

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
FEBRUARY 10, 2009
Substitute Page

**Substitute Item 1 Stan Mayfield Working Waterfronts 2008 Project Ranking List/
Department of Community Affairs/Florida Communities Trust**

REQUEST: Consideration of the Florida Communities Trust, Stan Mayfield Working Waterfronts 2008 project ranking list for funding.

STAFF REMARKS: The Stan Mayfield Working Waterfronts (SMWW) Florida Forever grant program was created by the 2008 Legislature in section 380.5105, F.S., within the Florida Communities Trust (FCT) Act. To fund the program, the Legislature provided 2.5 percent of the total Florida Forever program distribution, which at the traditional funding level provides \$7.5 million annually to the program.

Section 380.503(18), F.S., provided that SMWW grant funds will be used to acquire parcels of land directly used for the purposes of the commercial harvest of marine organisms or saltwater products by state licensed commercial fishermen, aquaculturists, or business entities, including piers, wharves, docks, or other facilities operated to provide waterfront access to licensed commercial fishermen, aquaculturists or related business entities. The acquisition of land used for recreational waterfront activities would not be considered within the SMWW program.

SMWW funds may also be used for the acquisition of parcels of land used for exhibitions, demonstrations, educational venues, civic events, and other purposes that promote and educate the public about economic, cultural, and historic heritage of Florida's traditional working waterfronts, including the marketing of the seafood and aquaculture industries.

Pursuant to section 380.5105(2), F.S., Department of Community Affairs' FCT worked jointly with the Department of Agriculture and Consumer Services (DACS) to develop rules establishing an application process and a process to evaluate, score and rank the projects. Five rule development workshops were held in key fishing communities throughout Florida in August 2008. The resulting feedback allowed the development of rules, providing the framework for the SMWW grant program, that were adopted November 2008. Eligible applicants for this program are local governments and working waterfront non-profit organizations that are tax exempt under section 501(c) of the United States Internal Revenue Code. Evaluation criteria outlined in Rule 9K-9.006, F.A.C., provides the basis for scoring and ranking of the projects. The scoring criteria are broken down into six primary categories; project location, economic considerations, site suitability/readiness, financial contributions provided by the applicants, community planning aspects and public education opportunities provided through the projects.

Grant applications for the initial SMWW grant cycle were received over a six week period that ended with a November 26, 2008 deadline. Twelve projects were submitted for consideration, two of which were ultimately determined ineligible. Subsequent to the receipt of the applications, FCT staff, with assistance from DACS and other agencies, evaluated the scoring criteria and the business summaries submitted by the applicants. Preliminary scores, along with a determination of the sufficiency of their business summaries were reported to the applicants in evaluation reports mailed in January. The week of January 12, 2009, FCT staff performed site visits to verify that the information submitted by the applicants in their applications was

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accurate. Some scoring adjustments were made as a result of the site visits. On January 29, 2009, the FCT Governing Board met to 1) review each application; 2) consider staff recommended scores and any applicant objections to the scores; and 3) to produce a finalized ranking list of the eligible applications.

Section 380.5105(4), F.S., mandated FCT to present the ranking list to the Board of Trustees at the first meeting in February. The finalized ranking list is presented to the Board of Trustees for its consideration and approval of the projects that will receive funding. The top ranked projects whose cumulative grant requests total less than the \$7.5 million annual SMWW Florida Forever distribution will be funded. If annual SMWW Florida Forever funds become available the remaining projects may receive grant request funding in the order they are ranked. Pursuant to section 380.5105(4), F.S., the Board of Trustees “may remove projects from the ranking list but may not add projects.”

Ranking List

	Project Name	Applicant	FCT Grant Request
1	Sebastian Working Waterfront Collaborative	City of Sebastian	\$3,163,500.00
2	Blue Crab Cove	Brevard County	\$2,665,000.00
3	Apalachicola Boat Works	City of Apalachicola	\$1,000,000.00
4	Madeira Beach Fish House & Commercial Docks	Southeastern Fisheries Association	\$1,605,000.00
5	Key West Historic Shrimp Docks	Gulf Fisherman's Association	\$4,200,000.00
6	Port Salerno Working Waterfronts Enhancements	Martin County BOCC	\$2,015,500.00
7	Dixie County Fish House at Horseshoe Beach	Dixie County	\$1,077,000.00
8	Eastpoint Working Waterfront	Franklin County	\$1,728,000.00
9	Mayfield-Stock Island Maritime Facility	Monroe County	\$7,500,000.00
10	Horseshoe Beach Waterfront Open Air Seafood Market	City of Horseshoe Beach	\$394,000.00
		Total	\$25,348,000.00

RECOMMEND DEFERRAL

Substitute Item 2 Fisherman's Marina, LLC/Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for a modification of a ten-year sovereignty submerged lands lease to increase the preempted area from 54,429 square feet to 71,333 square feet for a 68-slip commercial marina.

