

**AGENDA  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
MAY 13, 2008**

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**Item 1      Kaufman/Young Purchase Agreements/SJRWMD/Survey Waiver/Indian River Lagoon Blueway Florida Forever Project**

**DEFERRED FROM THE APRIL 29, 2008 AGENDA**

**REQUEST:** Consideration of (1) two purchase agreements to acquire a total of 41.88 acres within the Indian River Lagoon Blueway Florida Forever project from James M. Kaufman and Paul D. Young, in partnership with the St. Johns River Water Management District; and (2) the authority to waive the survey requirement.

**COUNTY:** Brevard

**LOCATION:** Section 22, Township 29 South, Range 38 East, and Section 27, Township 29 South, Range 38 East

**CONSIDERATION:** \$1,970,000 (\$1,313,399 to be paid by the Board of Trustees, and the remaining \$656,601 to be paid by St. Johns River Water Management District)

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE**</u>	<u>CLOSING DATE</u>
		<u>(06/08/05)</u>	<u>(06/08/05)</u>				
Kaufman	30.46	\$1,520,000	\$1,360,000	\$1,520,000	\$575,000*	\$1,113,389	90 days
Young	11.42	\$450,000	\$420,000	\$450,000	unknown*	\$200,010	after BOT
Total	41.88	\$1,970,000	\$1,780,000	\$1,970,000		\$1,313,399***	approval

- \* Kaufman purchased the property in 2001. This price reflects the lack of access at that time. There have been no arm's-length transactions of the Young parcel within the last five years. The last transaction was from P.W. Young to Paul D. Young in 2001. This was a quitclaim deed and not an arm's-length transaction.
- \*\* Board of Trustees to pay two-thirds of purchase price (66.67%) and St. Johns River Water Management District to pay the remaining one-third (33.33%) for a combined total of 100% of approved value.
- \*\*\* \$47,039 per acre.

**Noted Features of Subject Property:**

The subject property consists of two contiguous waterfront ownerships along the Indian River Lagoon in the part of Brevard County known as the South Beaches.  
 Combined frontage on the Indian River Lagoon is over 1.5 miles.  
 The Kaufman property is comprised of 2.48 acres of uplands and 27.98 acres of wetlands.  
 The Young property is comprised of 0.82 acres of uplands and 10.60 acres of wetlands.  
 This is one of the very few remaining vacant lagoon-front parcels in the region including Southeast Brevard County and Northeast Indian River County, south of the Sebastian Inlet in private ownership.  
 The area is densely populated and newcomers are now buying improved homesites and destroying the improvements for redevelopment.  
 The property is the westerly portion of a larger mosquito impoundment area with access through the property by means of the impoundment berm roadway along the shoreline on the north, west and south boundaries.  
 Florida's 18th Judicial District Court for Brevard County granted a defined legal access route to the northwest corner of the combined property through public lands lying to the east of the property, as a way of necessity, on September 29, 2005.

**STAFF REMARKS:** The Indian River Lagoon Blueway project is a full fee "A" group project on the Florida Forever Priority List approved by the Board of Trustees on February 26, 2008. The project contains 26,380 acres, of which 3,808 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 22,572 acres or 86 percent of the project will remain to be acquired.

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**Item 1, cont.**

**Project Description**

The Kaufman and Young parcels are adjoining parcels within the Indian River Lagoon Blueway, located along the Intracoastal Waterway. These parcels have been the subject of an ongoing lawsuit attempting to gain access from the Board of Trustees, the St Johns River Water Management District (SJRWMD), and Brevard County (County) as adjoining landowners for over seven years. The circuit court granted Kaufman and Young access to their properties through the Board of Trustees', SJRWMD's and the County's properties. Yet to be determined in the suit is the amount due to the Board of Trustees and SJRWMD for the imposition of the easement and the entitlement and amount of attorney fees and costs due to the easement holders. Purchase of the properties will result in the dismissal of the lawsuit between the owners and the Board of Trustees, SJRWMD, and the County. The Board of Trustees will pay two-thirds of the acquisition price, and SJRWMD will pay the remaining one-third. In exchange, each entity will receive an undivided interest in the property equal to its percentage of the purchase price. These purchase agreements are contingent upon dismissal of the suit. The agreements were approved by the Governing Board of the SJRWMD on March 11, 2008.

