



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

9/15/2020

Subject:

Approval; Re: Exchange Agreement between Brevard County and Florida Inland Navigation District (FIND) - District 3, Continued from May 5, 2020

Fiscal Impact:

The Environmentally Endangered Lands (EEL) Program funds will reimburse \$88,823.38 to Florida Inland Navigation District (FIND) at closing for basin re-design. It is anticipated that additional costs will be incurred for a boundary survey, Environmental Site Assessment and title work. These costs are expected to not exceed \$41,000. EEL Program funds are available in Fund 3219 and Cost Center 340250.

Dept/Office:

Parks and Recreation Department
Environmentally Endangered Lands (EEL) Program

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Exchange Agreement with the Florida Inland Navigation District, upon County Attorney and Risk Management approval, authorize staff to finalize the exchange and authorize the County Manager to execute necessary budget change requests.

Summary Explanation and Background:

The Exchange Agreement was initially submitted to the County Commission for consideration on May 5, 2020 and then continued until September 15, 2020.

On February 11, 2020, the BOCC authorized staff to advertise a land exchange between Brevard County and Florida Inland Navigation District (FIND). The required advertisement period was completed on February 20 and February 27, 2020 in the Florida Today newspaper.

FIND owns property (site BV-24) in Grant-Valkaria and this property was identified in the early 1990's as a future containment basin site for dredged materials from maintenance of the Intracoastal Waterway (ICW). In 1991, the Environmentally Endangered Lands (EEL) Program's Selection and Management Committee (SMC) identified the FIND site as containing substantial scrubby pine flatwoods and the use of the site for spoil disposal may have significant endangered species impacts due to the size of the Florida scrub-jay population in this area. Preservation of the Valkaria area, which includes the FIND property, is critical to the survival of the Florida scrub-jay population in this region.

In 1995, the County acquired 84.39 acres, adjacent to the FIND property, through a mitigation donation for the

Cypress Creek Development. In 1997, the County began talks with FIND regarding a potential exchange of the adjacent County owned property due to the higher quality scrub habitat that exists on the FIND property.

In 2009, the Environmentally Endangered Lands Program Selection and Management Committee recommended continued support for the proposed concept of the Florida Inland Navigation District land exchange. On May 19, 2009, the Board of County Commissioners authorized staff to proceed and finalize details for the exchange of property. As part of this 2009 Board approval, the County agreed to reimburse Florida Inland Navigation District up to \$150,000 for their re-design costs of the BV-24 basin, if the exchange were to occur.

The United States Fish & Wildlife Service is responsible for FIND's project permitting and they are supportive of this land exchange concept. They have stated that such an exchange would preserve some of the most critical scrub habitat in the area and would benefit the survival of the regional scrub-jay population.

On January 21, 2015, the Environmentally Endangered Lands Program Selection and Management Committee recommended that the Exchange Agreement be forwarded to the Board of County Commissioners for consideration. On April 28, 2015, the Board of County Commissioners approved the Exchange Agreement.

The Exchange Agreement outlines the following:

- County will exchange 69.36 +/- acres of land for Florida Inland Navigation District's 83.19 +/- acres
- The exchange is contingent upon FIND obtaining necessary permitting.
- Upon closing, each party will bear the costs of their own due diligence (boundary survey, title commitments and environmental site assessments) for the property that each party will receive in the exchange
- Upon closing, the County will reimburse FIND half of the re-design costs for the basin, not to exceed \$88,823.38
- The potential overall cost to the County, at closing, is estimated at \$129,823 (this includes half of the basin re-design costs and due diligence expenses).

Due to the period of time required to obtain Florida Inland Navigation District's permits for construction of BV-24, the Exchange Agreement expired and has required additional revisions related to the mitigation plan for the construction permits.

The revised Exchange Agreement was reviewed and approved by the Environmentally Endangered Lands Program Selection and Management Committee on January 29, 2020. The Exchange Agreement is now being submitted to the County Commission for approval and authority to finalize the exchange.

The Exchange Agreement was initially submitted to the County Commission for consideration on March 10, 2020 but was continued to May 5, 2020 and then continued until September 15, 2020.

Clerk to the Board Instructions:

Please return executed Exchange Agreement and Board Memo to the Environmentally Endangered Lands (EEL) Program.



September 16, 2020

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item H.1., Resolution and Exchange Agreement between Brevard County and Florida Inland Navigation District (FIND)

The Board of County Commissioners, in regular session on September 15, 2020, adopted Resolution No. 20-113, authorizing the Exchange Agreement with FIND; executed and approved the Exchange Agreement and the exchange of County property, upon County Attorney and Risk Management approval; and authorized the County Manager to execute any necessary budget change requests. Enclosed is a fully-executed Resolution and a fully-executed Exchange Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

Encls. (2)

cc: Asset Management
County Manager
County Attorney
Finance
Budget
EELs

RESOLUTION NO. 2020- 113

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (the COUNTY), PURSUANT TO SECTION 125.37, FLORIDA STATUTES, AUTHORIZING THE EXCHANGE OF COUNTY PROPERTY FOR OTHER REAL PROPERTY OWNED BY THE FLORIDA INLAND NAVIGATION DISTRICT (F.I.N.D.); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 28, 2015, the COUNTY adopted Resolution Number 2015-055 authorizing the exchange of certain real property with F.I.N.D. subject to terms and conditions outlined in an exchange agreement, which has since expired; and

WHEREAS, the COUNTY owns 69.36 acres of certain real property within the Town of Grant-Valkaria (Environmentally Endangered Lands Parcel (EEL Parcel)) and still desires to exchange said property for a 83.19 acre parcel owned by F.I.N.D.; and

WHEREAS, F.I.N.D. will combine the EEL Parcel with other lands it currently owns to create a new Dredged Material Management Area, known as the F.I.N.D. BV-24A Site; and

WHEREAS, the COUNTY will combine the F.I.N.D. parcel with other lands it currently owns and manages for scrub jay habitat and preservation; and

WHEREAS, F.I.N.D. has determined that such an exchange would be in the public interest and within its statutory responsibilities by providing the land required for dredge material management for the Atlantic Intracoastal Waterway; and

WHEREAS, the COUNTY has determined that such an exchange would be in the public interest and within its statutory responsibilities by obtaining land to provide preserves and protect scrub jay habitat.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

The COUNTY agrees to exchange the above-described lands with F.I.N.D. pursuant to the terms and conditions set forth in the Exchange Agreement attached hereto.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed as of the date and year first written below.

ATTEST:

By: 

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Bryan Andrew Lober, Chair

As approved by the Board on 9/15/2020

EXCHANGE AGREEMENT

This Exchange Agreement ("Agreement") is made and entered into as of the last date of signature below by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special district authorized and existing by virtue of the laws of the State of Florida ("FIND"), and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "COUNTY").

WHEREAS, FIND is the owner of certain property in Brevard County, Florida containing 83.19 acres, more or less, and depicted in red on Exhibit "A" attached hereto as Parcel A, which will be more fully described in the boundary survey performed pursuant to Section 6 of this Agreement (the "FIND Parcel"); and

WHEREAS, the COUNTY is the owner of a parcel of real property in Brevard County, Florida containing 69.36 acres, more or less, and depicted in green on Exhibit "A" attached hereto as Parcel B, which will be more fully described in the boundary survey performed pursuant to Section 6 of this Agreement (the "EEL Parcel"); and

WHEREAS, the COUNTY has proposed to FIND an exchange of properties between the parties, such that COUNTY will own the FIND Parcel, and FIND will own the EEL parcel; and

WHEREAS, FIND will combine the EEL Parcel with other lands it currently owns to create a new Dredged Material Management Area known as the FIND BV-24A Site; and

WHEREAS, FIND has determined that, subject to the provisions of this Agreement, such an exchange would be in the public interest and within its statutory responsibilities by providing the land required for dredged material management for the Atlantic Intracoastal Waterway; and

WHEREAS, the COUNTY has determined that, subject to the provisions of this Agreement, such an exchange would be in the public interest and within its statutory responsibilities by obtaining land for scrub jay habitat and preservation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Incorporation of Recitals: Agreement to Exchange. The foregoing recitals are true and correct and are incorporated herein by reference. FIND and the COUNTY hereby agree to exchange with one another parcels of real property, described in this Agreement, pursuant to the terms and conditions set forth in this Agreement.

Section 2. Property to be Transferred to the COUNTY. FIND will convey the FIND Parcel to the COUNTY. Should the COUNTY, now or in the future, use the FIND Parcel for creation of a Scrub-Jay (*Aphelocoma coerulescens*) Preserve, the COUNTY shall, without cost to FIND, accept into such a Scrub-Jay Preserve any and all scrub-jays that require relocation from the FIND BV-24A Site. If the COUNTY does not create a Scrub-Jay Preserve but should habitat space be present within the FIND Parcel and state and federal agencies approve, the COUNTY shall allow the transfer of any and all Scrub-Jays that require relocation from the FIND BV-24A Site as a result of the Dredged Material Management Area footprint on the BV-24A Site, without charge or cost for the transfer of Scrub-Jays to County lands.

Section 3. Property to be Transferred to FIND.

- A. The COUNTY will convey the EEL Parcel to FIND.
- B. The COUNTY will convey a perpetual non-exclusive access, ingress, egress and pipeline easement sixty (60) feet in width to FIND over, upon and across Tax Parcel ID No. 29-38-21-00-511, between the FEC Railroad right of way and the eastern boundary of the EEL Parcel (the "Access and Pipeline Easement") as depicted in yellow "Alternative Pipeline Route" on Exhibit "B" attached hereto and made a part hereof by reference. The Access and Pipeline Easement shall include the Pipeline Monitoring and Incident Management Plan attached hereto as Exhibit "C". FIND, to the extent (if any) permitted by Section 768.28, Florida Statutes, shall indemnify and hold the COUNTY harmless, from and against any liability for personal injuries, death or property damage due to or arising out of FIND's use of the Access and Pipeline Easement. FIND shall require any of FIND's contractors performing work in or utilizing the Access and Pipeline Easement to indemnify and hold the COUNTY harmless from and against any liability for personal

injuries, death or property damage due to or arising out of the use of the Access and Pipeline Easement by such contractor or its employees, agents or subcontractors.

Section 4. Exchange Values. The COUNTY and FIND stipulate that the EEL Parcel and the FIND Parcel are approximately equal in value and neither party shall owe the other party any additional consideration as a result of any actual difference between the values of the respective properties.

Section 5. Title to be Conveyed: Evidence of Title. Each party shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Agreement. Within thirty (30) days after the delivery of the boundary survey of the FIND Parcel, as described in Section 6, the COUNTY may obtain, at its expense, a title insurance commitment, to be followed by an owner's title insurance policy from a title insurance company insuring marketable title to the FIND Parcel. Within thirty (30) days after the delivery of the boundary survey of the EEL Parcel, as described in Section 6, FIND may obtain, at its expense, a title insurance commitment, to be followed by an owner's title insurance policy from a title insurance company, insuring marketable title to the EEL Parcel. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

Section 6. Surveys. Within ninety (90) days of the Effective Date, the COUNTY shall obtain a boundary survey of the FIND Parcel, at its expense and FIND shall obtain a boundary survey of the EEL Parcel, at its expense. The boundary surveys shall be prepared and certified by a Florida registered land surveyor and mapper. The legal descriptions of the respective parcels created pursuant to said boundary surveys shall be reasonably satisfactory to both parties and shall be used in the deeds of conveyance. In the event either boundary survey shows any encroachment on either parcel or that improvements intended to be located on either parcel encroach on the land of others, or if either survey shows evidence of unrecorded easements, the same shall be treated as a title defect in the manner provided in Section 7.

