road, upland portions of vehicular access bridge and utility bridge, blowdown pipes, cooling water intake structure and pipes, transmission lines, and other utility facilities. The barge slip/boat ramp and bridged vehicular accessway are being permitted separately and in advance of the final construction permit for the Levy Nuclear Power Plant so that the necessary site preparation activities will be completed and not create a delay for construction of the plant. The proposed PEF Easement was reviewed and approved by DEP's Acquisition and Restoration Council (ARC) on October 10, 2008. The proposed PEF Easement is the initial phase of the overall Levy Nuclear Plant project which could potentially impact other Board of Trustees'-owned lands. These conservation lands could include lands managed by OGT, Division of Forestry and the Florida Fish and Wildlife Conservation Commission. If PEF requests future authorizations to use these lands these authorizations will have to go before ARC and the Board of Trustees for approval. When this occurs, the managing agencies will be contacted to process the request for authorizations and consideration of net positive benefit.

The purpose of that portion of the PEF Easement that runs over, across and upon Parcel One is to obtain satisfactory evidence of sufficient upland interest as defined in subsection 18-21.003(57), F.A.C., which is required in order for PEF to obtain a sovereignty submerged lands easement

Substitute Item 8, cont.

from the Board of Trustees. PEF has also applied for a sovereignty submerged lands easement for a bridge and utility crossing between Parcel One and Parcel Two. In the future, PEF will also have to apply for a permit to excavate and to dredge the area between the proposed upland construction and that portion of the Canal that links Lake Rousseau and the Gulf of Mexico in order to use this facility as a barge slip/boat ramp.

The upland portion of the barge slip/boat ramp will be located adjacent to the Canal. Although the Canal is a navigable waterway; no activities are proposed below the mean high water line at this time. The Inglis Lock Bypass Channel is not navigable at the location where the bridged vehicular accessway will be located as there are barriers to navigation west and east of the proposed bridge. To the west there is a gated spillway structure and to the east there is a causeway crossing with culverts in the channel.

PEF Easement Term

A state site certification application is currently being processed pursuant to the Electrical Power Plant Siting Act (Sections 403.501-518, F.S.) for the proposed Levy Nuclear Power Plant and associated facilities. PEF has stated that approval of the federal permit could take up to three years or longer. As a result, staff is recommending an initial three year term length for the PEF Easement that may be extended upon mutual agreement of the parties if PEF's federal permit application is still pending after three years. If PEF obtains the federal permit the term of the PEF Easement will automatically be extended so that the total easement term is 50 years plus one automatic 10 year renewal if PEF is in full compliance with the terms and conditions of the PEF Easement at the time of renewal. The PEF Easement will contain a special condition that requires PEF to allow public access to the easement premises, including the boat ramp and associated parking, for public recreational purposes except when modular plant components or other barge materials are in the active loading or unloading process. DEP staff is recommending that the PEF Easement also contain a special condition that requires PEF, at the sole option and discretion of OGT, to restore the easement area to the condition as it existed on the date of the grant of the PEF Easement if PEF does not obtain the federal permit. The PEF Easement shall automatically and immediately terminate upon PEF's withdrawal of its federal permit application for the Levy Nuclear Power Plant or the federal government's denial of the permit.

BOT Easement

Immediately upon receipt of its federal permit for the Levy Nuclear Power Plant, PEF shall grant to the Board of Trustees a perpetual 18-foot-wide easement for a public recreational trail over, across and upon an approximately 40-mile-long PEF-owned corridor over the rail bed from Dunnellon, north to Chiefland, within the existing undeveloped utility corridor. The proposed trail is part of the Nature Coast State Trail – Northern & Southern Extensions via the Progress Energy Corridors, on the OGT 2007-2008 approved Acquisition Project List. The BOT Easement will be situated to utilize the top portion of the existing rail bed on which the railroad

Substitute Item 8, cont.

tracks were previously located. Utility facilities may also be located on the top portion of the existing rail bed and PEF and OGT will work together in designing and constructing their respective facilities to assure that they can be co-located on top of the rail bed in a compatible manner. The BOT Easement will be subject to PEF's right to use the corridor in the future for the construction, operation and maintenance of electric transmission and distribution lines and other associated utility facilities (including access roads, rail lines, or other linear facilities).

Management of PEF Easement

PEF and OGT have worked closely to develop this project and will continue to collaborate through the project's implementation. PEF will undertake construction of all of the proposed construction activities on the PEF Easement and will be responsible for the operation and maintenance of the upland barge slip/boat ramp and bridged vehicular accessway. Because the proposed PEF Easement is non-exclusive, OGT as the lessee under Board of Trustees' Lease No. 4013 continues to have the right to manage the easement premises. PEF's use of the easement premises will not interfere with OGT's overall management of the easement premises. The PEF Easement will contain an acknowledgement that OGT and its employees, contractors and agents continue to have the right to access the easement premises for all purposes authorized under Board of Trustees' Lease No. 4013, including but not limited to maintenance and security of the easement premises. However, it will be necessary to close these areas to the public during construction of the proposed barge slip and heavy haul road.