APPLICANT: The Fisherman's Marina, LLC
Lease No. 160001762
Application No. 16-261963-002-EM

LOCATION: 451 Trout River Drive
Jacksonville, Duval County
Section 30, Township 01 South, Range 27 East
Aquatic Preserve: No
Waterbody/Classification: Trout River, Class III
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: slow speed minimum wake within 300 feet of shoreline

CONSIDERATION: \$7,883.07, representing: (1) \$7,267.96 as the initial lease fee computed at the base rate of \$0.145554 per square foot, discounted 30 percent because 90 percent of the slips are open to the public for rent on a first-come, first-served basis; and (2) \$615.11 as the initial 25 percent surcharge payment for the additional area. 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 chapters 253, and 258 F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

Background

The lease was originally approved by the Board of Trustees on May 4, 1976. The original lease authorized the preemption of 10,256 square feet of sovereignty submerged lands. On April 17, 2007, the Board of Trustees approved a lease modification authorizing the removal of an existing 16-slip commercial marina and construction of a new 68-slip commercial docking facility with 54,429 square feet of preempted area. The facility was to accommodate vessels ranging from 15 to 40 feet in length, with drafts ranging from 2 to 5 feet.

The lessee, while reviewing the lease area, compared its riparian line to that of the neighboring marina's lease. At that time, the lessee found that its riparian lines were inaccurately allocated. In fact, the current southern riparian line actually crosses the neighboring marina's surveyed

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riparian lines. Once the lessee became aware of this discrepancy, the lessee had its riparian lines reallocated to be consistent with the Department of Environmental Protection's (DEP) Bureau of Surveying and Mapping's sponsored study of the effect of shorelines and channel geometry on the division of riparian rights. With the reallocation of riparian lines, the lessee found that its riparian area was actually wider than originally determined. The wider riparian area would allow the lessee to have a larger preempted area and still meet: (1) the 25-foot setback as required in section 18-21.004(3)(d), F.A.C.; and (2) Board of Trustees-approved special lease condition which prohibits lengthening waterward extent of the docking facility.

Project Detail

With the reallocation of the riparian lines, the lessee proposes to increase the preempted area by 16,904 square feet to accommodate recreational vessels up to 50 feet in length, with drafts ranging from 2 to 5 feet. The proposed lease modification would authorize a ten-year sovereignty submerged lands lease preempting 71,333 square feet for a 68-slip commercial marina to be used in conjunction with an upland marina.

Ninety percent of all of the slips will continue to be available for rent to the general public on a first-come, first-served basis, pursuant to section 18-21.003(25), F.A.C. This requirement has been included as a special lease condition.

Noticing

The proposed lease modification was noticed pursuant to section 18-21.004(1)(m), F.A.C. Thirty-one property owners were specifically noticed and no objections were received by the end of the commenting period.

Permit Summary

DEP's environmental resource permit authorized sewage pumpout and fueling facilities, and prohibited liveaboards. The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding the protection of manatees were addressed in the permit. Duval County is a designated manatee county with an approved manatee protection plan. FWC determined that the proposed project was consistent with the plan.

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 the plan is in compliance. The proposed action is consistent with the plan according to a letter received from the city of Jacksonville.

(See Attachment 2, Pages 1-14)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF \$7,883.07

**Substitute Item 3 Boca Ciega Resort Marina, LLC/Recommended Consolidated Intent/
Lease Modification/Authorization**

REQUEST: Consideration of an application for (1) modification of a 25-year sovereignty submerged lands lease to (a) reflect a change in upland ownership; (b) change the use from a multi-slip dock for temporary mooring only to a mixed use of private residential multi-family docking facility and a commercial marina; (c) delete Special Lease Condition No. 31. E. that prohibits further expansion; (d) reduce the term of the lease to 5 years; and (e) increase the preempted area from 7,728 square feet to 66,843 square feet, more or less, for a 47-slip mixed use private residential multi-family docking facility and commercial marina; (2) authorization for the placement of 19 reef balls; and (3) authorization for the placement of 33 cubic yards of riprap along a seawall.

