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FLORIDA FOREVER'S LAND ACQUISITION USING LESS-THAN-FEE METHODS

Statement of the Issue

The brief discusses the Florida Forever Program (FFP), the acquisition of state lands with a specific focus on the utilization of the less-than-fee method. Fee simple is the purchase of lands outright and less-than-fee simple is the purchase of limited property rights. Acquiring land at less-than-fee simple means acquisition of an interest in the property which allows the FFP to conserve and protect resources on the property at less cost while keeping the land in private ownership. The brief will review how conservation lands are selected and compare the fee and less-than-fee methods within the Division of State Lands of the Department of Environmental Protection.

Discussion

Background on Florida Forever

According to the Florida Department of Environmental Protection (DEP) the Florida Forever Program strives to purchase the best natural areas and most significant archaeological and historical sites so they can be preserved in perpetuity for Florida's citizens¹. Further, the program helps protect critical lands from development and thus avoid environmental and water quality problems and loss of species. However, purchasing land can be expensive. It also passes the tax burden to the citizens of Florida and results in the state incurring long-term land management costs. To tackle this burden, the Legislature required DEP to utilize less expensive conservation strategies such as buying development rights. The owner does not have to allow the public to use the land². The Division of State Lands (DSL) negotiates as much public access as possible from the owners that utilize the less-than-fee method. However, of the 110 conservation easements (less-than-fees), 105 do not have public access³.

Florida Forever is structured on a willing seller program so the owner's motivations to sell at less-than fees can vary. In some cases, the owner is a conservationist who has no plans to develop the land and wants to insure that the land remains pristine. The landowner may be concerned about liability issues. So, by utilizing the less-than-fee land acquisition method, the landowner can still own and use the property and the land will be monitored and essentially protected by the state. Also, a landowner might be willing to sell if there is a section of the property inhabited by endangered species or is protected and the landowner is prohibited from developing it.

Rule 18-24, Florida Administrative Code, revised in December 2009, along with Chapter 259, F.S., provides the criteria that must be met for a property to be eligible to be a Florida Forever project under the Division of State Lands. The rule outlines the process used by the Acquisition and Restoration Council (ARC) to add a new property to the list of DSL projects. The ARC is an 11 member group with representatives from five state agencies, four appointees of the Governor, one appointee by the Fish and Wildlife Conservation Commission (FWC), and one appointee by the Commissioner of Agriculture and Consumer Services (DACs). ARC has responsibility for the evaluation, selection, and ranking of state land acquisition projects on the Florida Forever priority list, as well as the review of management plans and land used for all state owned conservation lands.⁴

Rule 18-24, F.A.C., specifies that land can be purchased or obtained for Florida Forever projects if it meets several of the established Florida Forever goals listed in the administrative rules. The goals and measures include features related to the completion of ongoing projects, increased protection of Florida's biodiversity, maintenance

¹ How Property Becomes a Florida Forever Project, FDEP, July 2010.

² Office of Program Policy Analysis and Government Accountability, Sunset Memorandum, October 31, 2007.

³ DEP, Division of State Lands, September 29, 2010.

⁴ Florida Department of Environmental Protection, staff, Florida Forever, State Lands.

and restoration of the quality and natural function of uplands and wetlands, protection of our water supply, providing natural resource-based recreational opportunities, preserving our significant archaeological and historical sites, maintaining sustainable forestlands, and providing open space within urban areas. These goals and measures are used not only for evaluating new property proposed to be added to our acquisition lists, but also to determine how well the program is doing in protecting our natural and cultural lands. The rule further specifies that land can be purchased or obtained for Florida Forever projects if it:

- Is part of the ongoing effort to restore, protect or improve land or water;
- Improves the management of other public land;
- Has significant historical value;
- Has funding for at least the next two years;
- Helps regional water supplies;
- Is in danger of being developed;
- Implements part of an ecosystem plan;
- Helps the Everglades Restoration effort;
- Can be purchased for 80 percent of its value or less;
- Is a joint effort at acquiring and preserving land; or
- Can be acquired with alternative funding such as tax incentives, or easements.

To be added to the Florida Forever list, a landowner must submit an application to the DSL to be a new Florida Forever Project or an addition to an existing Florida Forever Project. ARC has two application cycles for new projects per year, with application deadlines of December 31 and June 30 of each year. Application for addition to existing projects can be submitted at any time. After receiving the applications for new projects, staff of the Division's Office of Environmental Services (OES) reviews them for completeness and sends them to the members of ARC and to the Florida Natural Areas Inventory (FNAI). Staff from FNAI prepares an initial report on the significance of the natural resources on the site based on their database of natural communities, occurrences of rare plants and animals in Florida, and statewide geographic data on the relative significance of the proposal using sixteen of the Florida Forever performance measures spanning the broad list of goals previously mentioned.

