

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 15, 2007 Consent Regular
 Workshop Public Hearing

Department
Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to accept: the donation of a 78.2-acre preserve area from Carleton Oaks Homeowners Association, Inc. (the HOA) to be incorporated into the Loxahatchee Slough Natural Area (LOS) and managed by the County’s Department of Environmental Resources Management (ERM), subject to: 1) the preserve area being brought into compliance with the applicable South Florida Water Management District (SFWMD) and United States Army Corps of Engineers (USACOE) permits; 2) the HOA making a \$20,000 one time contribution towards the perpetual maintenance of the preserve; and 3) satisfactory completion of County due diligence.

Summary: On November 10, 2006, the HOA submitted an Application for the Acceptance of Conservation Lands for their 78.2-acre preserve area. As proposed in their application and conditioned above, the HOA will meet all of the nine primary criteria listed in the policy prior to closing except for only partially meeting the financial commitment (No. 8) and public access (No. 7). The one time donation of \$20,000 will not be sufficient to fund perpetual land management (currently estimated at \$15,000 per year) and the conservation easement will be modified post-closing to allow for public access. District 1 (JMB)

Background and Policy Issues: The Loxahatchee Slough (Attachment 1) is an approximate 11,013-acre Natural Area located within the City of Palm Beach Gardens. The Carleton Oaks residential community is north of Northlake Boulevard, and bordered on the north and east sides by the LOS (Attachment 1). The portion of the LOS that borders Carleton Oaks contains approximately 1,659 acres. On November 10, 2006, the HOA submitted a letter (Attachment 2) asking the County to accept the donation of their 78.2-acre preserve area (Parcel Control Number: 00-41-42-13-05-002-0000). The preserve area, which contains fair to good quality wetlands and uplands, was required by the SFWMD and USACOE as mitigation for wetland impacts incurred during the construction of Carleton Oaks. Although the preserve area does not contain any storm water retention areas, it is surrounded by a perimeter berm and controlled with a fixed water control structure. If the County accepts the proposed land donation, ERM would request permission from the SFWMD and USACOE to abandon the control structure and remove the perimeter berm to re-establish a hydrologic connection with the LOS and facilitate management

(Continued on Page 3)

Attachments:

1. Location Map
2. Correspondence from Carleton Oaks Homeowners Association, Inc.
3. Policy for the Acceptance of Conservation Lands

Recommended by: Richard E. Wabaly 4/16/07
Department Director **Date**

Approved by: [Signature] 4/30/07
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures					
Operating Costs	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>
External Revenues	<u>\$20,000>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><\$5,000></u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No.: Fund 1226 Department 380 Unit 3162 Object 3401 (Bud)
Fund 1226 Dept 380 Unit 3162 RCRS 6600

B. Recommended Sources of Funds/Summary of Fiscal Impact:

A \$20,000 donation by the Carleton Oaks Homeowners Association would cover the first year's expected management and maintenance costs, as well as a portion of the second year's costs. Management and maintenance costs beyond the \$20,000 donation would be paid using natural areas or other designated funds. The donation would be deposited in the Natural Areas Fund.

C. Department Fiscal Review: *JR*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

Jim Or 4/23/07
OFMB *4/18/07*

Jim J. Jacobus 4/24/07
Contract Development and Control *E. Jones 4/24/07*

B. Legal Sufficiency:

James Brubaker 4/24/07
Assistant County Attorney

C. Other Department Review:

Department Director

(Continued from Page 1):