Management of BOT Easement

The BOT Easement will be used for an approximately 18-foot-wide by 40-mile-long public recreational trail over the rail bed from Dunnellon, north to Chiefland, within the existing utility corridor, and will be situated to utilize the raised rail bed. PEF's utility facilities may also be located on the raised rail bed. OGT and PEF will work together in designing and constructing their respective facilities to assure that they can be co-located on the raised rail bed in a compatible manner. PEF's right to use the corridor in the future for the construction, operation and maintenance of electric transmission and distribution lines and other associated utility facilities (including access roads or other linear facilities) shall not interfere with OGT's design of the trail or its ability to effectively and efficiently manage the BOT Easement as a public recreational trail. PEF agrees not to locate any of its utility facilities within, on, over or across the public recreational trail.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan.

(See Attachment 8, Pages 1-20)

RECOMMEND WITHDRAWAL

Substitute Item 9 Mitigation Services PBC, LLC Contract/Mitigation Bank/Lemon Grove Property/Pal-Mar Florida Forever Project/Determination/Competitive Bid Waiver

REQUEST: Consideration of a request to (1) allow Mitigation Services PBC, LLC to operate a mitigation bank on approximately 263.05 acres of state-owned land known as the Lemon Grove property within the Pal-Mar Florida Forever Project for one ten-year term followed by one five-year renewal term; (2) authorize the negotiation of a contract to allow Mitigation Services PBC, LLC to establish a mitigation bank on the Lemon Grove property and delegate authority to the Department of Environmental Protection to approve and consent to the contract between Mitigation Services PBC, LLC and Florida Fish and Wildlife Conservation Commission; (3) determine, that pursuant to paragraph 18-21.018(1)(a), F.A.C., the proposed contract is not contrary to the public interest; and (4) waive the competitive bid requirements of paragraph 18-2.018(2)(i), F.A.C.

COUNTY: Palm Beach

APPLICANT: Mitigation Services PBC, LLC (Mitigation Services)

LOCATION: Section 33, Township 40 South, Range 40 East

CONSIDERATION: During the term of this contract, Mitigation Services shall be required to pay Florida Fish and Wildlife Conservation Commission (FWC) a minimum annual fee equal to the annual market rental rate of \$5,261 (Base Fee), plus applicable sales tax, in advance on the effective date of the contract and on each subsequent anniversary of the effective date of the contract. In addition to the Base Fee, Mitigation Services shall also be required to pay to FWC the following additional compensation (Supplemental Payment) at the end of each contract year unless the Base Fee exceeds both Supplemental Payment amounts:

- a. \$394,500 which is 50 percent of the Department of Environmental Protection (DEP) approved appraised value of the fee simple estate in the land, divided by the total number of mitigation bank credits authorized by the South Florida Water Management District (SFWMD) permit and multiplied by the number of credits sold in a contract year, less the Base Fee; or
- b. Six percent of the gross sale price of each mitigation bank credit sold in a contract year, less the Base Fee, whichever is higher.

Over the life of the contract, Mitigation Services shall be required to pay FWC a minimum of \$394,500. To ensure this payment, Mitigation Services will provide FWC with a surety bond that guarantees that when the contract terminates, FWC will receive a minimum of \$394,500.

STAFF REMARKS: On November 13, 2002, the Board of Trustees approved an option agreement to purchase 2,018.88 acres within the Pal-Mar Florida Forever Project from Palm Beach County (County). The transaction closed on May 3, 2004. The County had previously acquired the property from the John D. and Catherine T. MacArthur Foundation (Foundation) and, entered into a ten-year mitigation agreement (mitigation agreement) with the Foundation. The

Substitute Item 9, cont.

mitigation agreement covering approximately 263.05 acres, known as Lemon Grove, was assigned to Mitigation Services and expires March 31, 2009. Mitigation Services has obtained the rights formerly held by the Foundation to perform mitigation services on the property.

The parcel is managed by FWC under Board of Trustees' Lease No. 4480.