APPLICANT: Boca Ciega Resort Marina, LLC, a Florida limited liability company
Lease No. 521729223
Application No. 52-0213081-002

LOCATION: 8800 Bay Pines Boulevard
St. Petersburg, Pinellas County
Section 01, Township 31 South, Range 15 East
Aquatic Preserve: Boca Ciega Bay, Resource Protection Areas 1 and 3
Waterbody/Classification: Long Bayou, Class III
Outstanding Florida Waters: Yes
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$11,880.38, representing (1) \$9,729.27 as the initial lease fee computed at the base rate of \$0.145554 per square foot; and (2) \$2,151.11 as the initial 25 percent surcharge payment for the additional area. 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 rental value, pursuant to section 18-21.011, 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 chapters 253, and 258 F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

Project Synopsis

The applicant is proposing to construct a 47-slip mixed use private residential multi-family docking facility (18 slips) and a commercial marina (29 slips) over 66,843 square feet of sovereignty submerged lands to be used in conjunction with an upland 81-unit condominium/hotel. The proposed docking facility will accommodate vessels ranging in lengths from 30 to 60 feet with average drafts of 2.5 to 4 feet.

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Background

The initial 25-year sovereignty submerged lands lease for the existing docking facility containing 7,728 square feet and 12 transient slips was approved by the Board of Trustees on May 14, 1991. A storm destroyed a 200-foot-long segment of the docking facility with 8 slips circa 1997. Since that time, the facility has consisted of a 4-slip dock containing approximately 1,800 square feet of preempted area. The 1991 lease contained a special lease condition stating that, "The lessee shall not expand the structure or area included in this lease." The applicant at the time (the predecessor in title) offered to forego any future expansion of the docking facility as a condition to meet the aquatic preserve public interest requirement. However, the Department of Environmental Protection (DEP) is recommending that the Board of Trustees remove this special lease condition and allow the proposed expansion because: (1) there are no resource concerns associated with the proposed project (the docking structures on the south side of the facility are designed to avoid impacts to the oyster bed located adjacent to the seawall); (2) adequate water depths, good flushing, and water quality exist at the project site; (3) the applicant has offered public interest in the form of increased public opportunities for access to sovereignty submerged lands; (4) there is no history of non-compliance with the existing lease; and (5) by rule the term of the lease will be reduced from 25 years to 5 years.

The upland property was redeveloped in 2005 into a condominium/hotel complex called Boca Ciega Resort Marina, a condominium and rental resort, with 81 units. Boca Ciega Resort & Marina Condominium Association, Inc., that controls the riparian shoreline, has granted a perpetual easement with riparian rights over a 10-foot-wide strip of upland along the entire 609 linear feet of riparian shoreline to the applicant for the purposes of operating both the condominium and commercial marina portions of the 47-slip docking facility and accepting responsibility for the sovereignty submerged lands lease. The agreement provides the public with pedestrian and vehicular ingress and egress to the commercial marina portion of the docking facility in addition to 14 parking spaces per Pinellas County (County) regulations and coded access to restrooms inside the condominium complex.

Project Detail

The applicant is proposing to remove the remaining 4-slip dock previously used for temporary mooring in conjunction with an upland restaurant and construct a 47-slip mixed use private residential multi-family docking facility and commercial marina. The applicant will provide the upland condominium unit owners the right of first refusal on the use of up to 18 slips. At least 29 slips, and potentially more if the condominium unit owners choose not to use any of the 18 slips, will be a part of the commercial marina. A minimum of 29 slips will be available for rent to the public on a first-come, first-served basis pursuant to section 18-21.003(25), F.A.C., which has been addressed as a special lease condition.

The 18 slips and associated preempted area (a maximum of 18,270 square feet) that may be used by the upland condominium owners meets the one to one unit to slip ratio pursuant to section 18-21.004(4)(b)1, F.A.C., and the 30 to 1 preempted area to riparian shoreline ratio pursuant to section 18-20.019(7)(a), F.A.C. (Boca Ciega Bay and Pinellas County Aquatic Preserve rule). A special lease condition will require no more than 18,270 square feet be leased, rented or

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otherwise used by entities having an ownership interest in any residential condominium unit in the Boca Ciega Resort Marina condominium/hotel complex. Pursuant to section 18-20.019(7)(a), F.A.C., a perpetual proprietary conservation easement will be granted to the Board of Trustees over the entire 609 linear feet of riparian shoreline to preclude the construction of additional docks. This has been included as a special approval condition.

