

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
AUGUST 12, 2008
Substitute Page

Item 1 Minutes

Submittal of the Minutes from the May 13, 2008 Cabinet Meeting.

(See Attachment 1, Pages 1-16)

RECOMMEND APPROVAL

**Substitute Item 2 Nextel South Corp. Lease/E911 Wireless Communication Facility/
Delegation**

WITHDRAWN FROM THE OCTOBER 2, 2007 AGENDA

REQUEST: Consideration of (1) a five-year lease, with four additional five-year renewal terms, for an existing wireless communications tower on 5.44 acres of state-owned land, between the Board of Trustees and Nextel South Corp.; and (2) delegation of authority to the Secretary of the Department of Environmental Protection, or designee, to approve future leases and subleases for wireless communications facilities that support the Emergency 911 system on state-owned buildings or structures located on non-conservation lands.

COUNTY: Broward

APPLICANTS: Nextel South Corp. (Nextel) and Department of Management Services (DMS)

LOCATION: Section 02, Township 48 South, Range 38 East

CONSIDERATION: \$34,000 annual lease fee for the first year of the lease, escalated at four percent per annum for the remainder of the lease term and 50 percent of sublease and/or license gross revenues derived from co-locating subleases on the tower, both to be deposited into the Internal Improvement Trust Fund. Lessee will pay fees forward from October 1, 2006, totaling approximately \$69,360. Total guaranteed income over the term of the lease is \$1,506,582 not including royalties derived from co-locating other service providers.

STAFF REMARKS:

Project Synopsis

Nextel has requested a lease for the existing wireless communications tower and equipment (generators, antennae support, etc.) for an Emergency 911 (E911) wireless communications system located at U.S. 27 at the Palm Beach County line. The existing tower site consists of approximately 5.44 acres including a free standing 130-foot-high tower. The antenna support structure on the tower will accommodate the co-location of two to three additional antennae for future users, such as other communication carriers. Pursuant to Federal Communications Commission (FCC) regulations, all antennae must carry E911 wireless service.

Substitute Item 2, cont.

Background

The Board of Trustees acquired title to the subject parcel by virtue of the Swamp and Overflowed Lands Act of the United States Congress, approved on September 28, 1850. The Central and Southern Florida Flood Control District, now known as the South Florida Water Management District (District), has held surface easement rights since January 17, 1950 with the underlying fee title being vested in the Board of Trustees.

In 1963, the Board of Trustees approved a 99-year lease to AT&T Company (AT&T) and the District for a radio relay station site, together with a 40-foot access strip from the site to U.S. Highway 27 in the same section. A one-time consideration of \$507 was accepted in light of the potential public benefit, providing emergency radio relay services in a remote area of Broward County (County). In 1991, AT&T assigned the lease to the County for the same purpose.

In October 2006, the Board of Trustees terminated the County's lease for non-compliance of several lease conditions which left the property without a manager. The County has since vacated the premises and is now working from one of its own tower sites. During the term of the County's lease, it issued Nextel and other wireless companies, license agreements for use of the tower and charged considerable fees for this use. Nextel has been located on this site for several years and has remained onsite since termination of the County lease, along with all of its communications equipment, and with the understanding that DMS and the Department of Environmental Protection (DEP), Division of State Lands (DSL), would be negotiating a lease that would enable them to continue occupying and managing the subject property.

The proposed lease area is specifically located in Conservation Area No. 3A North, part of the Everglades Restoration Project area and located just south of the Palm Beach County line. The District reviewed the proposed lease details and has no objections to issuance of the lease to Nextel. Nextel will not erect any additional structures or extend the height of the tower and Nextel has also agreed to be responsible for the operation and maintenance of the tower itself as duly noted in paragraph number 34 of the lease.

Lease Revenue

Nextel will be required to pay to the Board of Trustees rent in equal quarterly installments paid in advance, with the first year's payment totaling \$34,000 and escalating at four percent per annum for the remaining term of the lease. Nextel will submit to the Board of Trustees, as additional payment, a 50 percent share of any gross revenue generated from subleases or licenses to third parties and will pay an increase in rent based upon installation of new equipment. All sublease and co-location payments received by the Board of Trustees as a result of a sublease or license are subject to negotiation by DMS. Nextel will also pay lease fees forward from October 1, 2006, the date it assumed management of the remote tower site, of approximately \$69,360.