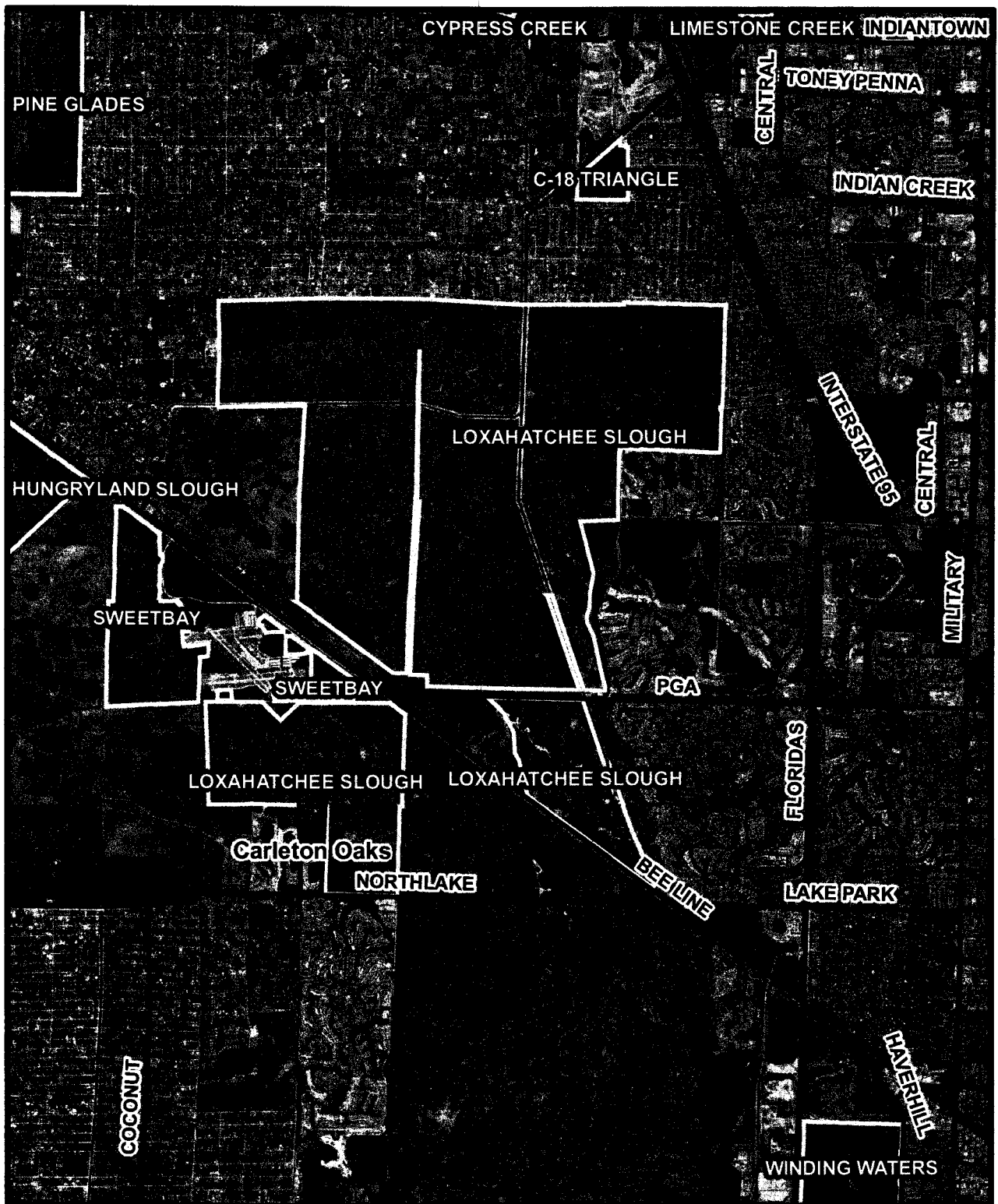
of the preserve area in conjunction with the adjacent portions of the LOS. The preserve area is currently out of compliance with its permits as it exhibits more than 5% aerial coverage of exotic/nuisance vegetation in certain areas of the preserve, and the HOA has not yet submitted the fourth of five required annual monitoring reports. Compliance with these requirements would occur prior to closing.

The County will benefit from the proposed land donation in that acceptance of the donation will:




- 1) allow public passive recreational access to just over 78 additional acres of environmentally sensitive land contiguous with southwest portion of the LOS;
- 2) expand an environmentally sensitive County-owned Natural Area, the Loxahatchee Slough, which feeds the Wild and Scenic Loxahatchee River; and
- 3) receive property valued far in excess of the \$15,000 per year needed to maintain the area.

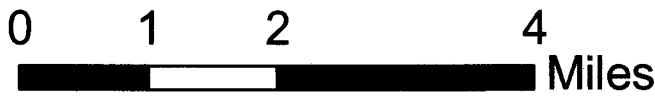
If the donation of the conservation area is accepted, the preserve area will be incorporated into the adjacent LOS and managed by ERM as part of that site.