Section 7. Defects in Title. If the title insurance commitments of Surveys obtained pursuant to Section 6 of this Agreement disclose any matters that would render title to the FIND Parcel unmarketable and/or matters that would render title to the EEL parcel unmarketable, the affected party shall notify the other party, in writing, within fifteen (15) days of receipt of the title

commitment or boundary survey, as the case may be, specifying the defect or defects. Such other party shall have one hundred twenty (120) days from the date of receipt of such notice to remove the defect or defects and shall use diligent efforts in connection therewith. However, such other party shall not be required to file a lawsuit to cure such defect or defects. If such other party is unsuccessful in removing the defects within such one hundred twenty (120) day period, the objecting party shall have the right to either (a) waive such defects and accept title as it then is, without any claim for damages, or (b) terminate this Agreement, in which event the COUNTY and FIND shall be released from any and all further obligations and liabilities hereunder. Any matters disclosed by the title insurance commitment or the survey which are not timely objected to by the grantee party, or which are waived by the grantee party, shall be deemed a "Permitted Exception" as to that parcel.

Section 8. Environmental Site Assessment. Each party, within ninety (90) days of the Effective Date and at its sole expense, may conduct an Environmental Site Assessment of the parcel to be conveyed to it to determine the existence and extent, if any, of any Hazardous Material on the parcel. In the event that the Environmental Site Assessment discloses one or more Recognized Environmental Conditions, the applicable party shall have an additional ninety (90) days to conduct such other and additional sampling, analysis and investigations as said party deems necessary. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law, as defined in Section 9 below.

Section 9. Hazardous Materials. If the environmental site assessment provided for in Section 8 confirms the presence of Hazardous Materials on either parcel, either party, at its sole option, may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should neither party elect to terminate this Agreement, the grantee of the contaminated parcel shall accept title "as-is" and is responsible, at its sole cost and expense, for pursuing any assessment, clean up and monitoring of the parcel necessary as to Hazardous Materials existing on the parcel, to bring the parcel into full compliance with Environmental Law. "Environmental Law" shall mean all federal, state and local laws, including statutes, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to the protection of the environmental or human health, welfare or safety, or to the emission, discharge, seepage, release or threatened release of any contaminant, chemical, waste, irritant, petroleum product, waste

product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyl, asbestos, hazardous or toxic substance, material or waste or any kind into the environment, including, without limitation, ambient air, surface water, ground water, or land including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource and Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act of 1986, Chapters 161, 253, 373, 376 and 403, Florida Statutes, Rules of the U.S. Environmental Protection Agency, Rules of the Florida Department of Environmental Protection, and the rules of the Florida water management districts now or at any time hereafter in effect.

Nothing contained herein shall be construed to limit either party's legal liability under any Environmental Law for Hazardous Materials located on the property. Nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes or other limitations imposed on potential liability under state or federal law.

Section 10. Representations and warranties. For the purpose of this section each party hereby represents and covenants, in its capacity as grantor of the parcel it proposes to convey to the other, as follows:

(a) This Agreement has been duly executed, and is a valid and binding agreement enforceable in accordance with its terms;

(b) Neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated herein, will conflict with, or result in a breach of, any contract, license or undertaking to which the granting party or by which any of its property is bound, or constitute a default there under, or result in the creation of any lien or encumbrance upon the parcel it proposes to convey (or any part thereof), or contravene any provision of any law, administrative regulation, or judgment, order, decree, writ or injunction of any court of competent jurisdiction;

(c) No legal or administrative proceeding is pending or, to the best knowledge of the granting party, threatened against the granting party, which would or could adversely affect its right to convey the proposed parcel (or any part thereof) as contemplated in this Agreement.

There are no condemnation or eminent domain proceedings pending or, to the best knowledge of the granting party, threatened with respect to the parcel proposed for conveyance (or any part thereof) and there are no legal or administrative proceedings pending or, to the best knowledge of the granting party, threatened affecting the parcel to be conveyed (or any part thereof);

(d) The granting party has good, clear, indefeasible, insurable and marketable title to the parcel to be conveyed, subject to no mortgage (other than existing mortgages which can and shall be satisfied at or prior to Closing), construction or other lien or encumbrance other than the grantee's Permitted Exceptions.

(e) All taxes, whether Federal, State, local or otherwise, which could become a lien against or otherwise affect all or any portion of the grantee's interest therein as the transferor thereof, or the grantee's interest therein as the transferee thereof, that have become due or payable at or prior to the date hereof, have been paid, including without limitation, all real estate taxes, tangible personal property taxes, sales taxes and any and all other taxes which relate to all or any portion of the parcel to be conveyed or could otherwise affect all or any portion of the parcel to be conveyed.

(f) The transfer of the parcel as contemplated herein, will not violate any subdivision statute, ordinance, law, or code or plat presently in existence;

(g) The parcel to be conveyed is not subject to any prescriptive easement or adverse possession;

(h) No "Hazardous Substance" (as hereinafter defined) has, to the knowledge of grantor, been disposed of, buried beneath, or percolated beneath the parcel to be conveyed or any improvements thereon, nor has any toxic, explosive or Hazardous Substance ever been removed from the parcel to be conveyed and stored off site. Further, to the knowledge of the grantor, there has been no "Release" (as hereinafter defined) of a Hazardous Substance on or from the parcel to be conveyed or any improvements thereon.

(i) The parcel to be conveyed and any improvements thereon have not, to the knowledge of the grantor, been used and are not presently being used for the handling, transportation or disposal of a Hazardous Substance. Neither the grantor, nor any lessee, licensee nor other party acting at the direction of or with consent of the grantor or said lessee or

licensee, has manufactured, treated, stored or disposed of any Hazardous Substance on the parcel to be conveyed or any improvement thereon;

(j) With respect to the parcel to be conveyed, to the knowledge of the grantor, the Parcel is in material compliance with all applicable federal, state and local laws, administrative rulings, and regulations of any court, administrative agency or other governmental or quasi-governmental authority, relating to the protection of the environment (including, without limitation, laws prohibiting the creation of a public nuisance). With respect to said Parcel, the grantor has not received notification that it is a potentially responsible party under Section 107 of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), or Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), nor has the grantor received notification from any federal, state, or local government, agency, or regulatory body, of a violation under any federal, state, or local law regulating the disposal or discharge of any toxic, explosive or other Hazardous Substance.

(k) For purposes hereof, the term "Hazardous Substance" means any one or more of the following: (i) any substance deemed hazardous under Section 101(14) of CERCLA, (ii) any other substance deemed hazardous by the Environmental Protection Agency pursuant to Section 102(a) of CERCLA, (iii) petroleum (including, without limitation, crude oil or any fraction thereof), (iv) any substance deemed hazardous pursuant to Section 1004(5) of RCRA, (v) any solid waste identified in Section 1004(27) of RCRA or (vi) any other hazardous or toxic substance, material, compound, mixture, solution, element, pollutant, or waste regulated under any federal, state or local statute, ordinance or regulation. The term "Release" shall have the meaning given to such term in Section 101(22) of CERCLA.

(l) The grantor has not received notice of, nor does the grantor have any knowledge of, any default or breach by the grantor of any covenant, condition, restriction, right of way, easement, or agreement affecting the Parcel; and

(m) All of the representations and other provisions contained in this Section, in other Sections in this Agreement and in any other document to be delivered by the grantor as contemplated hereby shall (i) be true, accurate and complete both as of the date hereof or the effective date of such other document, as the case may be and as of the Closing and (ii) shall survive the Closing. Further, the truth, accuracy and completeness of all of such representations

and warranties of the grantor shall, notwithstanding anything contained herein to the contrary, be a condition precedent to the grantee's obligation to close hereunder; provided, however, the grantee shall not have any obligation to investigate the truth, accuracy or completeness of said representations and warranties and, in the event same are not true, accurate or complete, but the grantee nonetheless elects to close hereunder, such shall not constitute a waiver of any of the grantee's rights and remedies as a result of a breach thereof. The grantor shall, to the extent permitted by law, indemnify and hold the grantee harmless from any and all losses, claims, damages, costs, expenses, obligations and liability arising out of or with respect to any breach or violation of any of the grantor's representations contained in this Agreement or in any other document to be delivered by the grantor. Nothing contained in this Agreement shall be construed as a waiver of either party's right to sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on either party's potential liability under state or federal law.

Section 11. Conditions Precedent as to FIND. Notwithstanding anything contained herein to the contrary, this Agreement and FIND's obligations hereunder are, unless waived in whole or in part in writing by FIND (which FIND shall have the right to do), subject to and contingent upon each and all the following (hereinafter sometimes collectively referred to as "Conditions Precedent" and singularly as "Condition Precedent"):

(a) FIND has obtained all federal, state and water management district permits necessary to construct a dredged material management facility on the BV-24 site;

(b) FIND has not terminated this Agreement pursuant to Section 7 or 9;

(c) All the representations and warranties hereof of the COUNTY shall be true, accurate and complete as of the date hereof and at all times thereafter through and including Closing; provided, however, in the event FIND elects to waive this Condition Precedent, such waiver shall not constitute a waiver of FIND's rights or remedies arising out of a breach or violation of any such representations or warranties of the COUNTY;

(d) The COUNTY shall have satisfied, fulfilled or performed all of its obligations which are to be satisfied, fulfilled or performed at or prior to Closing; provided, however, in the event FIND elects to waive this Condition Precedent, such waiver shall not constitute a waiver of FIND's rights or remedies hereunder to enforce any failure of COUNTY to fully satisfy, fulfill or perform such obligations;

(e) The COUNTY shall not have furnished any notice of termination as may be permitted hereunder; and

(f) The COUNTY shall, at its sole cost and expense, have caused the termination of any lease of the EEL Parcel (or any portion thereof) and shall have affected the removal of any tenant(s) there under.

(g) Should FIND cancel this Agreement due to the failure of any Condition Precedent or Conditions Precedent, all parties hereto shall, except if and to the extent provided herein to the contrary, be relieved from any and all further obligations and liability hereunder or arising here from.

Section 12. Conditions Precedent as to the COUNTY. Notwithstanding anything contained herein to the contrary, this Agreement and the COUNTY's obligations hereunder are, unless waived in whole or in part in writing by the COUNTY (which the COUNTY shall have the right to do), subject to and contingent upon each and all the following (hereinafter sometimes collectively referred to as "Conditions Precedent" and singularly as "Condition Precedent"):

(a) All the representations and warranties hereof of FIND shall be true, accurate and complete as of the date hereof and at all times thereafter through and including Closing; provided, however, in the event the COUNTY elects to waive this Condition Precedent, such waiver shall not constitute a waiver of the COUNTY's rights or remedies arising out of a breach or violation of any such representations or warranties of FIND;

(b) FIND shall have satisfied, fulfilled and/or performed all of their obligations which are to be satisfied, fulfilled or performed at or prior to Closing; provided, however, in the event the COUNTY elects to waive this Condition Precedent, such waiver shall not constitute a waiver of the COUNTY's rights or remedies hereunder to enforce any failure of FIND to fully satisfy, fulfill or perform such obligations;

(c) FIND shall not have furnished any notice of termination as may be permitted hereunder;

(d) FIND shall, at its sole cost and expense, have caused the termination of any lease of the FIND Parcel (or any portion thereof) and shall have affected the removal of any tenant(s) there under; and

(e) The COUNTY has not terminated this Agreement pursuant to Section 7 or
9

(f) Should the COUNTY cancel this Agreement due to the failure of any Condition Precedent or Conditions Precedent, all parties hereto shall, except if and to the extent provided herein to the contrary, be relieved from any and all further obligations and liability hereunder or arising here from.