Public Benefit

The proposed lease will provide the following public benefits:

- prompt delivery of 911 calls to public safety organizations;
- public welfare by promoting safety of life and property;

Substitute Item 2, cont.

- continuous service for all existing wireless customers in this remote area;
- facilitate uninterrupted services and enhance the E911 system's public communication efforts throughout the year especially during busy hurricane seasons in Florida; and
- generate considerable recurring revenue for the Board of Trustees over the term of the lease.

Applicable Statutes/Rules

Section 365.172(12)(f), F.S., and chapter 60H-9, F.A.C., dealing with the implementation of the E911 wireless system, requires DMS to negotiate in the name of the State of Florida, leases for wireless communications facilities that provide access to state-owned property not acquired for transportation purposes. As required by section 60H-9.004, F.A.C., DMS coordinated the use of this tower site with the Board of Trustees, the owner agency. Co-location of more than one antenna per tower is encouraged where there are multiple antennae or structure siting requests for the same location. Pursuant to section 365.172(12)(f), F.S., "leases shall be granted on a space available, first-come, first-served basis." Therefore, neither DMS nor DSL were required to competitively bid this lease. Nextel was the first entity to request continued use of the wireless cell phone tower site at this location.

Section 60H-9.005(4)(c), F.A.C., states that DMS "shall negotiate reasonable fees for leasing State-owned property that reflect the market rate for the type of facility or geographic location of the property." Pursuant to chapter 60H-9, F.A.C., DMS is requesting Board of Trustees' approval for the proposed lease. Negotiated lease fees were based largely on similar leases in the area as well as a previous Nextel lease.

Comprehensive Plan

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

(See Attachment 2, Pages 1-33)

RECOMMEND APPROVAL

**Substitute Item 3 BOT/FPL Memorandum of Agreement/Easement Amendment/
Release/ Delegation**

REQUEST: Consideration of (1) a memorandum of agreement for the relocation of Florida Power & Light Company's electrical transmission right-of-way corridor in order to reduce environmental impacts to the Everglades National Park Expansion Area; (2) an amendment to Florida Power & Light Company's existing easement for the construction, operation and maintenance of one or more overhead electric transmission and distribution lines to relocate the electrical transmission right-of-way corridor, provide access to the corridor and provide a non-native vegetation and fire management buffer area that is a maximum of 90 feet in width; (3) the

Substitute Item 3, cont.

release of Board of Trustees' reservations, restrictions, reverters, construction rights and other encumbrances that adversely affect Florida Power & Light Company's ability to use the realigned transmission line corridor contingent upon the Board of Trustees' execution of the amendment to easement; and (4) delegation of authority to the Secretary of the Department of Environmental Protection, or designee, to (a) release any additional Board of Trustees' encumbrances within the realigned easement boundary and five access parcels, subject to title verification, that may be discovered prior to the execution of the amendment to the existing easement; (b) negotiate the consideration, if any, of the release of any encumbrances similar in character to those being recommended for release held by the Board of Trustees within the realigned easement boundary and five access parcels; and (c) make non-substantive changes to the amendment to easement agreement.

COUNTY: Miami-Dade

APPLICANT: Florida Power & Light Company (FPL)

LOCATION: Hiatus Lot 1, Township 53/54 South, Range 38 East and Sections 24, 25 and 36, Township 53 South, Range 38 East

CONSIDERATION: The difference between the appraised values of the existing easement and the realigned easement corridor together with five access parcels plus a negotiated fee for the release of any deed restrictions and reverters held by the Board of Trustees in the realigned easement corridor and the five access parcels not to exceed the market value of the rights released.