Public Interest

The proposed project is located within the Boca Ciega Bay Aquatic Preserve, in a highly developed area of the County. Since the project is within an aquatic preserve, it must be in the public interest, pursuant to section 18-20.004(1)(b), F.A.C. To fulfill this requirement, the applicant has offered to: (1) provide greater public access to sovereignty submerged lands by the payment of \$200,000 to the County for the construction of a second boat ramp and access lane at a County-owned boat ramp facility; (2) provide greater public access to sovereignty submerged lands by making available a minimum of 29 slips for rent to the public on a first-come, first-served basis; (3) treat greater than 1.25 inches of stormwater (0.50 inches over the minimum requirement of 0.75 inches); (4) placement of 33 cubic yards of riprap along 220 linear feet of seawall; and (5) construct 19 reef balls underneath a terminal dock.

Benefits

Benefits of the proposed public interest: (1) The applicant's \$200,000 payment for the addition of a second boat ramp and access lane at the Sutherland Bayou Boat Ramp, owned by the County in the Town of Palm Harbor, will increase public access opportunities for the boating public to sovereignty submerged lands within the aquatic preserve. The County has earmarked the funds for placement in a capital improvement fund specifically established for the construction of the second boat ramp and access lane. Because the funds have yet to be appropriated by the County for the improvements, the applicant's contribution will greatly help in jump starting this phase of improvements.

In addition to the construction of the boat ramp and access lane, money from this fund can be applied to the environmental resource permit (ERP) application fee, any permit mitigation, environmental signage, waterway markers, such as speed limits or no wake signs, and enforcement. The ERP application process will entail a review of any direct and secondary impacts to occur to Sutherland Bayou, an Outstanding Florida Water, and in particular a review by the Florida Fish and Wildlife Conservation Commission (FWC), Office of Imperiled Species Management, of any direct and secondary impacts on manatees.

(2) The provision of a minimum of 29 slips available for rent to the public on a first-come, first-served basis will go toward restoring some of the many open to the public slips that have been lost in the last several years due to private redevelopment projects.

(3) The additional one-half inch of stormwater treatment will reduce the amount of pollutants such as oil, gasoline and tar entering the bay by maintaining a longer period of treatment on the subject upland property. With the widespread dredging, filling and bulkheading of the Boca

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Ciega Bay Aquatic Preserve shoreline over many years and the consequential loss of mangrove and marsh habitat, opportunities to restore habitat areas are few.

(4) The construction of the riprap will reduce downdrift erosion or filling due to sand transport caused by deflected wave energy off the existing seawall and provide habitat for attaching organisms such as mollusks, barnacles and algae.

(5) The construction of reef balls will provide habitat for oyster reef communities consisting of other attaching organisms such as barnacles, sea squirts, anemones, sponges, corals and algae that increase the productivity of the benthic area. Oyster reef communities also filter out water pollutants and provide diverse food sources for a variety of important fish species such as redfish, snook, sheepshead, wading birds such as American oystercatcher, ibis and herons, and other marine species such as blue and stone crabs.

In light of the above, DEP staff is of the opinion that the proposed project is in the public interest.

Noticing

Twenty-one property owners within a 500-foot radius were provided notice of the proposed project. DEP received six letters of objection. One of the letters was from a representative of a 127-unit condominium. The objectors raised the following concerns:

- (1) potential for greater noise and traffic congestion by patrons using the marina;
- (2) potential for more violations by boaters of the existing "No Wake" zone causing additional shoreline erosion and seawall damage; objector states this situation already exists from boaters ingressing and egressing the existing marina located adjacent to and south of the proposed project;
- (3) potential for expansion of the docking facility to cause further degradation of Boca Ciega Bay already suffering from the affects of too many boaters and over development on the waterfront;
- (4) potential for dock construction to cause silting in of access routes to a nearby mobile home park facility, making navigation to and from the main channel more difficult for boat owners at that facility.