Public acquisition would help preserve and improve the aquatic natural communities of the Indian River Lagoon, one of the country's most productive, diverse, and commercially and recreationally important estuaries. A third of the country's manatee population lives in the Indian River, and the area is important for many migratory birds as well as for oceanic and estuarine fishes. Additionally, public acquisition would provide natural resource-based recreation in a developing area of Florida.

**Mortgages and Liens**

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

The circuit court entered judgment for the sellers establishing access to the properties subject to the payment of compensation to the underlying land-owners for the easement. The compensation has been estimated to be, at a minimum, \$71,500. There is currently a reciprocal agreement between Mr. Kaufman and Mr. Young granting access for ingress and egress. Due to the nature of the litigation, the appraisers valued the properties under the hypothetical condition that they would obtain access through an easement. The property can be effectively managed as an addition to the adjoining Indian River Lagoon Preserve State Park. There is a single-lane unpaved road running along a berm on the property in a north to south direction. This road, along with several culverts beneath this road, which are maintained by the County as part of the mosquito impound control system, are not open to the public.

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**Item 1, cont.**

**Survey Waiver**

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

While the parcels are being recommended for a waiver of survey at this time, should the title commitment and field inspection reveal a substantive surveying or surveying related issue, which impacts the parcel, a certified survey will be provided by DEP's Division of State Lands (DSL) and the SJRWMD prior to closing. The Board of Trustees will pay for two-thirds of any associated costs; the SJRWMD will pay the remaining one-third. In the event a full survey is waived, a professional land surveyor will inspect the property for any visible evidence of improvements or potential boundary issues. In cooperation with the managing agency, DSL will acquire any special purpose survey work necessary for the effective management of this property.

**Closing Information**

A title insurance policy and an environmental site assessment will be provided by the purchaser prior to closing. The Board of Trustees will pay for two-thirds of the associated costs, while the SJRWMD will pay the remaining one-third. The County may provide funds to assist in payment of closing costs.

**Management**

This acquisition will be managed by DEP's Division of Recreation and Parks, as part of Indian River Lagoon Preserve State Park.

**Comprehensive Plan**

These acquisitions are consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands' section of the State Comprehensive Plan.

(See Attachment 3, Pages 1-77 submitted with the April 29, 2008 agenda)

**RECOMMEND APPROVAL**

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**2<sup>nd</sup> Substitute Item 2 Panuska Option Agreement/Conservation Easement/Monitoring Agency Designation/Management Policy Statement Confirmation/Survey Waiver/ Promise Ranch Florida Forever Project**

**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; (3) confirmation of the management policy statement; and (4) the authority to waive the survey requirement.

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2<sup>nd</sup> Substitute Page Four**

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**2<sup>nd</sup> Substitute Item 2, cont.**

**COUNTY:** Lake

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

**CONSIDERATION:** \$11,200,000

<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 (07/07/06)	Clayton (07/07/06)				
Panuska	1,489.17	\$14,000,000	\$14,150,000	\$14,150,000	\$3,236,900*	\$11,200,000** (79%)	On or before 08/15/08

\* The seller assembled the property in five separate transactions from July 7, 2000 to June 11, 2004, which did not reflect the appraised market value.

\*\* \$7,521 per acre; Fee value is \$20,850,000; Conservation Easement Purchase Price is 54% of the fee value.

**Noted Features of Subject Property:**

The value estimates reflect the total value attributable to the conservation easement (less-than-fee value).