STAFF REMARKS: In 2007, the Department of Environmental Protection (DEP) entered into talks with multiple parties to discuss relocating an existing FPL electric transmission corridor easement that has not yet been utilized, to an area that will be less environmentally impacted during and after construction. Relocating the proposed corridor will require FPL to request amending many existing easements that have been granted by the Board of Trustees, and to exchange land interests with the U.S. Department of the Interior's National Park Service (NPS), the U.S. Army Corps of Engineers (ACOE), and the South Florida Water Management District (SFWMD).

The Everglades National Park Protection and Expansion Act of 1989 (Act), 16 U.S.C. Section 410r-5 *et seq.* expanded the boundaries of the Everglades National Park (ENP) to include approximately 107,600 acres south of the Tamiami Trail. Through this Act, plus additional legislation, the NPS and ACOE were authorized to acquire lands within the designated area (ENP Expansion Area). The ENP Expansion Area includes the areas commonly known as the Northeast Shark River Slough and the East Everglades. The purpose of the ENP expansion includes the preservation of the outstanding natural features of the park; enhancement and restoration of the ecological values and natural hydrologic conditions; plus public enjoyment of

Substitute Item 3, cont.

such areas by assuring that the NPS can maintain the natural abundance, diversity, and ecological integrity of the ecosystem. NPS and ACOE are further authorized by 16 U.S.C. Section 410r-8, to acquire lands outside of the designated 107,600 acres for the purposes of constructing modified water deliveries to the ENP.

During the 1960s and early 1970s, FPL acquired a 40-mile easement corridor (FPL Property) in fee and easement, 7.4 miles of which is located within the ENP Expansion Area, and ranges from 330 feet to 370 feet in width. Approximately 70 acres of the FPL Property is located on Board of Trustees-owned land. FPL has asserted that the portions of the FPL Property within the ENP Expansion Area and over the Board of Trustees-owned land are vital portions of a contiguous 40-mile corridor essential for the placement of critical infrastructure necessary for the transmission of high voltage electrical power for the benefit of the citizens of South Florida. NPS has asserted that utilization of the FPL Property within the ENP Expansion Area for an electrical transmission corridor is contrary to the intended purposes of the ENP Expansion Area.

The parties have identified a corridor of property at the eastern edge of the ENP Expansion Area, including certain parcels of land owned by SFWMD, the Board of Trustees, and the United States, and have agreed that an electrical transmission corridor in this area will have substantially less impact on the ENP and the ENP Expansion Area. The proposed realigned easement corridor (which will include a non-native vegetation and fire management buffer area that is a maximum of 90 feet in width) will encumber approximately 170 acres of Board of Trustees-owned property rather than the 70 acres currently encumbered. The amendment to easement will also include five additional parcels of Board of Trustees-owned property that provide access to the realigned corridor. The acreage for the access parcels is not included in the 170 acres, but will be determined in the final survey. FPL has asserted that it is not opposed to such a realignment of its electrical transmission right-of-way corridor, and is willing to work with NPS and engineer transmission lines to fit within this proposed realigned corridor. However, FPL, NPS, and ACOE have indicated that time is of the essence in order to initiate construction of the Tamiami Trail portion of the congressionally authorized Modified Water Deliveries Project. Specifically, FPL intends to grant an easement to the ACOE on August 13, 2008, allowing for the construction of the bridge.

The proposed corridor contains multiple reservations, restrictions, reverts, construction rights and other encumbrances in favor of the Board of Trustees that could adversely affect FPL's ability to use the realigned transmission line corridor. The amendment to easement will not be executed nor will the reservations, restrictions, reverts, construction rights or any other Board of Trustees' encumbrances be released until: (1) DEP has approved the legal descriptions and surveys of the new FPL corridor relating to the Board of Trustees' lands; (2) the consideration for the release of any deed restrictions and reverts held by the Board of Trustees has been negotiated and payment has been received by DEP's Division of State Lands; and (3) the enactment of federal legislation ratifying the Contingent Agreement between FPL and the United States Department of Interior (DOI). These actions would then occur simultaneously with the FPL-DOI land exchange. In the event that additional Board of Trustees' encumbrances similar in character to those being recommended for release are discovered within the realigned

Substitute Item 3, cont.

easement corridor and the five access parcels prior to execution of the amendment to easement, staff is requesting the authority to release the encumbrances on behalf of the Board of Trustees for a negotiated compensation pursuant to the staff recommended consideration.