DEP is of the opinion that the objectors concerns are addressed as follows:

- (1) traffic congestion and noise are associated with zoning and land use and under the purview of the local government of jurisdiction;
- (2) enforcement of the "No Wake" zone is under the purview of FWC and the local government of jurisdiction;
- (3) an environmental resource permit is required for the proposed project which will include conditions that address cumulative and secondary impacts as required under the provisions of Part IV of Chapter 373, F.S; and

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- (4) the environmental resource permit required for the proposed project will contain a specific condition requiring the placement of turbidity curtains around the perimeter of the construction site to prevent any silt generated by the construction from migrating from the area.

Permit Summary

DEP's environmental resource permit (ERP) prohibits liveaboards and fueling facilities and requires sewage pumpout facilities. Specific conditions in the ERP require all CCA pilings to be wrapped to address secondary and cumulative impacts to the Outstanding Florida Water (OFW). In addition, the requirement to install sewage pumpout facilities provides DEP with reasonable assurance that water quality standards in an OFW will not be violated.

Adequate water depths for the size vessels using the marina exist from the proposed project site to the Gulf of Mexico. In addition, specific conditions in the ERP will require draft restrictions in certain slips as needed to ensure that there is a one-foot clearance between the bottom of the boat propeller and the bay bottom to prevent prop dredging.

Commenting Agency

The recommendations of FWC regarding protection of manatees have been addressed in the permit.

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 was in compliance. The proposed action has been determined to be consistent with the adopted plan according to a permit issued by Pinellas County on March 21, 2006 and a revised permit on July 9, 2008.

(See Attachment 3, Pages 1-39)

RECOMMEND WITHDRAWAL

Substitute Item 4 Mitigation Services PBC, LLC Contract/Mitigation Bank/Lemon Grove Property/Pal-Mar Florida Forever Project/Determination/Competitive Bid Waiver

WITHDRAWN FROM THE DECEMBER 9, 2008 AGENDA

REQUEST: Consideration of a request to (1) allow Mitigation Services PBC, LLC to operate a mitigation bank, or other mitigation project, 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 pursuant

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to the terms outlined below to allow Mitigation Services PBC, LLC to establish a mitigation bank, or other mitigation project, on the Lemon Grove property and delegate authority to the Department of Environmental Protection to approve and consent to the contract between the Board of Trustees, Mitigation Services PBC, LLC and Florida Fish and Wildlife Conservation Commission; (3) determine, that pursuant to paragraph 18-2.018(1)(a) F.A.C., the proposed contract is not contrary to the public interest; (4) determine it is in the public interest to waive the competitive bid requirements of paragraph 18-2.018(2)(i), F.A.C.; and, (5) authorize Florida Fish and Wildlife Conservation Commission to be the long-term operation and maintenance entity pursuant to the South Florida Water Management District permit.

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:

- \$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
- 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 either pay FWC a \$39,450 annual payment due at the beginning of each year, for the first ten years, or provide financial assurance, such as 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

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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, or other mitigation project, 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. The Board of Trustees had no actual or constructive knowledge when it purchased the property that the Foundation planned to use the property as a mitigation bank 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 the terms of an agreement with Mitigation Services to use the property for mitigation and restoration purposes. DEP is recommending that the Board of Trustees, 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 the Board of Trustees, FWC and Mitigation Services for a mitigation bank, or other mitigation project, 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:
 - 100 percent success has been demonstrated per the terms of the mitigation bank permit issued by SFWMD;
 - 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
 - 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:

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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 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:

- \$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
- 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 either pay FWC a \$39,450 annual payment due at the beginning of each year, for the first ten years, or a surety bond that guarantees that when the contract terminates, FWC will receive a minimum of \$394,500. The contract and/or land cannot be used as collateral to obtain a surety bond. 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.
- 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 the perpetual maintenance of the property. FWC, as lessee of the land, and/or the Board of Trustees, as owner of the land, will be responsible for the perpetual maintenance of the property. At the completion of the construction phase of the SFWMD permit, FWC agrees to accept the permit for operational and maintenance responsibilities and will be bound by all terms and conditions of the permit. 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.
- The contract is not assignable or transferrable.

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.

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While DEP and Mitigation Services disagree as to whether the original mitigation agreement authorized a mitigation bank, 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. In addition, the activity will help in the restoration of the property and is a compatible use within the management plan.