Acquisition and Restoration Council-First Vote

ARC must vote twice to add a new project to the Florida Forever list. The first vote occurs at their first meeting after the application deadline, in February and August of each year, respectively. During the public hearing portion of these meetings, property owners, project sponsors and other interested parties have the opportunity to explain to the ARC why the resources of their projects are worthy of protection through the Florida Forever program. In addition to the presentations at public meetings, interested parties may also send letters in support of new projects to members of the Council. After hearing public testimony and evaluating the application and supporting documents, the ARC members vote to determine which projects are worthy of moving forward to receive an in-depth full review. Even though there are 11 members on ARC, only five positive votes are needed for a project to move to the next evaluation phase⁵.

Project Evaluation Reports

Project proposals that receive five positive votes from ARC receive a detailed evaluation from staff of the agencies represented on ARC, FNAI, and other natural and cultural resource experts. As a first step, FNAI offers a Resource Planning Boundary which might suggest additional lands to be examined for possible expansion of the project. OES then coordinates site visits to the properties undergoing evaluation, during which ARC members and staff gain first-hand knowledge of the proposed projects. After the site visit, agency and FNAI staffs each write detailed analyses of portions of a final Project Evaluation report, which OES merges into a final document. The final reports contain descriptions of the natural resources, physical hydrological, recreational, archaeological, historical and geographical characteristics of the property. The reports describe the extent to which each of the Florida Forever goals and measures would be fulfilled by acquisition of the property, recommend final boundaries

⁵ How Property becomes a Florida Forever Project, FDEP, July 2010.

for the proposed projects, and recommend land managers for the properties with an outline (management prospectus) of how each property would be managed.

Prior to completion of the Project Evaluation reports, the Council conducts one or more public hearings in the general vicinity or vicinities of the projects under consideration so that interested parties may show support of or opposition to the properties that are being proposed for addition to the Florida Forever acquisitions list. The ARC votes to approve, amend or reject the reports at its June and December meeting, respectively.

Acquisition and Restoration Council-Second Vote

After approving the Project Evaluation Reports for each new project, the ARC then votes at the same meeting on whether or not to add the proposed new projects as approved Florida Forever projects. As is the case for the first Council vote, only five members must vote affirmatively to approve a new project to the acquisition list. This second vote takes into account the detailed resource analyses contained in the Project Evaluation Reports, as well as all public input provided during the evaluation phases.

Project Ranking

ARC's final responsibility in preparing its proposed acquisition list is to rank projects in numerical order in categories specified in Chapter 259, F.S. Each existing and newly approved project is assigned to one of the following categories: Critical Natural Lands, Climate Change Lands, Partnerships and Regional Incentives, Less-than-Fee Projects (primarily conservation easement), and Substantially Complete Projects. At its June and December meetings, respectively, after voting to add new projects to the list, the Council votes within each category to rank projects from highest to lowest priority. This ranking sets the stage for a work plan to be developed by the Division that outlines which specific projects and ownership within projects will be negotiating for purchase with Florida Forever funds allocated by the Legislature.

Public Participation in Project Selection and Ranking

ARC encourages public participation in all of its activities. Almost all of the Council's meetings occur over two days, with the first day devoted to public input and discussion of agenda items. The second day is typically devoted to final votes after Council members have had an opportunity to consider the information and discussion from the day before. In addition to public input at its regularly-scheduled meeting in Tallahassee, the ARC also holds public hearings around the state specifically for receiving public input in support of our opposition to proposed new projects and for information useful in ranking both new and current projects for the next Florida Forever list. The ARC accepts written comments on projects, either as letters or email. Any written comments that are sent to the ARC Staff Director are made available to all Council members. The ARC also holds special workshops as appropriate to solicit input for major policy changes and rulemaking.

List Approval by the Governor and Cabinet

The final step in creating the Florida Forever acquisition list is approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. The list, part of the Florida Forever Five-Year Plan, is usually taken to the Governor and Cabinet in February and September respectively. The Governor and Cabinet may approve or reject or remove projects from the Florida Forever list, but they may not change the priorities within categories as determined by the ARC. The public may also attend and provide input on the priority list when it is presented to the Governor and Cabinet.