Staff has reviewed the easement application and considers this an exchange that accomplishes a conservation benefit. Therefore, no other consideration would be recommended other than the difference in the appraised values of the existing easement and the realigned easement corridor and five access parcels plus a negotiated fee not to exceed the market value of the rights released for the release of any deed restrictions and reverters held by the Board of Trustees on the realigned easement corridor pursuant to paragraph 18-2.020(5)(b), F.A.C. Appraisals have been conducted for the existing and proposed easements and the Division of State Lands' Bureau of Appraisal will complete the review process. Once the appraisals are approved, the Board of Trustees will be compensated by FPL for the difference between the value of the existing easement and the realigned easement corridor with five access parcels plus a negotiated fee for the release of any deed restrictions and reverters held by the Board of Trustees not to exceed the market value of the rights released.

Property owners within 500 feet of the state-owned property were notified of the proposed realignment of the electrical transmission right-of-way corridor.

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

(See Attachment 3, Pages 1-32)

RECOMMEND APPROVAL

Item 4 **DEP's Fiscal Year 2008-2009 Annual Performance Measures**

REQUEST: Consideration of the Department of Environmental Protection's Fiscal Year 2008-2009 annual performance measures.

STAFF REMARKS: On April 17, 2007 the Governor and Cabinet sitting as the Board of Trustees, requested that all agencies reporting to the Governor and Cabinet submit annual performance measures for acceptance. Accordingly, the Department of Environmental Protection (DEP) has established annual performance measures that reflect standards essential to effectively acquire lands for conservation, management and protection of resources, as well as provide public recreation on state-owned lands. On July 31, 2007, the Board of Trustees approved DEP's 2007-2008 annual performance measures.

Item 4, cont.

Division of State Lands

DEP's Division of State Lands (DSL) oversees 3.5 million acres of upland conservation lands, 2 million acres of interior sovereignty submerged lands and thousands of acres of other, non-conservation state-owned public lands.

As staff to the Trustees, DSL is responsible for acquiring, reviewing management and authorizing activities on all state lands owned by the Board of Trustees. DSL oversees the Florida Forever conservation land acquisition program and manages activities on Trustees-owned and sovereignty submerged lands. The Division also maximizes funding to ensure best real estate and asset acquisition practices and leads the state's efforts to eliminate invasive exotic plant species on both state-owned uplands and aquatic systems. DSL's nine performance measures comprehensively evaluate and monitor the degree to which the Division is meeting these requirements.

Division of Recreation and Parks

DEP's Division of Recreation and Parks (DRP) manages 161 award-winning parks, spanning almost 700,000 acres with 100 miles of sandy white beaches. State parks include freshwater springs, beaches, aquatic preserves, ornamental gardens, forts, museums and lighthouses. DRP offers hiking, biking, swimming, horseback riding, canoeing and kayaking, primitive and cabin camping, picnicking, viewing threatened plant and animal species or quiet relaxation. This year, DRP announced a new attendance record with over 20.7 million park visitors, contributing over \$1 billion to Florida's economy.

DRP is responsible for providing resource-based public recreation while preserving, interpreting and restoring the state's natural and cultural resources. DRP's four performance measures evaluate and monitor the progress and management of state-owned lands for conservation and restoration, as well as public enjoyment. Prescribed burning, mechanical treatment and exotic invasive species removal are DRP's key natural resource management techniques. Measuring visitation is an indication of public awareness, and volunteers are important to furthering DEP's mission and build community relationships.

Office of Greenways & Trails

DEP's Office of Greenways and Trails (OGT) offers hiking, biking, skating and equestrian activities for the citizens and visitors of Florida on more than 80,000 acres of state-owned land, including eight state trails, the 110-mile Cross Florida Greenway, as well as other conservation properties.