Section 13. Closing: Escrow; Costs and other expenses. The closing of this transaction ("Closing") shall occur and exchange of possession of the Parcels shall take place at the County Attorney's office in Viera, Florida (or at such other place as shall be mutually agreed upon) within thirty (30) days after all of the Conditions Precedent as to both parties have been satisfied or waived in writing by the parties (unless extended by other provisions hereof) or on such other date as shall be mutually agreed upon ("Closing Date"). In the event that all of the Conditions Precedent set forth in Sections 11 and 12 have not been satisfied or waived within twenty-four (24) months of the Effective Date, the party for whose benefit such Condition Precedent exists shall have the option of (i) terminating this Agreement whereupon all parties hereto shall, except if and to the extent provided herein to the contrary, be released and relieved from any and all further obligations and liability hereunder or arising here from or (ii) agreeing to an additional twelve-month period to satisfy such Conditions Precedent (or to waive them). The County Manager or designee is authorized to extend the closing deadline up to twelve months on behalf of the COUNTY in the event additional time is needed for FIND to obtain the permit described in paragraph 11(a) above. In the event this Agreement is so extended, and at the end of said twelve-month period the Conditions Precedent have not been satisfied or waived in writing by the party for whose benefit such Condition Precedent exists, this Agreement shall terminate and all parties hereto shall, except if and to the extent provided herein to the contrary, be released and relieved from any and all further obligations and liability hereunder or arising here from. Time is of the essence with respect to said Closing.

The cost of performing or obtaining the surveys, any state documentary stamps which are required to be affixed to the deeds, the cost of the title insurance commitments and policies issued pursuant to this Agreement, the cost of recording the deeds, and any other normal and customary closing costs shall be paid by each respective party of the parcel to be acquired. Each party shall pay its own attorney's fees incurred in connection with the negotiation, preparation, execution, and closing of this Agreement.

As to the FIND BV-24A Site for FIND's containment basin, the COUNTY will reimburse FIND, at closing, for half of the quoted costs associated with deliverables for the re-design of the FIND BV-24A Site, after the exchange, charged by FIND's engineer, not to exceed a reimbursement of \$88,823.38. The costs for deliverables from FIND's engineer will include:

- Site boundary and topographic survey with legal description
- Environmental Documentation Report
- Phase I and Phase II (if necessary) Environmental Site Assessment Report
- Preliminary permit-level drawings
- Site Management Plan
- Engineering narrative

Section 14. Closing Obligations.

(a) At Closing, the COUNTY shall:

(i) deliver to FIND a county deed in the form prescribed in Section 125.411, Florida Statutes in form and substance satisfactory to FIND and its counsel, conveying the EEL Parcel to FIND subject only to the FIND Permitted Exceptions; the COUNTY shall not reserve any oil, gas, or mineral rights in the deed;

(ii) deliver to FIND a grant of easement in form and substance satisfactory to Find and its counsel, granting the Access and Pipeline Easement;

(iii) deliver to FIND possession of the EEL Parcel;

(iv) deliver to FIND a Non-Foreign Affidavit (i.e., Foreign Investment In Real Property Act ("FIRPTA") Affidavit) in form and substance satisfactory to FIND and its counsel;

(v) deliver or cause to be delivered to FIND and the Title Insurance Company such documents as may be required by the Title Insurance Company or FIND or its counsel to release the EEL Parcel from any security interests created at any time at or prior to Closing and otherwise to insure marketable title to the EEL subject only to the FIND Permitted Exceptions as herein provided, and, to the extent that any of such documents are not available to the Title Insurance Company and the parties hereto at Closing, cause the Title Insurance Company to deliver copies thereof to FIND forthwith after Closing, and deliver to FIND and the Title Insurance Company any and all executed affidavits and other documents necessary to delete all standard exceptions which can be deleted upon the delivery of such affidavits and documents in the Owner's Policy without specific reference in the Owner's Policy to any matter contemplated by said standard exceptions;

(vi) deliver to FIND an affidavit executed by the COUNTY and dated the Closing Date stating that there: (1) exists no condemnation of or similar proceeding with respect to the EEL Parcel or any part thereof (or any threat of condemnation); (2) there exists no pending or threatened litigation involving the EEL Parcel (or any part thereof), the COUNTY or this Agreement; and (3) the representations set forth in Section 4 hereof remain true and correct as of the date of Closing;

(vii) deliver to FIND or such other party designated by FIND or otherwise provided for herein all other instruments, documents and other matters required to be delivered or furnished by the COUNTY at Closing as elsewhere provided in this Agreement;

(viii) deliver to FIND or such other party designated by FIND such other instruments, documents and matters as FIND may reasonably require.

(ix) reimbursement of costs associated with the redesign of the BV-24A Site, described above in Section 13.

(b) At Closing, FIND shall:

(i) deliver to the COUNTY a Florida form of special warranty deed in form and substance satisfactory to the COUNTY and its counsel, conveying the FIND Parcel to the COUNTY subject only to the COUNTY Permitted Exceptions; FIND shall not reserve any oil, gas, or mineral rights in the deed;

(ii) deliver to the COUNTY possession of the FIND Parcel;

(iii) deliver to the COUNTY a Non-Foreign Affidavit (i.e., FIRPTA Affidavit) in form and substance satisfactory to the COUNTY and its counsel;

(iv) deliver to the COUNTY and the Title Insurance Company any and all executed affidavits and other documents necessary to delete all standard exceptions which can be deleted upon the delivery of such affidavits and documents in the Owner's Policy without specific reference in the Owner's Policy to any matter contemplated by said standard exceptions;

(v) deliver to the COUNTY an affidavit executed by FIND and dated the Closing Date stating that: (1) there exists no condemnation of or similar proceeding with respect to the FIND Parcel or any part thereof (or any threat of condemnation); (2) there exists no pending or threatened litigation involving the FIND Parcel (or any part thereof), FIND or this Agreement; and (3) the warranties and representations set forth in Paragraph 4 hereof remain true and correct as of the date of Closing;

(vi) deliver to the COUNTY or such other party designated by the COUNTY or otherwise provided for herein all other instruments, documents and other matters required to be delivered or furnished by FIND at Closing as elsewhere provided in this Agreement; and

(vii) deliver to the COUNTY or such other party designated by the COUNTY such other instruments, documents and matters as the COUNTY may reasonably require.

Section 15. Brokers. Each party hereto represents unto to the other that there are no real estate brokers, mortgage brokers, sales persons, finders or any like party involved with respect to the transactions contemplated hereby and that no brokerage fees, finders' fees, broker's commissions or the like are and/or shall be due as a result of their respective executions of this

Agreement or which will be due as a result of the Closing or any other matters contemplated hereby by virtue of their respective acts, inactions, conduct or otherwise. Each party hereto hereby agrees to indemnify and hold the other harmless from all losses, claims, damages, costs, expenses and liability arising out of any breach of such indemnifying party's representations and warranties as set forth above in this Section including, but not limited to, costs and attorneys' fees through all trial and appellate levels and post judgment proceedings and regardless of whether or not any action may be instituted.

Section 16. Condemnation. In the event of the commencement of any condemnation or eminent domain proceedings for any public or quasi-public purpose at any time prior to the Closing, resulting or which could result in the taking of all or any part of the Parcels, any party shall have the option of canceling this Agreement, in which event this Agreement shall be null, void and have no further force or effect and all parties hereto shall be released and relieved from any and all further liability and obligations hereunder. In the event that the parties agree not to cancel this Agreement and choose to close the transaction contemplated hereby, the transferor of the property thus affected shall assign to the transferee thereof any and all condemnation or eminent domain proceeds and the transferor's rights to receive same. Each party agrees not to enter into any settlement of any condemnation proceedings or eminent domain proceedings involving any of the properties comprising the Parcels without the prior written consent of the other parties.

Section 17. Default. In the event of a default by any party under this Agreement, the non-defaulting party shall have available to it all rights and remedies under the laws of the State of Florida including, but not limited to, the right to specifically enforce this Agreement or to obtain damages as a result of such default.

Section 18. Notices. Each notice, correspondence, document or other communication (collectively, "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

If to COUNTY:

Brevard County
Mike Knight, EEL Program Manager
91 East Drive
Melbourne, Florida 32904

With copy to:

Office of the Brevard County Attorney
Attn: Alex Esseeesse, Assistant County Attorney
2725 Judge Fran Jamieson Way, Bldg. C
Viera, Florida 32940

If to FIND:

Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477
Attention: Executive Director

With a copy to:

Peter L. Breton, Esq.
The Law Office of Peter L. Breton, PLLC.
2650 NE 52nd Street
Lighthouse Point, FL 33064

Except as provided herein to the contrary, Notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the third mail delivery day after the day of mailing as provided above, and the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt so deemed. In addition, the inability of the United States Postal Service to deliver because of a change of address of the party of which no Notice was given to the other party shall be deemed to be the receipt of the Notice sent. Changes of address and persons to whom Notice shall be addressed shall be made by Notice hereunder.

Section 19. Effective Date and Term of Agreement. The effective date of this Agreement shall be the date of last signature below ("Effective Date"). The term of the Agreement shall be twenty-four (24) months of the Effective Date, unless extended or amended in accordance with this Agreement.

Section 20. Waiver. No waiver of any rights or remedies hereunder by any party hereto shall be effective unless same shall be in writing executed by the party to be charged and any such waiver shall not be deemed to be a continuing or future waiver but shall be limited to the specific instance for which same was given.

Section 21. Governing Law, Venue and Attorneys' Fees. This Agreement and all matters related hereto shall be governed by the laws of the State of Florida and venue for any action or proceeding between the parties arising hereunder and/or in regard hereto shall be exclusively in Brevard County, Florida. In the event of any action or proceeding between the parties with respect to this Agreement or any document or instrument delivered in connection herewith, each party shall be responsible for its own attorney's fees and litigation costs.

Section 22. Successors. This Agreement shall be binding upon and inure to the benefit of all successors to and permitted assigns of the parties hereto.

Section 23. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, and all such counterparts shall for all purposes constitute a single instrument. A facsimile signature shall be as effective as an original.

Section 24. Pronouns, Singular and Plural. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter and the singular shall be deemed to refer to the plural and vice versa, all as the context of usage shall require.

Section 25. Section Captions. Section and Exhibit titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

Section 26. Amendments and Modifications. This Agreement may only be amended upon written agreement by and between authorized personnel of each party. The County Manager, or designee, shall be authorized to execute any necessary amendments or modifications to this Agreement on behalf of the COUNTY.

Section 27. Weekends and Holidays. In the event any date for performance hereunder shall occur or any period hereunder shall expire on a Saturday, Sunday or legal holiday celebrated in the State of Florida, then the date for such performance or date of expiry shall be automatically extended until the next business day thereafter which is not a Saturday, Sunday or legal holiday celebrated in the State of Florida.