The subject is located in Lake County just west of State Road 19 and south of County Road 450. This places the property approximately 2 miles west of Umatilla and 3.5 miles north of Eustis. This general area consists primarily of vacant land or low density residential development with scattered commercial development located along State Road 19.

The Ocala National Forest (360,000 + acres) is located approximately 6 miles north of the subject property and is the oldest national forest east of the Mississippi River.

The subject contains multiple zonings and land use classifications, however for appraisal purposes, both appraisers analyzed the subject based on its highest and best use, as low density residential.

The subject contains 1,489.17 acres, which includes 897.79 acres (60%) of uplands and 591.38 acres (40%) considered as jurisdictional wetlands.

The property has approximately 5,700 feet of frontage on Lake Yale.

**STAFF REMARKS:** The Promise Ranch project is a less-than-fee "A" group project on the Florida Forever Priority List approved by the Board of Trustees on February 26, 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.

**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 the 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

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**2<sup>nd</sup> Substitute Item 2, cont.**

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;
- activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation will be prohibited;
- 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;

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**2<sup>nd</sup> Substitute Item 2, cont.**

- 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, (iii) for cattle ranching purposes, and (iv) 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;
- 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;
- there shall be no cutting of cypress trees anywhere on the property;
- there shall be no mitigation bank pursuant to section 373.4135 et seq. F.S.; and
- any 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., as amended from time to time.

**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;

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**2<sup>nd</sup> Substitute Item 2, cont.**

- 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.

**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 twice in a calendar 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.

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**2<sup>nd</sup> Substitute Item 2, cont.**

**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 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 land owner'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.

**Survey Waiver**

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

While this parcel is being recommended for a waiver of survey at this time, should the title commitment and field inspection reveal a substantive surveying or surveying related issue, which impacts the parcel, a certified survey will be provided by the purchaser prior to closing. In the event a full survey is waived, a professional land surveyor will inspect the property for any visible evidence of improvements or potential boundary issues. BSM has field inspected the Lake Yale boundary line to confirm that no sovereign lands are being acquired.

**Closing Information**

A title insurance policy, an environmental site assessment, and baseline documentation report will be provided by the purchaser prior to closing.

**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.

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**2<sup>nd</sup> Substitute Item 2, cont.**

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 2, Pages 1- 55)

**RECOMMEND WITHDRAWAL**

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**Substitute Item 3    DOT Conveyance/Determination**

**REQUEST:** Consideration of a (1) determination that a 72.644-acre parcel and a 42.776-acre parcel (115.42 total acres) of state-owned land in Collier County are no longer needed for conservation purposes pursuant to section 253.034(6), F.S., and Article X, section 18 of the Florida Constitution; and (2) request for approval to convey the parcels to the Department of Transportation pursuant to section 253.03, F.S.

**COUNTY:** Collier

**APPLICANT:** Department of Transportation (DOT)

**LOCATION:** Section 05, Township 50 South, Range 30 East; and Section 32, Township 49 South, Range 30 East

**STAFF REMARKS:**

**History**

The 1986 Florida Legislature authorized DOT and the Board of Trustees, in a joint acquisition effort, to use DOT's procedures for acquiring lands adjacent to Alligator Alley needed for the construction of Interstate 75 (I-75). On September 4, 1986, the Board of Trustees approved an

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**Substitute Item 3, cont.**

Interagency Joint Participation Agreement (Agreement) between the Board of Trustees and DOT defining the responsibilities of each agency as it pertained to land acquisition along the I-75 corridor/Alligator Alley within the Save Our Everglades Conservation and Recreation Lands Project (SOE). Pursuant to the Agreement, DOT agreed to convey to the Board of Trustees any lands within SOE that were not needed for right-of-way purposes for I-75. In 1995, DOT deeded the parcels to the Board of Trustees.