The list of the projects that are recommend by the ARC to be included on the Florida Forever Priority list are placed in categories based on the information and evaluation reports provided by the independent appraisers. Projects are grouped into two groups and three subgroups. Group A are those acquisition projects that received the highest priority for acquisition. Group A projects are so designated based on the contribution toward achieving the Florida Forever goals, measures and criteria. The number of projects designated for Group A is limited, as determined by the Council, based on the total estimated funds available for acquisition during the acquisition

cycle for which the projects are scheduled, and the anticipated success rate of acquiring targeted projects. Group B are those acquisition projects that while important, are not the state's highest priority⁶.

Division of State Lands Work Plan

After the Florida Forever project selection and ranking process is completed and approved by the Governor and Cabinet, the DSL translates the ranked Florida Forever list into a work plan. In preparing the work plan, the Division consults project sponsors, prospective managers, local governments, and other stakeholders to identify the most important ownerships for resource protection and management feasibility in the highest-ranked projects within each of the five categories. Next, the Division determines the amount of funds available for acquisition, allocates the funds among categories, and decides which properties will be pursued during the coming months. The work plan must be approved by the ARC and by the Governor and Cabinet before October 1 of each year. The ARC allows for public input on the work plan at its August meeting. The public may also attend and provide input on the work plan when it is presented to the Governor and Cabinet in September of each year.⁷

Monitoring

The Office of Environmental Services (OES), Division of State Lands, is the primary entity responsible for monitoring landowner compliance with the terms and restrictions of the conservation easements and land protection agreements. In DSL's October 2009 report to the Acquisition and Restoration Council they provide examples of how the agencies work together to maintain the properties. For example, three of the easements (Volusia County Conservation Corridor/Plum Creek-Relay Tract, Reserve/Mills Ranch, and Cedar Swamp/Deep Forest) are monitored by the St. John's River Water Management District. Phase I of the Fisheating Creek is monitored by the Florida Fish and Wildlife Conservation Commission as part of their management of the fee-simple acquisition in that project, and the Bureau of Mine Reclamation monitors the easement over the Green Swamp/Jahna Industries easement. The latter still has an active mine on it that will eventually be restored to a more natural state. Finally, the U.S. National Park Service is monitoring the 7.4 acre Mercer conservation easement in the Northeast Florida Blueway.

OES has entered into contracts with four consultants to monitor our conservation easements and land protection agreements. Only one conservation easement has not been monitored at least once. The most recently purchased, Promise Ranch, closed in March 2009, and will be monitored for the first time in the fall of 2010. Most of the 56 Green Swamp Land Protection Agreements have been monitored four times, with eight properties being monitored at present. OES monitors the conservation easement and land protection agreement properties every 18 months. There have been no violations of the terms and conditions of any conservation easement or land protection agreement in the past year. The total expenditure for monitoring in FY 2008/2009 came to \$155,169, for 55,644, acres, monitored by OES or for \$2.79 per acre.

According to DEP, the program of conservation easement has been well received by landowners who hold land protection agreements. The landowners have complied with the terms and conditions of the land protection agreements. DEP has been particularly pleased to see how cooperative and successful the landowners have been in controlling invasive exotic plants on their properties. Virtually every landowner in the Green Swamp (conservation easement and land protection agreements lands) has implemented a plan to keep tropical soda apple, old world climbing fern, Chinese tallow and cogon grass off their properties. The easement monitoring staff teaches the landowners to recognize exotics and shows them where they are located. The FWC Invasive Plant Management Section (formerly DEP Bureau of Invasive Plants), has been critical in providing literature and passing along tips to help the land owners identify the plants and treat them accordingly.⁸