Section 28. Survival. All representations, warranties, covenants and other provisions of this Agreement shall survive Closing except to the extent provided herein to the contrary, if at all.

Section 29. No Presumption as to Drafting. The parties hereto acknowledge that they have extensively negotiated the terms and provisions hereof. Accordingly, the parties hereto intend and agree that this Agreement shall be construed without regard to any presumption, principle or other rule regarding construction of any or all terms and provisions against the party causing this Agreement to be drafted. Further, both parties hereto hereby waive, to the maximum extent permitted by law, all such aforesaid presumptions, principles and rules.

Section 30. Public Records. The parties hereto understand that this Agreement is subject to Chapter 119, Florida Statutes, also known as Florida's Public Records Law.

Section 31. Entire Agreement. This Agreement and all Exhibits and other attachments hereto, if any, embody the entire agreement and understanding of the parties hereto. This Agreement may not be changed, altered or modified except by an instrument in writing, signed by the party against whom the enforcement of any change, alteration or modification is sought.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed,
the day and year of the last signature below.

FLORIDA INLAND NAVIGATION DISTRICT

By: 

Don Donaldson, Chairman

BOARD OF COMMISSIONERS OF BREVARD
COUNTY, FLORIDA

By: 

Bryan Andrew Lober, Chair

As Approved by the Board on 9/15/2020

Attest: 

Scott Ellis, Clerk

Reviewed for form and legal content for
the Board of County Commissioners of
Brevard County, Florida:

 2/4/20

Alex Essee
Assistant County Attorney

EXHIBIT "A"

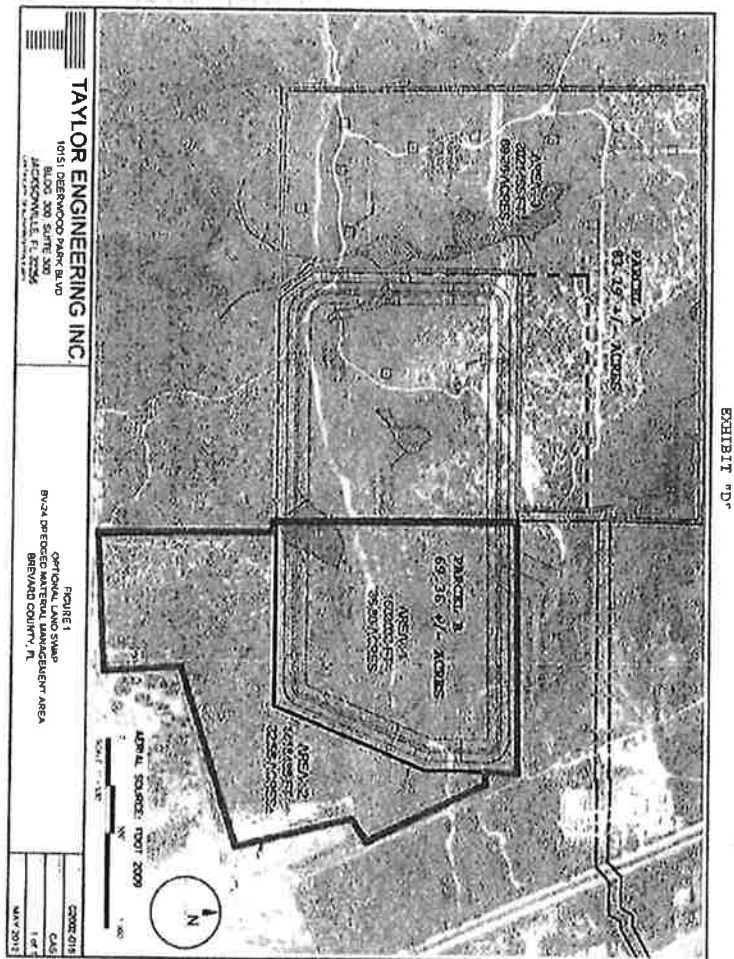


EXHIBIT B

ACCESS AND PIPELINE EASEMENT LOCATION

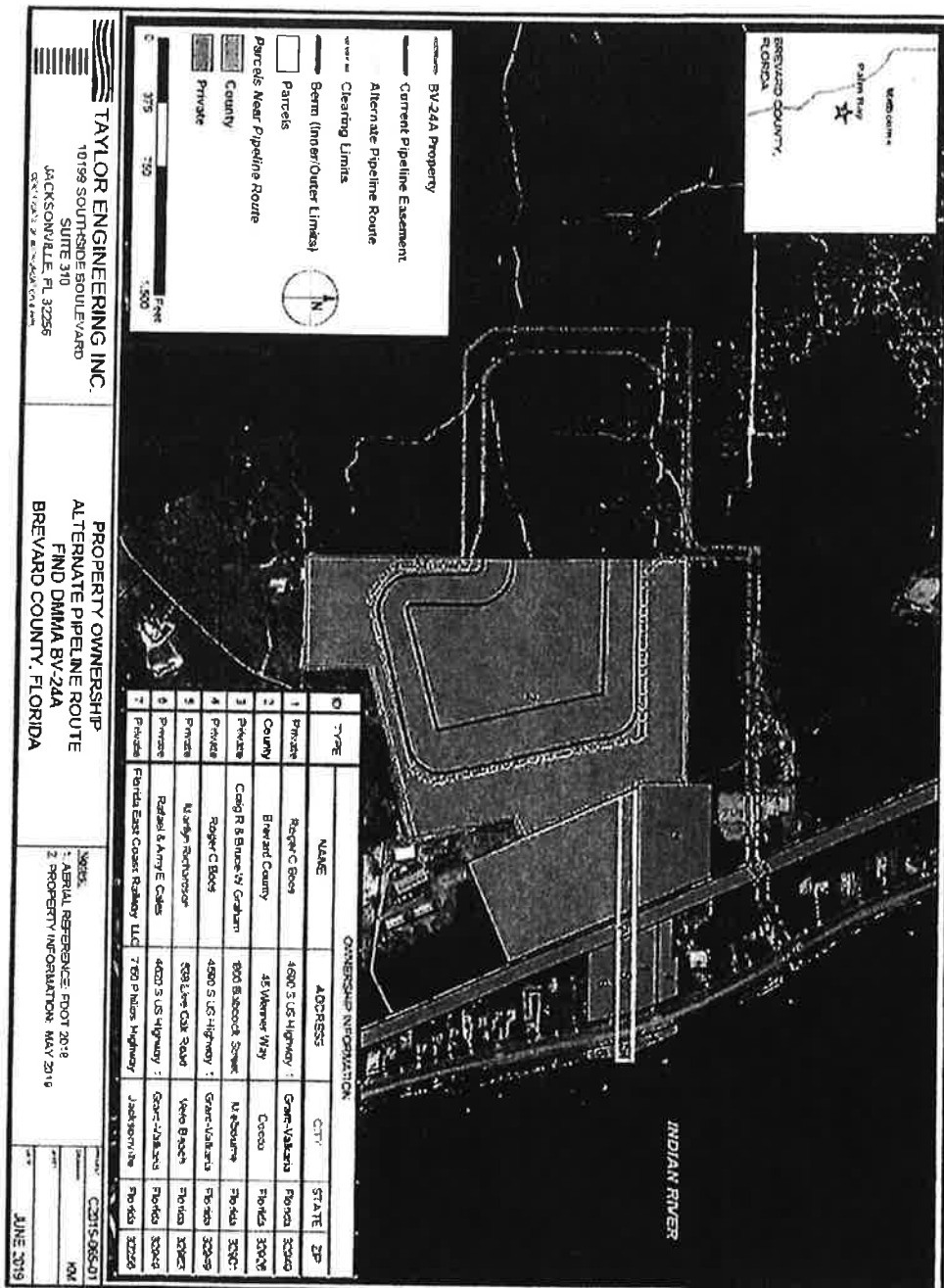


EXHIBIT C

Pipeline Monitoring and Incident Management Plan

FIND, to the extent (if any) permitted by Section 768.28, Florida Statutes, shall indemnify and hold the COUNTY harmless, from and against any liability for personal injuries, death or property damage due to or arising out of FIND's use of the Access and Pipeline Easement. FIND shall require any of FIND's contractors performing work in or utilizing the Access and Pipeline Easement to indemnify and hold the COUNTY harmless from and against any liability for personal injuries, death or property damage due to or arising out of the use of the Access and Pipeline Easement by such contractor or its employees, agents or subcontractors.

The Contractor's equipment will include a pressure monitoring system for the dredge/pump/pipeline operations. The system senses significant pressure drops and increases; the dredge operator continuously monitors this pressure gauge and the operator will immediately shut down the pumping system when any anomalies in the pressure monitoring system arise. Prior to any construction, the Contractor will be required to mark or fence the entire length of the pipeline easement corridor. The Contractor will ensure that the entire pipeline is devoid of any leaks before commencing dredging operations. The Contractor will maintain regular radio communication between the dredge and the disposal areas. The pipeline will be inspected for leaks at least twice daily by the Contractor. To verify Contractor inspection performance and reporting, FIND's engineer or their representative will periodically walk the entire length of the pipeline corridor. The Contractor will have a readily available emergency contact list for use in the event of any leak, or as necessary for other accident, malfunction, or permit compliance issue.

Any leaks in the pipeline, which include, but are not limited to, small discharges of material from joints in the pipe to complete pipe rupture, will result in shutdown of pumping and cessation of dredging operations. The Contractor will immediately report such spills to FIND's Engineer, the COUNTY, and regulatory compliance staff as required by the project permits. A survey will be conducted to estimate the spatial extent of the spill, the volume spilled, and the environmental impacts. The Contractor, FIND, and the appropriate regulatory agencies will coordinate on all necessary actions to quantify the impacts, define the necessary remediation

activities, and resume project activities. In any case, repair of the pipeline is a prerequisite to the resumption of dredging and/or further pumping. All spilled or misplaced materials must be recovered by the Contractor and disposed of at an offsite approved area. Any damage to private or public property resulting from the Contractor's operations shall be repaired by the Contractor at its expense. The Contractor will be required to carry commercial general liability insurance with appropriate limits.