**Current Request**

DOT is requesting the Board of Trustees convey these two parcels, totaling 115.42 acres, at the I-75 and SR 29 right-of-way interchange, pursuant to section 253.03, F.S., and in accordance with the intent of the Agreement. After construction of I-75, it was found that a portion of the ramps, at this interchange, was located outside the DOT right-of-way. The proposed additional right-of-way is needed for the existing ramps as well as for future road expansion.

The two parcels were purchased by DOT with 100 percent transportation funds. The Board of Trustees did not reimburse DOT for these parcels; therefore, no reimbursement to the Board of Trustees will occur.

**Constitution and Statutory Requirements**

Pursuant to Article X, section 18 of the Florida Constitution, the fee interest in real property may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

Pursuant to section 253.034(6), F.S., in order to surplus conservation lands, the Board of Trustees must make a determination that the lands are no longer needed for conservation purposes, and they may dispose of them by an affirmative vote of at least three members.

Department of Environmental Protection's (DEP) staff is recommending an affirmative determination by the Board of Trustees that these two parcels are no longer needed for conservation purposes because the parcels contain a portion of the I-75 and SR 29 interchange ramps and would provide a greater public benefit as DOT right-of-way. The original intent during the initial acquisition process was for DOT to retain all lands needed for the construction of I-75, of which these two parcels should have been retained by DOT for building of the ramps and to accommodate future expansion of the interstate highway system.

**Acquisition and Restoration Council (ARC) Approval**

Pursuant to section 253.0341(2), F.S., the surplus of state-owned conservation lands is subject to review by ARC. However, since the 1986 Agreement was in place, clearly directing DOT and DEP to work together on acquisitions for the I-75 corridor along Alligator Alley/Everglades, ARC approval is not necessary for the conveyance of these parcels.

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**Substitute Item 3, cont.**

**Managing Agency Approval**

The parcels are located on state-owned lands acquired as part of the Big Cypress Addition, which is managed by the Department of the Interior, National Park Services (NPS). NPS was contacted regarding the conveyance and has no objection.

**Mineral Interests**

The provisions of section 270.11, F.S., requiring the Board of Trustees to reserve unto itself certain oil and mineral interests in all deeds of conveyances, does not apply to any lands that inure to the Board of Trustees from other state agencies.

**Comprehensive Plan**

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

(See Attachment 3, Pages 1-14)

**RECOMMEND APPROVAL**

(AGENDA CONTINUED ON NEXT PAGE)

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**Substitute Item 4    BOT/University of Miami Exchange Agreement Amendment**

**REQUEST:** Consideration of an amendment to an exchange agreement between the Board of Trustees and the University of Miami.

**COUNTY:** Miami-Dade

**APPLICANT:** University of Miami (UM)

**LOCATION:** Section 36, Township 53 South, Range 41 East

**STAFF REMARKS:**

**History**

On September 19, 2006, the Board of Trustees approved an exchange agreement with the University of Miami (UM) that would result in the Board of Trustees acquiring 200 acres in water conservation area 3A in Dade County, 66.88 acres in the Florida Keys Ecosystem Florida Forever Project in Monroe County, and 1.21 acres in Miami, as well as \$7,844,360 in cash boot. In return, UM would acquire 7.87 acres of Board of Trustees' owned land in Miami on which it proposes to build a bioscience center. Also approved was a 60-year lease from the Board of Trustees to the Department of Children and Families, and a 60-year sublease to Camillus House, Inc. (Camillus), for the 1.21 acres to be obtained from UM. Camillus is a non-profit group that provides humanitarian services to persons in Miami-Dade County who are poor and homeless.