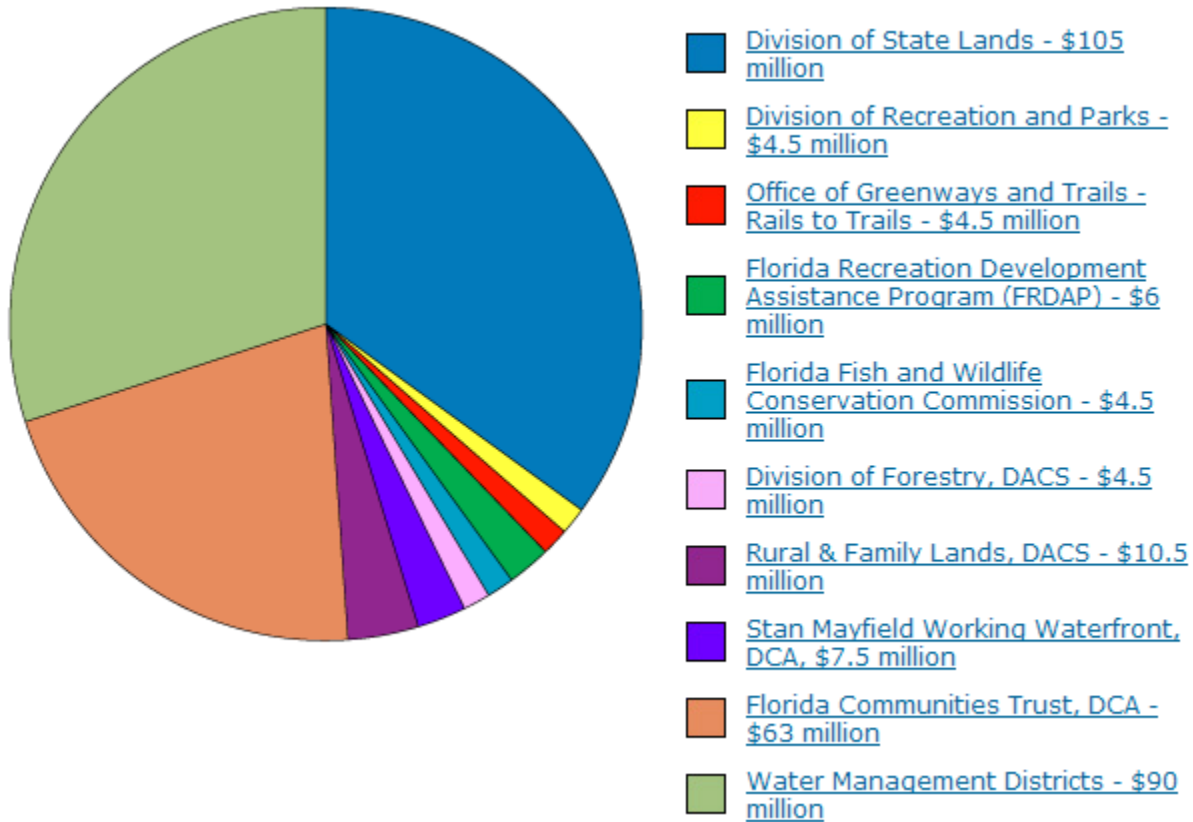
According to DEP, since its inception in July 2001, the Florida Forever Program has acquired more than 650,000 acres of land with \$2.73 billion. The average cost per acre is approximately \$4,200. Florida Forever funding is allocated by the legislature at \$300 million per year. It is distributed by the DEP to a number of state agencies and programs to purchase public lands in the form of parks, trails, forests, wildlife management areas and more. This

⁶ Florida Forever Five Year Plan, FDEP, Division of State Lands, Office of Environmental Services.

⁷ How Property Becomes a Florida Forever Project, FDEP, July 2010.

⁸ Jim Farr, Status of Conservation Easements, Division of State Lands, FDEP.

chart provides a broad view of the Florida Forever program annual allocation (when fully funded) within the various agencies and divisions.



9

Some of the conservation accomplishments include:

- 247,140 acres of Strategic Habitat Conservation Areas;
- 409,370 acres of rare species of special concern;
- 621,719 acres of ecological greenways;
- 56,950 acres of under-represented natural communities;
- 76,100 acres of natural floodplains;
- 628,800 acres of important to significant water bodies;
- 5,100 acres of fragile coastline;
- 261,630 acres of functional wetlands;
- 607,420 acres of significant groundwater recharge areas;
- 196 kilometers of land to support priority recreational trails;
- 295,050 acres of sustainable forest land; and
- 558 archaeological and historical sites.¹⁰

The acreages listed above were derived from the most recently updated Florida Forever data layers, which are continuously amended to reflect the most current scientific analyses of Florida’s natural resources. Additionally, the acreages recorded for each measure often overlap, and thus should not be added together.

⁹ www.dep.state.fl.us/lands/fl_forever.htm, last visited 10/1/10

¹⁰ Florida Forever Five Year Plan, March 2010, FDEP, Division of State Lands, Office of Environmental Services.