#1,
Brevard County Board of County Commissioners Meeting

September 15, 2020

- PRESENTED ON BEHALF OF -

Gary & Cheri Cameron
Escape Family Revocable Living Trust
Escape Farms, LLC

H.1 – Approval; Re Exchange Agreement between Brevard County
and Florida Inland Navigation District (FIND) – District 3,
Continued from May 5, 2020

KIMBERLY BONDER REZANKA, ESQ.
Lacey Lyons Rezanka
1290 US Highway 1, Suite 201
Rockledge, FL 32955
Phone (321) 608-0892



3 Property Owners \approx 70.5 acres

Account: 2960046 ParcelID: 29-38-21-00-511
 Sale: N/A
 BCPAO Market Value: \$585,470
 Owners: Brevard County
 Address: Not Assigned



Zoom | Clear | Details | EagleView | Hide Info

BCPAO Dana Blickley, CFA, Brevard County Property Appraiser | Instructions | Disclaimer

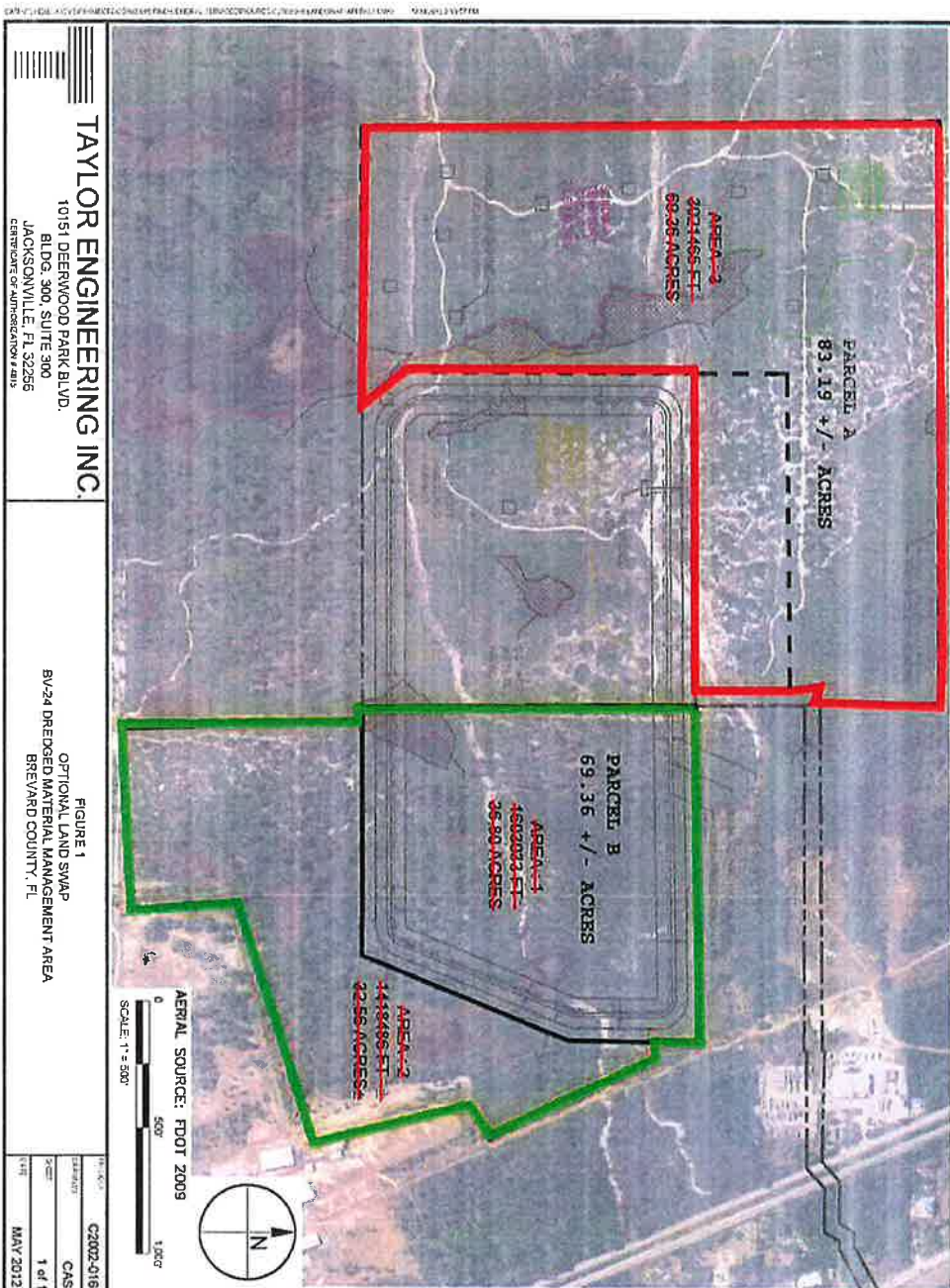
<https://www.bcpao.us/map/?r=29600046>

History of FIND – County Exchange

- 1989** Long-Range DMMA Management Plan for Intracoastal Waterway in Brevard County, Final Report (9/89) approving BV-24.
- 1990** FIND approves resolution to bring eminent domain proceeding for land for BV-24.
- 1993** Final Eminent Domain Judgment entered in favor of FIND for 119.533 acres for Site BV-24. Final engineering documents for Site BV-24 are submitted to FIND for review.
- 1995** County acquires Cypress Creek 83+/- acre Scrub Jay site through mitigation.
- 1997** FIND receives USACOE permit for impacts to scrub jay population/wetlands associated with construction of containment basin (BV-24).
- 1998** The Nature Conservancy (TNC) presents proposal to EELSMC to exchange County land for FIND land for "better enhancement and management opportunities for scrub and scrub-jays in the Valkaria area".
- 2002** EEL Program Manager sends letter to USFWS requesting support for land exchange, acknowledging that the FIND Board of Directors has not yet approved the exchange.
- 2005** Brevard Coastal Scrub Jay Project Report recommends Brevard County aggressively pursue the FIND site.
- 2009** FIND Director requests County to agree to exchange and create contract by end of May, and to pay up to \$150,000 for costs expended by FIND in 1992. Board of County Commissioners (BOCC) authorized staff to proceed and finalize details for exchange of property between County, FIND and third party (5/19/2009).
- 2011** EELSMC discusses that exchange that TNC had been working on was no longer an option, and EEL is working on new exchange with FIND
- 2013** EELSMC approves new exchange parameters for equal exchange of 69.36 acres of County land for FIND land.
- 2015** EELSMC approves draft Exchange Agreement (January); County Commission approves one-year Exchange Agreement (4/28/15).
- 2016** Exchange Agreement expires without extension (4/27/16).
- 2018** FIND submits Environmental Resources Permit Application (1/31/18) for BV-24A.
- 2020** EELSMC approves revised Exchange Agreement (1/29/20).

H.1.

EXHIBIT "D"



H.1.

NOTICE OF EXCHANGE OF COUNTY PROPERTY

Notice is hereby given that the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA will consider entering into an agreement for the exchange of real property located in the Town of Grant-Valkaria with FLORIDA INLAND NAVIGATION DISTRICT at the regularly scheduled meeting on March 10, 2020. This notice is being published as required by Section 125.37, Florida Statutes.

The County property being exchanged is described as approximately 69.36 acres within the Town of Grant-Valkaria and is more particularly described in the Exchange Agreement.

The description of the property the County will receive is described as approximately 83.19 acres within the Town of Grant-Valkaria and is more particularly described in the Exchange Agreement.

The principal terms and conditions of the proposed exchange agreement are the following:

1. The County shall use the FIND Parcel for creation of a scrub-jay preserve and to improve scrub-jay habitat in Brevard County.
2. The County will convey an easement for FIND to utilize for access, ingress, egress, and pipeline.
3. FIND shall provide certain documents and records pertaining to the property, including, but not limited to, an environmental site documentation report, site management plan, engineering narrative, preliminary permit-level drawings, and boundary survey.

The entirety of the agreement, including the terms and conditions thereof, can be viewed at the County Attorney's Office 2725 Judge Fran Jamieson Way, Bldg. C, Suite 308 Viera, Florida 32940 between the hours of 9:00 AM and 5:00PM, Monday through Friday prior to the County Commission meeting on March 10, 2020 when the County Commission will consider authorizing the Commission Chair to execute the agreement.

The needs of the hearing or visually impaired persons shall be met if the department sponsoring the meeting/hearing is contacted at least 48 hours prior to the public meeting/hearing by any person wishing assistance.

Per: Mike Knight, EEL Program, Program Manager
91 East Drive, Melbourne, FL 32904
321-255-4466 X 24911



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2960046
Owners Brevard County
Mailing Address 345 Wenner Way C/O Asset Management Coçoa FL
32926
Site Address Not Assigned
Parcel ID 29-38-21-00-511
Property Use 8020 - County Owned Land - Vacant
Exemptions EXCO - County Owned Property
Taxing District 34L0 - Grant-Valkaria
Total Acres 84.29
Subdivision --
Site Code 0001 - No Other Code Appl.
Plat Book/Page 0000/0000
Land Description Part Of W 1/2 Of SW 1/4 & Part Of Govt Lots 3 & 4 As
Desc IN Orb 3539 Pg 4402

VALUE SUMMARY

Category	2020	2019	2018
Market Value	\$585,470	\$585,470	\$585,470
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$247,040	\$224,590	\$204,180
Assessed Value School	\$585,470	\$585,470	\$585,470
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$247,040	\$224,590	\$204,180
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
01/30/1996	--	WD	Vacant	3539/4402

No Data Found



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2955406
Owners Florida, State Of (Itf); Division Of State Lands
Mailing Address C/O FL Dept/Environ Protect 3900 Commonwealth Blvd
MS 115 Tallahassee FL 32399
Site Address Not Assigned
Parcel ID 29-38-20-00-568
Property Use 8060 - State Owned Land - Vacant
Exemptions EXSF - State Owned
Taxing District 34L0 - Grant-Valkaria
Total Acres 1.40
Subdivision --
Site Code 0001 - No Other Code Appl.
Plat Book/Page 0000/0000
Land Description E 1/2 Of N 200 Ft Of S 3/4 Of Lot 12 Of Pb 1 Pg 166 Ex
E 25 Ft Aka Tract 201

VALUE SUMMARY

Category	2020	2019	2018
Market Value	\$1,400	\$1,400	\$1,400
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$1,400	\$1,400	\$1,400
Assessed Value School	\$1,400	\$1,400	\$1,400
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$1,400	\$1,400	\$1,400
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
07/28/2003	\$6,600	WD	Vacant	5019/1269
02/28/1985	\$6,000	NN	--	2584/0236

No Data Found

and ditches located on the BV-24A property, there is proposed to be a small surface water impact (108 square feet) to the Indian River Lagoon at the point of discharge for the emergency overflow structure, but this impact has been minimized to the extent possible. Furthermore, as there is a roughly 350-ft buffer between the DMMA containment basin and the easternmost property boundary most of the construction will occur away from the shoreline of the Indian River. See Attachment 2: Permit Drawings for further details regarding site plans.

In addition, the contractor will establish temporary erosion control measures upon mobilization to the site. The contractor will place the erosion control measures (e.g., silt fence) along the limits of construction as delineated on the final construction drawings. The contractor will monitor and maintain these erosion control devices according to FDEP protocol. Following the final site grading, the contractor will establish permanent vegetation (e.g., grass, sod, etc.) at the project site. See Attachment 12: Supplemental Information for DMMA Construction Projects – DMMA BV-24A for further details regarding the long-term site maintenance.

- b. If listed species are present or may be present then coordination with wildlife agencies is needed. Have you coordinated with the FFWCC and/or USFWS? If so, please provide correspondence from the wildlife agencies indicating concurrence with the species management plan(s).

Per Attachment 12: Supplemental Information for DMMA Construction Projects – DMMA BV-24A and Attachment 10: Environmental Site Documentation, coordination will occur with the Florida Fish and Wildlife commission to obtain a gopher tortoise relocation permit before construction begins.

Please see Attachment 10: Environmental Site Documentation and Attachment 14: Florida Scrub-Jay Survey for more detailed information regarding potential listed species and their habitats.

To date, no consultation with the FWC or USFWS has occurred outside of coordination regarding the Florida Scrub-Jay minimization efforts (i.e., land swap between Brevard County and FIND). However, see the table below for a summary of the listed species likely to occur on-site and their determination (as described in Section C, Part 2, Item 2). See Attachment 15: Listed Species Determination Keys for more information on the determination of effect.