**Current Request**

UM will acquire three parcels totaling 7.87 acres. The Board of Trustees acquired one of the parcels containing 5.02 acres from the Department of Transportation (DOT) in 2003 as a donation for the homeless shelter (Camillus Parcel). The two remaining parcels will be donated by DOT to the Board of Trustees and then deeded to UM as part of a simultaneous closing for the land exchange. UM has obtained environmental site assessments (ESA) on the three parcels it is to receive and is requesting that the three parcels be cleaned up before the exchange is closed or that the value of the three parcels be reduced to reflect the cost of clean up. At the time the parties entered into the exchange agreement an ESA obtained by Camillus on the Camillus Parcel as a condition of the Department of Environmental Protection (DEP), Division of State Lands (DSL) accepting the donation was satisfactory to Camillus. As such, the ESA did not receive the level of scrutiny required for lands purchased by the Board of Trustees. Had DEP staff been aware that its property was contaminated at the time the exchange agreement was negotiated, the appraised value of the Camillus Parcel would have reflected the cost to clean up the contamination.

DEP staff is recommending a \$2 million reduction in the value of the three parcels. This will result in a reduction in the cash boot to be paid by UM from \$7,844,360 to \$5,844,360. The exchange agreement is being amended to reflect the reduced value of the three parcels.

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**Substitute Item 4 cont.**

**Comprehensive Plan**

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

(See Attachment 4, Pages 1-47)

**RECOMMEND APPROVAL**

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**Substitute Item 5     DCF Lease/Camillus House and Shepherd's Court, LLC Sub-Sublease/Competitive Bid Waiver/Determination**

**REQUEST:** Consideration of (1) a 60-year lease on 1.21 acres, more or less, to the Department of Children and Families; (2) waiver of the competitive bid requirement of section 18-2.018(2)(i), F.A.C., for a 1.21-acre, more or less, sub-sublease between Camillus House, Inc., and Shepherd's Court, LLC; (3) a sub-sublease between Camillus House, Inc., and Shepherd's Court, LLC; and (4) a determination that, pursuant to section 18-2.018(3)(a)1., F.A.C., an extended sub-sublease term concurrent with Sublease No. 4536-01 is in the public interest.

**COUNTY:** Miami-Dade  
Sub-Sublease No. 4536-01-01

**APPLICANT:** Department of Children and Families (DCF), Camillus House, Inc. (Camillus House), and Shepherd's Court, LLC (Shepherd's Court)

**LOCATION:** Section 36, Township 53 South, Range 41 East

**STAFF REMARKS:**

**History**

On September 19, 2006, the Board of Trustees approved an exchange agreement with the University of Miami (UM) that would result in the Board of Trustees acquiring 200 acres in water conservation area 3A in Dade County, 66.88 acres in the Florida Keys Ecosystem Florida Forever Project in Monroe County, and 1.21 acres in Miami, as well as \$7,844,360 in cash boot. In return, UM would acquire 7.87 acres of Board of Trustees' owned land in Miami on which it proposes to build a bioscience center. Also approved was a 60-year lease from the Board of Trustees to DCF and a corresponding 60-year sublease to Camillus House, for the 1.21 acres to be acquired from UM and a 2.2 acre parcel to be donated by the Department of Transportation (DOT). Camillus House is a non-profit group that provides humanitarian services to persons in Miami-Dade County who are poor and homeless.

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**Substitute Item 5 cont.**

**Project Description**

Camillus House has contacted the Department of Environmental Protection's (DEP), Division of State Lands (DSL) staff regarding a \$12.8 million federal tax credit being sought for permanent supported housing and rescue mission services to be provided in conjunction with Camillus House's planned activities. In many cases, new construction of affordable housing in the United States is financed through the utilization of tax credits. Tax credits provide a dollar-for-dollar reduction in the federal tax liability otherwise payable by taxpayers. Non-profit corporations cannot utilize tax credits, as they generally do not owe federal income taxes. In the typical tax credit transaction in which new affordable housing is constructed, a taxable investor (such as a bank, utility company, or other corporation owing substantial federal income taxes) acquires a 99.99 percent interest in a for-profit entity and, as such, receives an allocation of 99.99 percent of the tax credits generated. Credits are allocated annually over a specified period, and taxable investors contribute capital in exchange for the 99.99 percent interest in the for-profit entity. These equity funds provide the source for construction of affordable housing. Since the rents that may be charged to tenants of affordable housing are restricted, affordable housing projects are unable to pay substantial debt service. The equity dollars contributed by the investor allow affordable housing to operate without the requirement of payment of substantial debt service.