OGT is responsible for the management and restoration of these properties and receives \$4.5 million annually from Florida Forever to acquire lands to establish a state-wide system of trails in both urban and rural areas. OGT's four performance measures will monitor progress and also serve as a guide for future management and budget planning. Prescribed burning, mechanical treatment and removal of exotics are key natural resource management techniques. Measuring visitation indicates success in public awareness of state trails, and volunteer hours are important to supplement limited staffing and build community relationships.

Item 4, cont.

Office of Coastal & Aquatic Managed Areas

DEP's Office of Coastal and Aquatic Managed Areas (CAMA) conducts stewardship, research and educational activities in four million acres of the most valuable submerged lands and select coastal uplands in Florida, including three National Estuarine Research Reserves, 41 aquatic preserves and the Florida Keys National Marine Sanctuary, as well as the Coral Reef Conservation Program.

CAMA is responsible for managing these protected coastal and aquatic areas to preserve wildlife habitats and protect waterways, while also inviting residents and visitors to explore Florida's natural environment. CAMA's four performance measures will evaluate and monitor its progress in conserving and restoring these valuable state lands. Visitation numbers and volunteer hours help to measure public awareness and community outreach efforts.

Office of Siting Coordination

DEP's Siting Coordination Office (OSC) reviews applications for power plants, transmission lines, natural gas pipelines, as well as coordinates certification of these facilities. Certification is an umbrella permit for all affected state, regional and local agencies and includes any applicable regulatory activity. This is a life-of-the-facility approval and authorizes construction, operation and maintenance.

The purpose of the Power Plant Siting Act, as set forth by the legislature in section 403.502 F.S., is to meet the need for electrical energy while also assuring Florida's citizens that plant operation safeguards are technically sufficient for their protection and welfare, and to achieve a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation, including air and water quality, fish and wildlife, as well as other natural resources.

OSC's two performance measures accurately reflect the amount of certified electrical generation capacity and transmission capacity under Siting Act oversight.

If the Board of Trustees accepts these measurement standards, DEP will monitor its performance over the next fiscal year and provide a comprehensive evaluation of its progress.

(See Attachment 4, Pages 1-7)

RECOMMEND ACCEPTANCE OF FISCAL YEAR 2008-2009 ANNUAL
PERFORMANCE MEASURES

Substitute Item 5 **Mitigation Services PBC, LLC, Mitigation Agreement Extension/
Mitigation Bank/Lemon Grove Property/Pal-Mar Florida Forever
Project**

REQUEST: Consideration of (1) an extension of an existing mitigation agreement covering the Lemon Grove property within the Pal-Mar Florida Forever Project; and (2) authorization to operate a mitigation bank on the property.

COUNTY: Palm Beach

APPLICANT: Mitigation Services PBC, LLC (Mitigation Services)

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

CONSIDERATION: To Be Determined

STAFF REMARKS: The Pal-Mar project is a full fee “B” group project on the Florida Forever Priority List approved by the Board of Trustees on February 26, 2008. The project contains 35,668 acres, of which 19,543 acres have been acquired or are under agreement to be acquired. The remaining area to be acquired contains 16,125 acres, or 46 percent of the original project area.

Project Description

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 mitigation agreement covering a portion of the property, for a period of ten years. This agreement, which is dated March 31, 1999, still covers approximately 263.5 acres, and is set to expire in March 2009. This area is described variously as Parcel F or Parcel 22 in some of the attached documentation from the November 13, 2002 agenda item. The agreement allows the Foundation to use the property for hydrological enhancement, control of exotic and nuisance plant species, habitat restoration, wetland restoration, and/or relocation of gopher tortoise, bald eagle and/or other endangered or protected animal or bird species provided that any such mitigation activities are at the sole cost and expense of the Foundation and are approved in writing by the Board of Trustees prior to their commencement. The agreement also calls for the Foundation to submit a mitigation plan depicting the areas of the mitigation property they intend to utilize for mitigation purposes within four years of the effective date of the agreement, with extension of the agreement to be obtained for the mitigation work on a case-by-case basis. These mitigation rights were valued at the time of the purchase of the property by the Board of Trustees. Their value for the ten-year term of the mitigation agreement was deducted from the purchase price.