Listed Species Likely to Occur On-site

Common Name	Scientific Name	Federal Status ¹	State Status ²	Determination
Florida scrub-jay	<i>Aphelocoma coerulescens</i>	Threatened	Threatened	May Affect, Not Likely to Adversely Affect
Everglades snail kite	<i>Rostrhamus sociabilis plumbeus</i>	Endangered	Endangered	No Affect
Red-cockaded Woodpecker	<i>Picoides borealis</i>	Endangered	Endangered	*STILL NEED TO CONDUCT SURVEY*
Wood Stork	<i>Mycteria americana</i>	Threatened	Threatened	Not Likely to Adversely Affect
Eastern indigo snake	<i>Drymarchon corais couperi</i>	Threatened	Threatened	May Affect, Not Likely to Adversely Affect

¹ Federally-listed and Candidate Species in Brevard County, FL; USFWS website (accessed September 2017)

² List of Imperiled Species, FWC (accessed September 2017) / FNAI Report for Matrix Unit 63265, 63266, 63530, 63531

PRELIMINARY CONSENT AGENDA
FLORIDA INLAND NAVIGATION DISTRICT
Board of Commissioners Meeting

9:00 a.m., Friday, June 14, 2019

Hilton Cocoa Beach Oceanfront
1550 North Atlantic Avenue (SR A1A)
Cocoa Beach (Brevard County), FL 32931-3230

Item A. **Approval of Mitigation Fee for Florida Scrub Jay Habitat Impacts at Dredged Material Management Area BV-24A, Brevard County, FL.**

One of the final steps to achieving the permit and finalizing the property exchange with Brevard County for Dredged Material Management Area (DMMA) BV-24A is the need for mitigation of Florida Scrub Jay habitat. While several ideas have been suggested and explored, the most direct, cost-effective and timely method will be payment to the Florida Scrub Jay Conservation Fund.

Negotiations have been conducted with the U.S. Fish & Wildlife Service (USFWS). The calculated fee is a one-time effective price of \$28,680.00 per acre, at a mitigation ratio of 2:1, for a total 10-acre impact (note, total DMMA area is over 60+ acres), for a total one-time fee of \$573,600.00. Payment of this fee will allow the District and Taylor Engineering to finalize the permitting requirements of DMMA BV-24A and complete final design.

At the May 17, 2019 Board meeting, Commissioners inquired about the origin of the fee and where the funds will be utilized. Staff and Taylor Engineering contacted the U.S. Fish & Wildlife Service (USFWS) concerning the fee and expenditures. As noted in the memo from Taylor Engineering dated May 30, 2019, the fee is forwarded to The Nature Conservancy (TNC). Under direction from the USFWS, the TNC can utilize the funds for property purchase and management, and to a lesser extent, research.

The included chart indicates the scale of fees depending upon habitat location. This explains the discrepancy between projects of similar sizes in other areas. Staff is of the opinion that the USFWS considered the sizable effort and additional costs associated with the land swap between the County and the District, and has provide a reasonable assessment of the impacts to habitat that must be mitigated.

(Please see back up pages 7-72)

RECOMMEND: Approval of a fee in the total amount of \$573,600.00 to the Florida Scrub Jay Conservation Fund for required mitigation at DMMA BV-24A, Brevard County, FL.

Item B. **Florida Department of Environmental Protection Spoil Island Projects Extension Requests.**

The Florida Department of Environmental Protection has requested extensions for three of their Spoil Island project agreements:

SI-FDEP-17-02 Brevard County Conservation Spoil Island Signs

**Florida Scrub-Jay Umbrella Habitat Conservation Plan
And
Environmental Assessment**

November 2007

the probability for survival of both of these metapopulations could be improved with more acquisition of habitat.

Eleven of the remaining 21 metapopulations were shown to be highly vulnerable to quasi-extinction if no more habitat were acquired (Central Brevard, North Brevard, Central Charlotte, Northwest Charlotte, Citrus, Lee, Levy, Manatee, Pasco, St. Lucie, and West Volusia). The model predicted that the risk of quasi-extinction would be greatly reduced for 7 of the 11 metapopulations (Central Brevard, North Brevard, Central Charlotte, Northwest Charlotte, Levy, St. Lucie, and West Volusia) by acquiring all or most of the remaining scrub habitat. The model predicted that the remaining four metapopulations (Citrus, Lee, Manatee, and Pasco) would moderately benefit if more acquisitions were made.

Stith (1999) classified two metapopulations (South Brevard and Sarasota) as moderately vulnerable with a moderate potential for improvement; they both had one or more fairly stable subpopulations of scrub-jays under protection, but the model predicted large population declines. The rest of the metapopulation could collapse without further acquisitions, making the protected subpopulations vulnerable to epidemics or other catastrophes.

Three of the metapopulations evaluated by Stith (1999) (Flagler, Central Lake, and South Palm Beach) were classified as highly vulnerable to quasi-extinction and had low potential for improvement since little or no habitat is available to acquire or restore.

Since the time that Stith completed his modeling exercise, Breininger *et al.* (2001, 2003) conducted additional studies within Brevard County. Dispersal data, improved habitat mapping, and new buffering results provide reasonable evidence that the South Brevard and Central Brevard metapopulations, as defined by Stith (1999), show greater connectivity, through observed scrub-jay dispersals, than was previously evident. Therefore, these can now be treated as one metapopulation. With this change made, there are currently 17 remaining metapopulations of scrub-jays that are potentially viable over the long-term.

The analysis clearly shows two items that are essential for recovery of this species: (1) restoration and management of publicly-owned scrub lands already under preservation and (2) additional purchase of scrub lands for preservation in key areas. Without both, it is unlikely that recovery can be achieved.

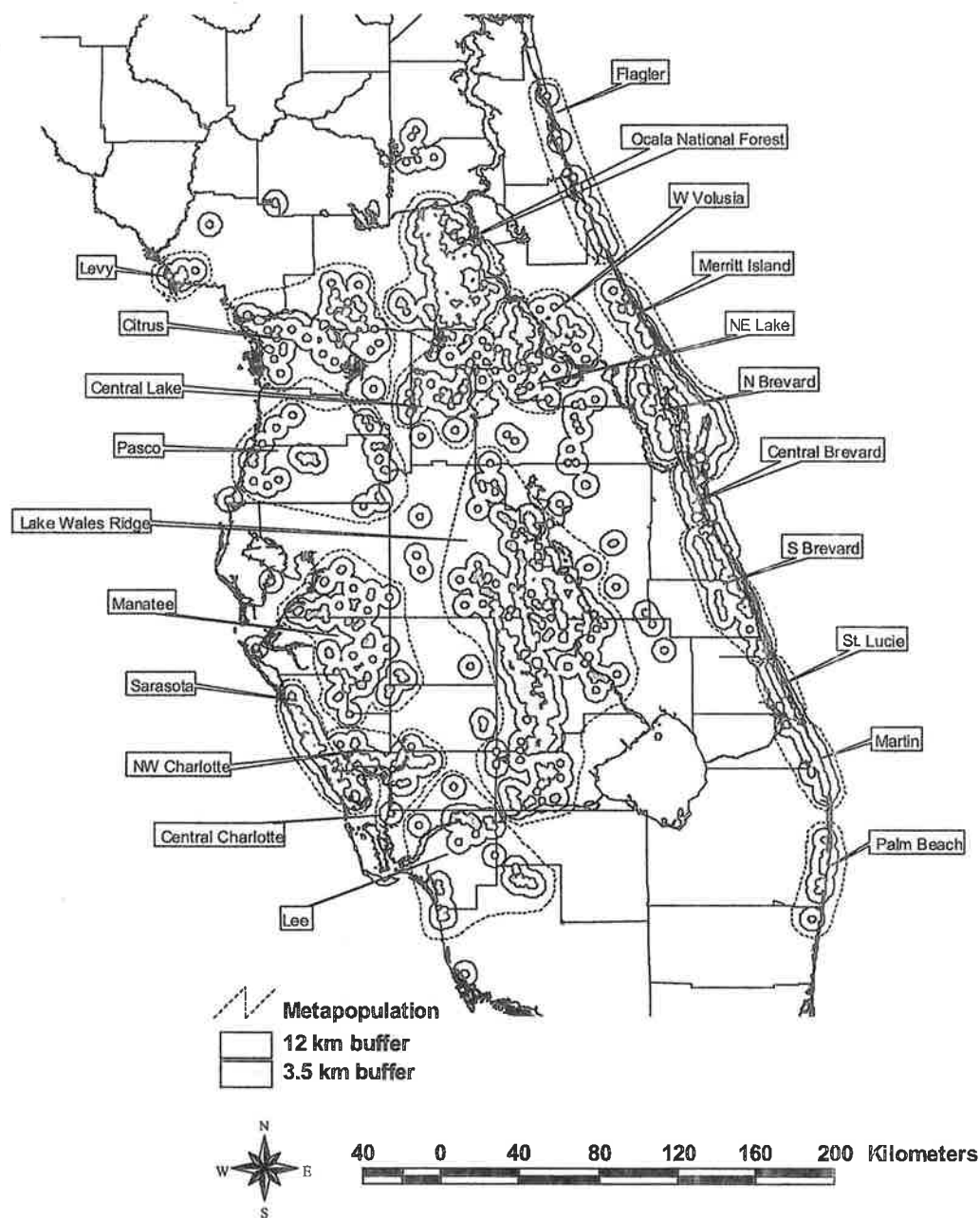
Threats

The existence of scrub-jays throughout their range depends on the existence of a particular seral stage of oak scrub habitat with unvegetated openings in sandy soils. This habitat occurs naturally only in localized patches associated with recent or ancient shoreline deposits. By the time the scrub-jay was listed under the Act (52 FR 42661), a large proportion of these habitat patches had been converted for human use or were slated for imminent conversion. Most of the coastal scrub habitat had already been cleared for

Table D.1. Mitigation cost per acre by Scrub-jay Metapopulation for the Florida Scrub-jay Umbrella Habitat Conservation Plan, revised **September 2014**.

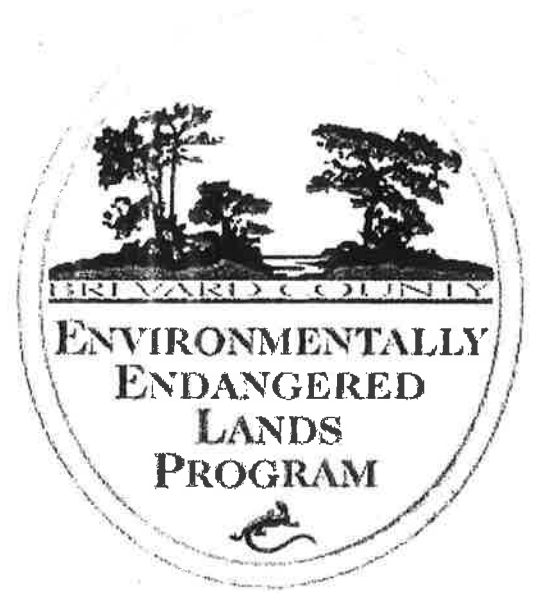
Scrub-jay Metapopulation	Per Acre Total Mitigation Cost
Central Brevard	\$44,074
Central Charlotte	\$19,893
Central Lake	\$29,961
Citrus	\$12,295
Flagler	\$29,961
Lake Wales Ridge	\$14,770
Lee	\$38,718
Levy	\$7,580
Manatee	\$13,450
Martin	\$37,359
Merritt Island	\$29,961
Ocala National Forest	\$29,961
Palm Beach	\$29,961
Pasco	\$19,903
North Brevard	\$14,294
Northeast Lake	\$27,659
Northwest Charlotte	\$38,637
Sarasota	\$71,360
South Brevard	\$28,680
St. Lucie	\$53,833
West Volusia	\$15,327
Average	\$29,961

Figure D.1. All Florida scrub-jay metapopulations.