In order to qualify for the tax credit, Camillus House has formed the for-profit entity Shepherd's Court, which is 100 percent owned by the non-profit Camillus House. Shepherd's Court will apply for tax credit and State Apartment Incentive Loan funding in Florida Housing Finance Corporation's (FHFC) Homeless Set-Aside. As such, there will be income restrictions that 80 percent of the residents must have incomes at or below 60 percent area median income and 20 percent must have incomes at or below 33 percent area median income. Shepherd's Court, however, will dedicate 100 percent of its units (80 units) to formerly homeless individuals and so will voluntarily exceed FHFC minimum income thresholds.

**Competitive Bid Waiver Request**

Pursuant to section 18-2.018(2)(i), F.A.C., when the use of uplands will generate income or revenue for private use or will limit or preempt use by the general public, the Board of Trustees shall award authorization for such uses on the basis of competitive bidding rather than negotiation, unless determined by the Board of Trustees to be in the public interest. Shepherd's Court is a for-profit entity formed specifically in order to further certain purposes of the exchange agreement including, but not limited to, applying for tax credits in order that permanent supported housing including rescue mission services may be constructed on a portion of the state-owned lands. If successful in obtaining the tax credits, Shepherd's Court proposes at some time in the future to solicit proposals from tax credit investor groups for a 99.99 percent interest in Shepherd's Court. The tax credit allocation will be for 15 years. At the end of the 15-year period, the tax credit investors will give up their interest and the non-profit Camillus House will again become the sole member of Shepherd's Court. The Shepherd's Court property and the permanent supported housing and rescue mission services components are essential and integral parts of the entire Camillus House program, which was previously approved by the Board of

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**Substitute Item 5 cont.**

Trustees. The Shepherd's Court portion will ultimately be operated in conjunction with the Camillus House portion, resulting in a consolidated project run by Camillus House. For the foregoing reasons, DSL staff recommends that the Board of Trustees find that it is in the public interest to waive the competitive bid process and approve the sub-sublease to Shepherd's Court.

**Extended Term Sub-Sublease Request**

Shepherd's Court has also requested a sub-sublease term concurrent with the 60-year sublease approved by the Board of Trustees for Camillus House in September 2006. Pursuant to section 18-2.018(3)(a)1., F.A.C., DSL staff believes it is in the public interest to approve the extended term for Shepherd's Court to insure that Shepherd's Court can provide services during the full term of the Camillus House sublease, and both Camillus House and Shepherd's Court have adequate time to build the facilities they need to operate the homeless shelter and treatment facilities. For these reasons, staff recommends that the Board of Trustees find the extended term to be in the public interest.

**DCF Lease/Camillus Sublease Revisions**

The environmental site assessment obtained for the 2.2-acre parcel to be donated by DOT for lease to DCF and subleased to Camillus revealed contamination that must be cleaned up before the Board of Trustees will take title. This parcel has been removed from the proposed lease and sublease approved by the Board of Trustees in September 2006 and will be added at a later date following clean-up and acceptance of the donation under delegation of authority. Only the 1.21 acres to be acquired from UM remain in the lease and sublease. DCF has also requested that a special condition be added to the lease that acknowledges that DCF will not be responsible for any payments or obligations that either Camillus or Shepherd's Court are required to pay, and that any payments or obligations DCF is required to pay are subject to annual appropriation from the Legislature.

**Comprehensive Plan**

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. A compliance agreement between DCA and the local government has been finalized. The proposed action is consistent with the adopted plan according to Miami-Dade County.

(See Attachment 5, Pages 1-75)

**RECOMMEND APPROVAL**