The agreement is set to expire on March 31, 2009. Mitigation Services has obtained the rights formerly held by the Foundation to perform mitigation activities on the property. Mitigation Services is requesting consent to operate a mitigation bank on the property. Mitigation Services is also requesting a ten-year extension of the agreement. If approved, the extension will alter the expiration date of the agreement to March 31, 2019.

Substitute Item 5, cont.

On February 25, 1997, the Board of Trustees approved a one-year moratorium for mitigation banks on Board of Trustees' land. This was done to allow time to study the potential effects of mitigation banking and project mitigation on State-owned lands. On May 12, 1998, the Board of Trustees approved a policy for project mitigation. At the same meeting, however, the Board of Trustees denied a proposed policy that would have allowed mitigation banking on Board of Trustees' land. Copies of the agenda items from those meetings are included herein as backup to this item.

The mitigation agreement in place on this property currently allows project by project mitigation, which is consistent with those previous decisions by the Board of Trustees. Project mitigation on Board of Trustees' lands can sometimes aid in the management of those lands because the restoration component of land management activities and project mitigation activities is similar. The use of this property for mitigation banking is not contemplated in the current mitigation agreement; nor was the use of the property for mitigation banking considered in the appraisal at the time of the purchase by the Board of Trustees.

The applicant's request entails a major shift in both the original mitigation agreement and current policy regarding Board of Trustees' lands. The current mitigation agreement calls for specific approval in writing by the Board of Trustees prior to each mitigation activity being performed. It also requires submission of an overall mitigation plan for approval by the Board of Trustees. This plan was to have been submitted within four years of the original agreement but has not been completed.

The current mitigation agreement does not provide for use as a mitigation bank, so granting the use of the property as such greatly broadens the intent of the original language.

As the landowner, the Board of Trustees has made a decision not to allow mitigation banking on Board of Trustees' lands. There is no language in the original agreement requiring the Board of Trustees to allow the proposed use or to extend the life of the agreement. Based on these factors, the Department of Environmental Protection is recommending denial of the applicant's request.

In summary, below is a chronology of events described above:

- 2/25/97 - The Board of Trustees approves a one-year moratorium for mitigation banking on Board of Trustees' lands;
- 5/12/98 - The Board of Trustees approves project by project mitigation, but denies the use of mitigation banking on Board of Trustees' lands;
- 3/31/99 - Palm Beach County and the MacArthur Foundation enter into the current mitigation agreement for project-specific mitigation;
- 3/31/03 - The deadline passes for submission of an overall mitigation plan on the subject property. This plan was not submitted;

Substitute Item 5, cont.

- 5/3/04 - The Board of Trustees takes title to the property subject to the existing mitigation agreement. The value of the rights for project-specific mitigation over the initial ten-year life of the agreement is deducted from the purchase price of the land;
- 3/31/09 - Expiration date of the current mitigation agreement. The agreement allows for but does not require an extension; and
- 3/31/19 - Mitigation Services PBC, LLC's requested extension date. The request is to extend the current agreement for another ten-year period while also expanding the scope in order to allow mitigation banking on the property. The value of these property rights has not been determined.

Agriculture and residential development have reduced natural areas in the interior of southeast Florida to fragments. One of the largest and best fragments, part of what was once a transition zone between pine flatwoods and the sawgrass marshes of the Everglades, will be protected by the Pal-Mar project. By protecting these flatwoods and marshes, this project will protect the habitat of the endangered Florida panther and snail kite, among other kinds of wildlife. The project will also preserve natural lands linking the J.W. Corbett Wildlife Management Area with Jonathan Dickinson State Park, and will provide land to the public of this fast-growing region for hiking, bicycling, camping, hunting, and learning about the original nature of this part of Florida.

Management

This property will continue to be managed by the Florida Fish and Wildlife Conservation Commission as an addition to the Hungryland Wildlife and Environmental Area.

(See Attachment 5, Pages 1-58)

RECOMMEND WITHDRAWAL