H.1.

Land Acquisition Manual



*Protecting
and Preserving
Biological Diversity
Through Responsible
Stewardship of
Brevard County's
Natural Resources*

EEL Selection and Management Committee Duties and Responsibilities:

1. Establish a scientifically based set of criteria to use as guidance for land acquisition decisions. (Task completed – 1991).
2. Receive and review individual proposals nominated for purchase in accordance with the criteria established in this Land Acquisition Manual.
3. Create a land acquisition strategy in accordance with the criteria established in the LAM.
4. Receive and review individual proposals nominated for sale.
5. Make minor changes to the Land Acquisition Manual and recommend substantial changes to the LAM to the EEL Procedures Committee and the Board.
6. Provide technical and scientific guidance for the development of proposals for matching funds and management plans.
7. Provide technical and scientific guidance for land management on sanctuary sites within the EEL Program natural areas network.
8. Develop a county-wide conceptual management plan (Sanctuary Management Manual) to provide conceptual planning for land management and stewardship for all EEL sites within the county's natural areas network.
9. Provide scientific and technical guidance for protection (i.e., fencing) and development (i.e., nature centers and boardwalks) on sanctuary sites.
10. Provide scientific and technical guidance for development of educational programs.
2. Evaluate applications for policy and procedural compliance.
3. Coordinate site reviews by EEL Selection and Management Committee.
4. Coordinate all land acquisition documents, appraisals, surveys and environmental assessments.
5. Arrange for discussions and meetings of EEL Committee Members and County, State and local governmental agencies, as required.
6. Prepare approval memorandum recommendations for Board consideration at the direction of the EEL Program Selection and Management Committee.
7. Identify source of funding for acquisition and management.
8. Develop, track, and administer grants and proposals for outside funding support.
9. Manage all aspects and phases of the land acquisition process.
10. Coordinate and implement on-site management, sanctuary development, and educational programs.

Brevard County EEL Program Staff

County personnel shall be assigned to the Parks and Recreation Department to implement the EEL Program and assist the Procedures and EEL Selection and Management Committees.

EEL Program Staff Duties and Responsibilities

1. Receive all acquisition applications.

Land Acquisition Staff and/or Negotiating Agent(s)

County personnel, outside consultant(s) or both are assigned to provide land acquisition assistance to the EEL Selection and Management Committee and Board.

Negotiating Agent Duties and Responsibilities

1. Compile, review and track all acquisition data (including appraisal maps, title reports, boundary surveys, appraisals, comprehensive plan information, hazardous waste reports, and any additional "due diligence" items or data pertinent to the valuation or acquisition of real property).
2. Consult with interagency partners (i.e., Division of State Lands, Bureau of Land Acquisition, USFWS, SJRWMD, etc.) to ensure interagency policy and procedures consistency and compliance.
3. Coordinate appraisals, appraisal mapping, survey, and hazardous waste reports, or any other due diligence procedure for land

Direct acquisition agreements have the advantage of being quick, controllable, and generally non-controversial.

Condemnation (not used by the EEL Program)

There are occasions when direct purchase is not possible because the owner does not want to sell or will not accept the price offered. When extremely high public values are endangered or threatened or the land is needed for protection, the County can exercise the right of eminent domain (the taking of land without consent of the owner). This judicial process is also called condemnation.

The disadvantages are that this process is almost always controversial, frequently creating highly emotional reaction on the part of the landowners and sometime the community at large. Furthermore, there is little control as to the cost which is generally determined as a result of a trial. In addition, the County must assume the judgment of the value that the jury places upon the land. The County may also pay additional costs and attorney fees of the property owners, as provided by law.

The EEL Program was established by voter-approved bond referendums in 1990 and 2004 and was authorized in the Goals, Policies, and Objectives of the Brevard County Comprehensive Plan (1988). Policies 9.6 and 10.4 direct that the establishment of a county-wide land acquisition program (EEL Program) must be voluntary and shall not use the powers of eminent domain or condemnation.

Donation

A citizen or group of citizens, foundation, or non-profit organization may wish to make a gift of property to the County. Such donations are often useful in carrying out the land acquisition program at a minimum of cost. Aside from the cost factor, these acquisitions are not different from any other means of obtaining land control. Gifts and donations have the same planning requirements as purchases.

Landowners often request information regarding Internal Revenue Tax benefits associated with donations. EEL staff should NOT provide information regarding potential tax benefits associated with land donations. Landowners should be cautioned that IRS regulations regarding donations are complex, likely to change, and require professional review by qualified tax lawyers or professional tax consultants.

Exchange

Lands under County control can be exchanged for land having greater ability to satisfy the objective of the land acquisition program. This can involve land in private ownership or land under the administration of another governmental agency. Inherent in the exchange concept is the requirement to get dollar value for dollar value. Exchanges are attractive in that they do not increase land holdings and do not require funds for purchase. Exchanges should be carefully considered by the EEL Selection and Management Committee to ensure that conservation goals are satisfied by the exchange.

In some cases, it may be appropriate for the EEL Program to exchange or transfer lands with other County departments in order to further the goals of the EEL Program. Any exchange or transfer that involves the movement of acquisition funding from one department to another must be considered as a land sale and must follow the Land Sale Procedures as defined on Page 34. In the event that land being transferred to the EEL Program was originally part of a mitigation permit, and has a balance of management funding, it is understood that the remaining funds would be transferred to the EEL Program along with the property.

To ensure that all lands being considered for exchange or transfer are consistent with the intent of the voter-approved EEL referenda, and the Board-approved land selection criteria (Chapter 3 of the EEL Land Acquisition Manual), the following steps will be followed:

Step 1: Conceptual Exchange/Transfer Presentation by staff to SMC (for consideration of a 1st Majority Vote).

The Conceptual Presentation would include the following information:

1. A brief history of the initial acquisition or donation and the sale/purchase history of all properties associated with the exchange/transfer.
 - a. Land exchanges or transfers that were acquired with partnership funding, or through donation may require approval from the original acquisition funding partner, permitting agency, or donor (where land use restrictions may exist, including but not limited to, easements,

donor restrictions, etc.) before being considered for an exchange or transfer.

2. Justification for the exchange/transfer detailing how it will further the EEL Program goals and mission.
3. An overview of the conservation value and current habitat conditions. The SMC would have the option of conducting a site visit prior to their consideration of a 1st Majority Vote.

Step 2: Exchange/Transfer Proposal

Staff will prepare an Exchange/Transfer Proposal for the Selection and Management Committee for consideration of a 2nd Majority Vote. All Exchange/Transfer Proposals must be carefully evaluated by the SMC, and must receive an extraordinary vote (at least six (6) out of eight (8) affirmative votes) in support of the proposal in order to authorize staff to prepare a Board Agenda Request for consideration by the Board of County Commissioners.

The proposal will include at a minimum, the following information:

1. An overview of the current use of the property, the existing management, and required management obligations related to the property.
2. An overview of the anticipated management needs of the property, including the estimated initial and annual management costs, priorities, and management partnership opportunities.
3. An overview of public access and environmental education opportunities.

Step 3: Bring exchange/transfer concept to BoCC for direction

EEL Staff will prepare an Agenda Request to present the land exchange/transfer to the Board for consideration. Upon consideration of the recommendation from the SMC, the Board will determine the most appropriate course of action for the disposition of the property including whether or not appraisals are necessary for the purpose of asset tracking and method of exchange/transfer, in accordance with County Ordinance Chapter 2, Article VIII and Florida Statutes 125.35 and 125.38.

Step 4: Initiation of Land Asset Transfer Process

Upon approval of the Exchange/Transfer Proposal by the Board of County Commissioners, staff will initiate the process for the transfer of the county property between the appropriate county departments. All lands transferred into EEL management become

formally designated as part of the EEL Sanctuary Network.

Land Sales

In certain circumstances it may be appropriate to sell property previously purchased under the EEL Program where the conservation value has diminished since the property was acquired. In these situations, the EEL SMC may recommend the sale of property if they determine that such a sale would provide a greater opportunity to further achieve the conservation goals of the EEL Program. The value for the sale of any property will be based on its fair market value, and will be consistent with County Policies related to the sale of real property. The proceeds from such sale shall be used for the acquisition of comparable conservation lands.

The following sequential steps will be followed when considering land sales:

Step 1: Extraordinary Majority Vote from SMC

All lands considered for sale will be carefully evaluated by the SMC, and must receive an extraordinary majority vote (at least six (6) out of eight (8) affirmative votes) in support of the sale to authorize staff to prepare a Board Agenda Request for consideration by the Board of County Commissioners.

Step 2: County Commission Consideration and Approval

EEL Staff will prepare an Agenda Report Request to present the land sale to the Board for consideration. Upon consideration of the recommendation from the SMC, the Board will determine the most appropriate course of action for the disposition of the property including the determination of fair market value, negotiations, and method of sale, in accordance with County Ordinance Chapter 2, Article VIII and Florida Statutes 125.35 and 125.38.

Step 3: Contract Negotiations

Based on the direction provided by the County Commission, staff will take the necessary steps to obtain a contract for sale for approval by either the County Commission or if so directed by the Board, the Chairman of the County Commission.

Step 4: SMC Final Review of Contract

Prior to presenting the sale contract to the Board, EEL staff will present the general contract terms to the

Step 6A: Resource Planning Assessment Report

The Resource Planning Assessment report will be filed as a compilation of all available resource data on a property or group of properties. This information will be used to prepare Resource Planning Boundaries for multi-parcel Florida Forever Program boundaries, prepare summary reports for site resource attributes or as information sources for outside acquisition funding. EEL staff is encouraged to seek land acquisition funding opportunities and multi-agency partnerships to extend the efficient use of EEL Program acquisition funds.

Step 7A: Contact Agencies

The EEL Selection and Management Committee and EEL staff will discuss potential acquisition partners based on the ecological attributes of the site and local, state, and national acquisition and management programs. At any time during the process, EEL staff are encouraged to seek acquisition partners to extend the available financial resources of the program. Verbal and written inquiries will be sent to all agencies or programs to identify potential levels of interest and funding availability for acquisition or management. Special attention will be given to programs having significant matching funds, such as Florida Forever Program, Florida Communities Trust, and the North American Wetlands Conservation Council. Each of these programs has their own guidelines and rules for acquisition. County staff must coordinate with every acquisition partner to ensure that EEL Program procedures are complementary to and consistent with partner agency programs.

II. Acquisition Planning Phase

Step 8A: Decision Point (First Majority Vote)

The First Majority Vote is an important decision point that initiates Phase 2, the Acquisition Planning-Project Design phase of the process. This phase will include acquisition planning and real estate valuation. The EEL Selection and Management Committee initiates Phase 2 by a majority vote of the members.