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 claims they have a significant amount of time invested with the SFWMD staff in preparing for the mitigation bank permit and 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 4, Pages 1-11)

RECOMMEND APPROVAL

**Substitute Item 5 Florida Power Corporation/Progress Energy Florida, Inc. Easement/
Marjorie Harris Carr Cross Florida Greenway/BOT Easement**

WITHDRAWN FROM THE DECEMBER 9, 2008 AGENDA

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 pursuant to section 253.7827(1), F.S.; and (2) acquisition of an approximately 18-foot-wide by 40-mile-long perpetual, non-exclusive easement for a public recreational trail; and (3) delegation to Secretary of the Department of Environmental Protection, or designee, to approve non-substantive changes to the 27.017-acre easement.

COUNTY: Levy

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the parties, and PEF will pay an additional pro rata 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 DEP 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 67-year easement term. Those payments are discussed in Phase II, below.

Phase II

Upon receipt of its federal permit for the Power Plant, PEF shall be required to pay an additional fee of \$7,525,000 for the life of the easement, not to exceed 70 years, of which (1) \$3,010,000 of this fee represents the DSL-approved appraised value of the remaining 67-year easement term; and (2) and \$4,515,000 of this fee represents the net positive benefit, which is 1.5 times the DSL-approved appraised value of a 67-year easement. PEF shall be entitled to set off \$6,375,000, which is the DSL-approved appraised value of an approximately 18-foot-wide by 40-mile-long non-exclusive perpetual easement for a public recreational trail that PEF will grant to the Board of Trustees (BOT Easement), against this additional \$7,525,000 fee. The set off will be adjusted at closing for any reduction in the DSL-approved appraised value based upon a review of the final DSL-approved title insurance commitment, environmental site assessment, and survey. However, if the value of the BOT Easement is reduced by twenty percent (20%) or more, PEF has the right to pay the consideration for the 27-acre easement as stated above instead of conveying the BOT Easement and the NPB would remain at the \$4,515,000. PEF shall be required to contribute the remaining \$1,150,000 (or the value if adjusted after the due diligence products are completed) toward the design, permitting and construction of the paved public recreational trail within the easement area on the raised portion of the existing rail bed on which the railroad tracks were previously located or for the purchase of replacement lands to be determined by OGT.

Within six months of closing and prior to DSL's determination to accept or decline the BOT Easement, PEF will provide, at its sole cost and expense, a final title insurance commitment (to be followed by an owner's marketable title insurance policy [ALTA Form "B" with Florida revisions]) subject to the limitation on PEF's duty to cure defects identified in the due diligence products, as stated below, final boundary survey, and final environmental site assessment(s) (Phase I and Phase II, if required). Also, PEF shall provide a status report to DSL within six months from the Board of Trustees' approval of the PEF Easement, which will include an owners and encumbrance report, Val Maps and graphic depiction of any encumbrances and encroachments derived from the owners and encumbrance report, and preliminary environmental site assessment. DSL shall present the report to the Board of Trustees in the form of a negative response memo or formal agenda item. The acceptance of the BOT Easement is contingent on DSL's approval of the final form and substance of the title insurance commitment, survey, and environmental site assessment after PEF has cured any issues identified by DSL, provided, however, that PEF shall not be required to engage in any litigation or precursors to litigation or to pay more than fair market value to cure defects identified by the due diligence products; DSL's approval of the terms and conditions of the BOT Easement; and DSL's approval of the Title, Possession and Lien Affidavit and the Environmental Affidavit to be executed by PEF at

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the time of the granting of the BOT Easement. The final title insurance commitment shall be no more than six months old at closing. The final survey shall be certified within 90 days prior to closing, and the final environmental site assessment shall be no more than 12 months old at closing. PEF shall pay the documentary revenue stamp tax and all other taxes and costs associated with the conveyance of the BOT Easement. If, after the exercise by PEF of diligent effort to cure defects identified by DSL (other than engaging in litigation, precursors to litigation or paying more than fair market value to cure defects identified by the due diligence products) DSL does not approve one or more of these items and DSL does not agree to accept the BOT Easement, PEF shall pay an easement fee of \$3,010,000 to the Board of Trustees that will be deposited in the Internal Improvement Trust Fund, and PEF shall contribute \$4,515,000 toward the design, permitting and construction of public recreational trails and other related facilities to be determined by OGT. If PEF fails to provide any of the due diligence products or to make a diligent effort to cure defects identified by DSL (other than engaging in litigation, precursors to litigation or paying more than fair market value to cure defects), PEF shall pay an additional net positive benefit by increasing the multiplier for the PEF Easement from 1.5 to 2.0.