Current Request

On October 28, 2008, the Board of Trustees was asked to consider extending the existing mitigation agreement and to authorize the operation of a mitigation bank on Lemon Grove. DEP staff recommended denial of the request. As a landowner, the Board of Trustees has made a decision not to allow mitigation banking on Board of Trustees' lands but rather approve project by project mitigation. DEP staff contends the Board of Trustees had no actual or constructive knowledge when it purchased the property that a mitigation bank was intended and there is no language in the mitigation agreement requiring the Board of Trustees to allow the proposed use or to renew the life of the mitigation agreement in any form. It was the opinion of DEP staff, that continuing the mitigation activities beyond the current expiration date would necessitate an entirely new agreement, which would then be subject to the valuation and review processes standard for that type of agreement. The Board of Trustees deferred action on the request and directed DEP to negotiate a lease with Mitigation Services. DEP is recommending that FWC and Mitigation Services enter into a contract rather than a sublease because this is the form of authorization typically used by SFWMD for mitigation banks located on its property.

Negotiation Recommendations

As a result of negotiations conducted by DEP with Mitigation Services for mitigation banking on the Lemon Grove parcel, DEP staff is requesting the Board of Trustees approve the following recommendations:

- DEP and FWC will negotiate a contract between FWC and Mitigation Services for a mitigation bank on the Lemon Grove parcel.
- The term of the contract will be for ten years with one five-year renewal, at the sole option of Mitigation Services, if:
 1. 100 percent success has been demonstrated per the terms of the mitigation bank permit issued by SFWMD;
 2. Mitigation Services is in compliance with all of the terms and conditions of the SFWMD mitigation bank permit, the contract and FWC's management plan; and
 3. Mitigation bank credits remain to be sold.
- Equitable compensation, required pursuant to paragraph 18-2.018(2)(i), F.A.C., will be determined by the highest dollar amount among the following calculations:
 1. During the term of this contract, Mitigation Services shall be required to pay FWC a minimum annual fee equal to the Base Fee, plus applicable sales tax, in advance on the effective date of the contract and on each subsequent anniversary of the

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effective date of the contract. In addition to the Base Fee, Mitigation Services shall also be required to pay to FWC the following Supplemental Payment at the end of each contract year unless the Base Fee exceeds both Supplemental Payment amounts:

- a. \$394,500, divided by the total number of mitigation bank credits authorized by the SFWMD permit and multiplied by the number of credits sold in a contract year, less the Base Fee; or
- b. Six percent of the gross sale price of each mitigation bank credit sold in a contract year, less the Base Fee, whichever is higher.

Over the life of the contract, Mitigation Services shall be required to pay FWC a minimum of \$394,500. To ensure this payment, Mitigation Services will provide FWC with a surety bond that guarantees that when the contract terminates, FWC will receive a minimum of \$394,500. Details will be defined in the final contract.

- Per paragraph 18-2.018(2)(k)2, F.A.C., Mitigation Services shall be required to pay for the cost of the appraisal totaling approximately \$6,500.
- The SFWMD will be the permitting agency for the mitigation bank. FWC, as lessee of the land, will be a co-applicant with Mitigation Services for the mitigation bank permit.
- Mitigation Services shall set aside a portion of the proceeds from each sale of a full or partial mitigation credit at Lemon Grove in a maintenance endowment for FWC's perpetual maintenance of the property. The funding will be based on the sales of mitigation credits only. However, this will not relieve Mitigation Services from any other regulatory requirements or obligations.

Public Interest Determination

Pursuant to paragraph 18-2.018(1)(a), F.A.C., the decision to authorize the use of Board of Trustees-owned land requires a determination that such use is not contrary to the public interest. DEP is recommending the Board of Trustees make such a determination in this case because the Board of Trustees purchased the Lemon Grove property subject to the mitigation agreement. While DEP and Mitigation Services disagree as to whether the Board of Trustees had actual or constructive knowledge that a mitigation bank was intended, this recommendation is an effort to resolve the disagreement over what rights existed under the mitigation agreement at the time the Board of Trustees purchased the property.

Request to Waive Competitive Bid Requirement

Pursuant to paragraph 18-2.018(2)(i), F.A.C., the Board of Trustees may waive the requirement for competitive bids if determined to be in the public interest. Mitigation Services has been working towards a mitigation bank permit under its existing mitigation agreement with the County on the Lemon Grove parcel prior to the Board of Trustees purchasing the property. Mitigation Services not only has a significant amount of time invested with the SFWMD staff in

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preparing for the mitigation bank permit but also a financial investment for expenditures for the completed surveys and site assessments on the parcel. These investments of time and money were made to receive the SFWMD permit approval necessary to start the mitigation/restoration work and will enable Mitigation Services to begin the restoration in a timely manner. Mitigation Services also has seven years of experience in mitigation banking at a separate site and according to SFWMD has been found to be in compliance with its current permit. DEP is recommending the Board of Trustees waive the competitive bid process because of these factors.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan.

(See Attachment 9, Pages 1-27)

RECOMMEND WITHDRAWAL