Step 9A: Project Design Report

The EEL Selection and Management Committee determines land acquisition priorities and the timetable for moving properties into the detailed planning phase for land acquisition. Basic to the establishment of acquisition priorities are considerations for resource values, resource vulnerability, economic opportunities, acquisition partnership opportunities, and availability of willing sellers. The development of a strategy for land acquisition should consider an ecosystem approach to acquisition which includes four general phases of project design development:

1. Resource and real estate data synthesis and analysis;
2. Proposal development with acquisition justification;
3. Identification of funding sources and interagency acquisition partners; and
4. Third party valuation of the property (appraisal process), which includes appraisal maps and title reports for the property.

Decisions regarding acquisition priorities should consider the establishment of a proper climate for effective negotiations. Generally, the EEL Program should not establish a prioritized, linear list of properties to be acquired. The list of properties to be acquired by the program should exceed the available funds at any given time in the process. This will provide flexibility and an enhanced negotiation position for the program. Properties and groups of properties of highest and equal resource value should be given priority consideration. The process must remain flexible to ensure that acquisition staff can capitalize on unique real estate opportunities and "bargain sale" opportunities.

Considerations during the Project Design phase include the urgency of the conservation need, the priority of the resource, estimated cost of the action, the potential for funding, opportunities for interagency partnerships, availability of willing sellers, options to fee simple acquisition and other factors.

For acquisition proposals which require large commitments of EEL matching funds or long-term program commitments to acquisition and management, a state or federal land acquisition

4-b: Vicinity and Property Descriptions and Maps

A broad description of the project area with a map to orient the reviewer should be provided. An appraisal map, diagram or survey of the property boundaries with a legal description should be provided for each property within the project area.

4-c: Title Reports

A title report should be provided for each property in the project. The chain of title should be investigated for at least the last 30 years.

4-d: Appraisal Reports

The County will contract for appraisal of all parcels to be acquired as provided by this section. The appraisals shall be prepared by qualified appraisers, certified by the State of Florida, who are included on a qualified list of appraisers approved by the Florida Division of State Lands, Bureau of Appraisal. All appraisals prepared for the EEL Program must comply with the procedures and requirements set forth in Section 259.041(7) Florida Statutes, Rule 18-1.006 Florida Administrative Code and the Bureau of Appraisal's Uniform Appraisal Standards (and amendments to these rules, policies, and procedures as they are adopted). Appraisal reports should meet the technical standards of the Uniform Standards of Professional Appraisal Practice. In addition, an affidavit from each appraiser shall be submitted with the appraisal reports certifying that the appraiser has no vested or fiduciary interest in the parcels being appraised.

Each parcel to be acquired shall have at least one appraisal. Two appraisals are required when the estimated value of the parcel exceeds \$500,000. However, when two appraisals are obtained that differ significantly (the higher of the two values exceeds 120% of the lower value) a third appraisal may be obtained as determined by the EEL Program Manager. Additionally, an appraisal review shall be obtained for any appraisal exceeding \$250,000. All appraisals and reviews will be prepared by MAI appraisers contracted by the EEL Program,

provided by Brevard County as permanent appraisal review staff or identified by the Division of State Lands (DSL), Bureau of Appraisal as part of an interagency acquisition project (as defined by a Multi-Party Acquisition Agreement).

Additional items that may be included in the Project Design Report are:

- a. Description of the planning process followed
- b. Description of the present environment or resource setting
- c. Discussion of alternatives to fee simple acquisition
- d. Discussion of the environmental, administrative and institutional consequences of each alternative
- e. Discussion of the alternatives considered, chosen, and rejected
- f. Discussion of potential problems for the County and its municipalities
- g. Discussion of the degree of public involvement and public sentiment
- h. Identification of commitments made to the public, local governments, or State and Federal agencies, if applicable
- i. Documentation of compliance with policies, regulations, and the law
- j. Projections of project costs and community impact

The basic information (as described in the previous steps) relates to the planning process and provides much of the information needed for responsible land acquisition decisions. Land acquisition decisions often require additional material and data which may be pertinent to specific land acquisition sites and objectives. EEL Program staff should consider every property as a unique entity, with site-specific issues and challenges.

Responsible and comprehensive pre-acquisition planning is essential to the successful completion of an acquisition initiative. As general guidance for EEL staff, the Project Design Report shall

contain the basic information needed for making an informed real estate acquisition decision. Key components include appraisal map (with wetland and upland delineation), appraisals, title reports, and any additional information essential to the negotiation.

Various laws, regulations, and policy directives which pertain to the proposed land acquisition must be considered prior to making decisions on land acquisition. The Project Design Report should contain a brief and concise statement indicating what has been done to comply with these laws, regulations, and policies, if applicable.

Since the planning process requires consideration of a number of resource and economic considerations, the feasibility of a land acquisition initiative must consider economic issues. Land costs and funding availability may be a key consideration. Effective planning and priority setting requires a close liaison between the EEL Selection and Management Committee and the Negotiation Agent or EEL acquisition staff.

Although the final acquisition cost estimate for land and improvements is presented as a lump sum, the estimate should be based on a total of the following considerations separately stated.

- a. Direct cost of acquisition based on current estimate.
- b. Land appreciation projected over a reasonable period to a proposed date of acquisition. Presumptions on projections should also be stated.
- c. Indirect cost of acquisition: appraisals, negotiations, title, survey, closing costs and other land acquisition-related costs. These may entail a certain amount of cost projection.

The size and nature of a project will generally dictate what additional facts are needed to get an overall picture of the proposed project, project locale and the impact the project could have on local communities. These considerations may include:

- a. The general financial situation of the county or municipality where the project is located. This should include the county/city tax or millage rate schedule showing the proposed distribution of taxes to the State, county, school districts, roads, and other purposes.
- b. Information on drainage, water rights, stormwater control, and the Water Management District interests to be affected by the proposed project.
- c. The number and size of school districts partly or wholly within the proposed project and the effect the project will have on these.
- d. Other impacts of the project on the local area that should be identified may include the impact on an individual, on adjacent landowners or on the local community at large.
- e. Any possible acquisition problems uncovered during the feasibility study should be discussed, as well as any other matters which might have a bearing on the proposed project or which would be helpful in considering the proposal.

with the individual(s) identified by the landowner on the Owner's Authorized Representative Form (see Appendix). The current status of the Owner's Authorized Representative Form will be confirmed immediately prior to initiating negotiations. In situations where a significant time (over 6 months) has passed since the Owner's Authorized Representative Form was signed, EEL staff will request a new Owner's Authorized Representative Form from the landowner. Although negotiations are likely to involve much verbal discussions, all offers and counter-offers will be formally presented in writing. The acquisition agent will maintain complete records of the negotiation process.

Step 14A: Contract Development and EEL Staff Review

To ensure complete consideration of land acquisition documents, the following County staff must review all contract documents:

1. Parks and Recreation Department
2. Negotiation Agent
3. The County Attorney or designated legal staff from the County Attorney's Office
4. Designated staff from the Risk Management Office
5. Per County Administrative Order AO-37, all land purchases that have a contract price of \$750,000 or more are reviewed by the County's Land Acquisition Review Committee to ensure that the facts upon which the appraisals are based are accurate and that all information necessary for the Board's consideration has been provided.

EEL staff reviews shall seek clarification on minor points or additional information by informal communication with County legal and survey staff, other agencies or other parties to the acquisition. If significant problems are encountered, formal communications shall be forwarded to the EEL Selection and Management Committee by EEL staff. No acquisition contract will be presented to the Board until all essential legal and technical issues are addressed and considered by staff.

Prior to presenting the acquisition contract to the Board, EEL staff or the acquisition agent will present the general contract terms to the EEL

Selection and Management Committee for final review and authorization to proceed to the Board. The basic question to be answered in the discussion is: "Does the proposed action meet the Program objectives and needs and should the EEL Selection and Management Committee recommend the acquisition for Board approval?"

Consultation with other County entities should occur for any property that has the potential to impact other County or municipal programs. EEL staff should consider the following general questions prior to presenting an acquisition to the Board for consideration:

1. Will the proposal have an impact on County or municipal programs or properties?
2. Are there technical errors or omissions which may affect a decision by the County Commission?

If it is determined by the EEL Selection and Management Committee that Board approval should not be sought, the Board shall be made aware of the decision by staff memorandum. EEL staff will notify the landowner(s) of the decision.

Step 15A: Decision Point (Board Review of Contract)

EEL staff will prepare an Agenda Request to present the land acquisition documents to the Board for review and approval. The Agenda Request will present a summary of the project and will include:

1. Resource values of the property
2. Justification for the action
3. Program and administrative consequences
4. Economic impacts of the requested action
5. The EEL Selection and Management Committee's recommended action

At a minimum, staff will include the following items as attachments to the Agenda Request to the Board:

1. Legal documents (Contract, Option Agreement, etc.) for the purchase of the property. All legal documents must be signed by the landowner(s) prior to staff submission of the Agenda Request.
2. A vicinity map and property boundary map of the subject parcels.

Step 3C: Decision Point (Second Majority Vote)

The Second Majority Vote (by extraordinary majority – Step 11A) is required at this stage for expenditure of EEL funds for land acquisition proposal preparation. Almost all land acquisition proposals require a commitment of local funds as a prerequisite of proposal ranking and matching fund appropriations. Most state and federal programs have lengthy proposal review cycles that can last up to one year. Once accepted and funded, the County is expected to meet the financial, acquisition and program commitments as outlined by the proposal.

Step 4C: Commission Review and Resolution

All proposals for outside funding support must be submitted to the Board for full review prior to submission of the proposal. In circumstances where proposal notification provides no time for formal Board review, a proposal may be submitted in advance of Board approval. Staff must place the proposal on the next available agenda for Board consideration. If the Board determines that the proposal should not be submitted or requires modification, staff will immediately contact the funding agency and remove the proposal from further consideration or make requested changes.

Step 5C: Proposal Submission

Land acquisition proposals involving outside funding support are to be submitted to the partner agency(s) in the proper format and with the appropriate signatures as are necessary. The

Board may elect to provide a Resolution of Support to be appended in the proposal or

submitted independently to demonstrate their level of support for the project.

Step 6C: Agency Review and Proposal Tracking

Each agency has individual procedures and policies for proposal review. EEL staff is responsible for coordinating local support and lobbying efforts, liaison with agency staff, providing verbal testimony at public hearings, tracking the proposal review process, and coordinating all efforts that contribute to the successful ranking and funding of the proposal.

Step 7C: Boundary Maps and Appraisal

Prior to making an offer for the acquisition of a parcel, the County will have prepared all due diligence (Site Visit Reports, Phase 1 hazardous Waste Assessment Report, Title Report, Appraisal and/or Survey Maps), including appraisals of the fair market value of parcels to be acquired following the procedures of the EEL Program LAM or those of the acquisition partner's agency. The appraisals shall be ordered from State of Florida certified appraisers who are listed on the State's Division of State Lands qualified list of appraisers, as approved by the EEL Selection and Management Committee. The Board shall be regulated by Florida Statutes which limit the amount that local governments can pay for land.

Step 8C: Boundary Map and Appraisal Review

Acquisition staff and/or County acquisition consultants are required to implement a procedure for appraisal review that is consistent with and accepted by the Florida Division of State Lands (DSL) and the partner agencies involved in the acquisition. Staff and review appraisers