STAFF REMARKS: DSL received a request from PEF for a non-exclusive easement (PEF Easement) over two parcels of state-owned uplands within the CFG, just west of the Inglis Lock, in Levy County. The property, former Cross Florida Barge Canal lands, was conveyed to the Board of Trustees after the deauthorization of the barge canal project in 1991. 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 70 years. The acreage of the PEF Easement may be slightly amended based on a final survey which PEF will provide to DSL within 60 days of Board of Trustees approval. The proposed PEF Easement is needed initially for site preparation activities for PEF's proposed Power Plant that will be located on property owned by PEF approximately three miles north of the CFG. The 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 Power Plant so that the necessary site preparation activities will be completed and not create a delay for construction following the final certification by the Board of Trustees, anticipated later this summer. For nuclear power plants, such infrastructure preparation is specifically allowed pursuant to section 403.506(3), F.S. The proposed PEF Easement is the initial phase of the overall Power Plant project which could potentially impact other Board of Trustees' lands. These potential impacts could include lands managed by OGT, Division of Forestry and the Florida Fish and Wildlife Conservation Commission.

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The proposed PEF Easement was reviewed and approved by the Acquisition and Restoration Council (ARC) on October 10, 2008. If PEF requests future authorizations to use state lands, these authorizations will have to go before ARC and the Board of Trustees for consideration. When this occurs, the managing agencies will be contacted to process the requests for authorizations and consideration of net positive benefit.

The purpose of this 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 section 18-21.003(57), F.A.C., which is required for PEF to obtain a sovereignty submerged lands easement from the Board of Trustees, and to allow construction, maintenance and operation of access roads, upland portions of vehicular access bridge and utility bridge, blowdown pipes, cooling water intake pipes, transmission lines, and other utility facilities. 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 and PEF must obtain prior Board of Trustees' approval for any excavating and/or dredging in this area.

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 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, DEP 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 and being diligently pursued 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, including the initial three-year term, is 70 years so long as 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, or other utility uses of the easement area require closure of the easement area to the public for safety reasons. DEP is recommending that the PEF Easement also contain a special condition that requires PEF, at the sole option and discretion of OGT, to

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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 Power Plant or the federal government's denial of the permit.

Future Authorizations/Approvals

Approval of the PEF Easement as requested in this item shall not be construed as a duty in DSL or the Board of Trustees to approve any future requests for authorizations.

BOT Easement

Immediately upon receipt of its federal permit for the Power Plant, PEF shall grant to the Board of Trustees a non-exclusive perpetual 18-foot-wide easement for a public recreational trail over, across and upon an approximately 40-mile-long PEF-owned corridor over the raised rail bed from Dunnellon, north to Chiefland, within the existing undeveloped utility corridor, contingent upon DSL's approval of the final title insurance commitment, survey, environmental site assessment, and the terms and conditions of the BOT Easement, and the Title, Possession and Lien Affidavit, and Environmental Affidavit to be executed by PEF. The proposed trail is part of the Nature Coast State Trail - Southern Extension via the Progress Energy Corridors, on the OGT 2007-2008 approved Acquisition Project List. The BOT Easement will be situated to utilize the existing raised rail bed on which the railroad tracks were previously located. Utility facilities may also be located on the raised portion of the existing rail bed. PEF and OGT will work together in advance of the easement closing to design, or at a minimum identify placement of their respective facilities to assure that they can be co-located along the rail bed in a compatible manner. PEF retains the right to construct railroad facilities, in addition to other utility uses, within the easement area. Any future facilities will be constructed so as not to unreasonably interfere with any OGT trail existing at the time of construction, or PEF agrees to relocate such trail facilities, at PEF's expense and in a manner acceptable to the Board of Trustees and OGT that will retain its intended public function. Uses of the corridor by PEF, or others to whom it may grant rights, shall not unreasonably interfere with OGT's design, use, and management of the BOT Easement as a public recreational trail.

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 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.

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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 or other 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 the facilities 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) or for other uses shall not unreasonably interfere with OGT's design of the trail or its ability to effectively and efficiently manage the BOT Easement as a 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 5, Pages 1-55)

RECOMMEND APPROVAL