Below is a chart of the Florida Forever Program for the Division of State Lands Acquisition Expenditures (as of August 31, 2010). The chart shows the fiscal year, how many thousand acres were acquired and the how much was purchased using the fee simple and less-than fee method.¹¹

| FLORIDA FOREVER ACQUISITION PROGRAM | | | | |
|--|----------------|-------------------------|---------------|------------------------------|
| Acreage/Costs | | | | |
| Fiscal Year | Acres | Full-Fee Cost \$ | Acres | Less-Than-Fee Cost \$ |
| 2001-2002 | 15,513 | 83,192,584 | N/A | N/A |
| 2002-2003 | 109,463 | 151,403,885 | 11,545 | 11,491,407 |
| 2003-2004 | 18,566 | 50,606,376 | 90 | 345,008 |
| 2004-2005 | 14,673 | 59,064,614 | 37,697 | 32,598,090 |
| 2005-2006 | 18,528 | 108,980,981 | 11,553 | 7,671,800 |
| 2006-2007 | 8,418 | 124,144,227 | 579 | 3,471,400 |
| 2007-2008 | 16,093 | 119,610,818 | 1,430 | 7,287,500 |
| 2008-2009 | 2,215 | 35,077,562 | 1,489 | 7,000,000 |
| 2009-2010 | 77 | 12,521,858 | N/A | N/A |
| 2010-2011 | 41 | 569,092 | N/A | N/A |
| Total | 203,587 | \$745,171,997 | 64,383 | \$69,865,205 |

Florida Forever funds were not expended in fiscal year 2000-2001 (the beginning of Florida Forever) because there was a balance of P2000 funds that was being expended.

The average cost per acre for the full fee acquisitions is approximately \$3,650. The average cost per acre for the less-than-fee acquisitions is approximately \$1,100. For example, according to DSL, a total of four conservation easements (CE) were acquired for fiscal years '07-'08, '08-'09 and '09-'10. The average amount paid for the CEs was 49% of the fee value, or 79% of the conservation easement value. The conservation easement value is a comparison between the value of the property with its developmental rights and what the property is worth with the conservation easements and when development is prohibited. The process of determining this value has gotten much more accurate since the program's inception. Originally, the only hard numbers the appraisers had to utilize included the full fee cost of similar properties or bank loan records. With the acquisition of more DSL properties, there are more tangible comparisons available for appraisal purposes. Further, appraisers can carve out the value of the rights the owner retains if it is agriculture or hiking, etc., and apply a numeric value to that activity. So, the conservation agreements vary themselves based on the rights the owner retains.

Office of Program Policy Analysis and Government Accountability Review (2007)

The Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed DSL and their land acquisition procedures in October 2007. OPPAGA reported that the DSL's Land Management program exceeded timeliness standards for completing most requests and applications for leases, easements, and land use agreements. The division also met its legislative standard for controlling invasive aquatic plants (this responsibility is now under FWC's purview). For example, the division was successful in purchasing lands below approved levels, with purchase prices at 80%. However, DSL's Land Administration program did not meet its goal to increase the amount of acreage on the Florida Forever list. According to DEP, "the trend in actual acreage placed on the list slowed during the life of the program."¹²

¹¹ Florida Department of Environmental Protection, Division of State Lands, 9/29/10.

¹² Office of Program Policy Analysis and Government Accountability, Sunset Memorandum, October, 2007.

Conclusion

While there has been long-term public and legislative support for conservation land acquisition programs in Florida, the ongoing question has been “How much conservation land should the state buy?”¹³ Currently, about 27% of the state’s lands are managed for conservation.¹⁴ A 1994 baseline estimate by the Florida Fish and Wildlife Conservation Commission asserted that approximately 11.7 million acres, or about 33% of the land area of the state, should fall into some type of conservation land use.¹⁵ It is difficult to assess if more land purchases should utilize the less-than-fee methods when the state is restricted to the willing seller program. As stated earlier, lands purchased under the full fee method are acquired for a variety of reasons and the less-than fee method is a unique option and is not appealing to all landowners. The decision of land acquisition for conservation purposes is complex and will continue to evolve as the Legislature balances the needs of Florida within the confines of the budget.

¹³ Office of Program Policy Analysis and Government Accountability, Sunset Memorandum, October, 2007.

¹⁴ Protecting Wild Florida: Preserving the Best and Last Wilderness of Florida, Forever, The Nature Conservancy, 2006.

¹⁵ Closing the Gaps in Florida’s Wildlife Habitat Conservation System, Florida Game and Fresh Water Fish Commission, 1994.