Carleton Oaks Land Donation



Legend

-  Carleton Oaks
-  Roads
-  PBC Natural Area



Palm Beach County
 Department of Environmental
 Resources Management
 2/22/07 BJS



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*also admitted in NY & NJ
**also admitted in CA & HI

November 10, 2006

Sent via certified mail RRR

Richard Walesky, Department Director
South Florida Water Management District
2300 N. Jog Road, 4th Floor
West Palm Beach, FL 33411

**Re: Carleton Oaks Application for the Acceptance of Conservation Lands
South Florida Water Management District Permit No. 50-03516-5**

Dear Mr. Walesky:

Our office represents Carleton Oaks Homeowner's Association, Inc. with regard to their application to donate conservation lands to Palm Beach County. We have been provided with the Policy for the Acceptance of Conservation Lands. We request the Department of Environmental Resources accept our application to donate the land and respond to the considerations outlined in the policy as follows:

- 1) Will the conservation lands be conveyed to the County by way of a long-term non-revocable lease and management agreement (i.e., agreement for more than fifty (50) years) or deeded fee simple to the County?; and

Carleton Oaks Homeowner's Association, Inc. ("Association") will donate a 78.2 acre conservation preserve "deeded fee simple" to Palm Beach County ("County").

- 2) Is the conservation land: a) immediately adjacent to and contiguous with an existing natural area managed by ERM and is it configured such that its inclusion into the adjacent natural area will provide an exceptional benefit to the management of the natural area by adding desirable habitat for listed species or evening-out or squaring-off the natural area's boundaries; or b) not immediately adjacent to an existing natural area but consisting of at least 15 acres of scrub or scrubby flatwoods habitats or 50 acres or more of other wetland/upland habitat type?; and

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The conservation land is surrounded on the north and east sides by the southwest parcel of an existing natural area maintained by ERM. The Loxahatchee Slough Natural Area consists of approximately 11,000 acres of environmentally sensitive land used for passive recreation such as hiking and bird watching. The conservation land would be absorbed by the Loxahatchee Slough Natural Area.

- 3) **Is the conservation land a continuous piece of property that is not affected by roads, structures, irregular boundaries or other configurations that would make management of the preserve more difficult or costly?; and**

Yes. The conservation land is one continuous piece of property. There are no roads, structures or irregular boundaries affecting the area.

- 4) **Is the conservation land free of nonnative or invasive vegetation (i.e., less than 5% coverage)?; and**

Yes. The land is currently under contract with Superior Waterway Services, Inc. for preserve area management services including Exotic Vegetation Control, Invasive Weed and Brush Control and Management Reporting.

- 5) **Is the conservation land currently in compliance with any and all permit requirements associated with the property, including but not limited to any monitoring, reporting, and survivorship requirements specified in all applicable permits?; and**

Yes. The land is currently under contract with Superior Waterway Services, Inc. for preserve area management services including Exotic Vegetation Control, Invasive Weed and Brush Control and Management Reporting. The Association has been reporting to Raymond Miller of the South Florida Water Management District.

- 6) **Is the conservation land clear of restrictions, such that it can be included into an adjacent natural area and managed subject to both the County's Natural Areas Ordinance (94-13) and other land management activities that ERM deems necessary to maintain or restore native vegetation communities within the conservation land, such as prescribed burns?; and**

No. The land is currently restricted by a Deed of Conservation Easement to South Florida Water Management District recorded in OR Book 11056 at Page 808 of the Public Records of Palm Beach County (attached hereto as Exhibit "A") and South Florida Water Management District Permit No. 50-03516-5 (attached hereto as Exhibit "B"). However, it is our understanding the South Florida Water

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Management District may agree to amend the deed as necessary to meet the needs of the County.

- 7) **Is the conservation land clear of restrictions such that public access on the property is allowed for passive resource-based recreational and educational activities?; and**

No. The Deed of Conservation Easement states under condition #4 "No right of access by the general public to any portion of the Property is conveyed by this conservation easement." However, it is our understanding the South Florida Water Management District may agree to amend the deed as necessary to meet the needs of the County and has previously advised the land would be open to the public subsequent to transferring the land to the County.

- 8) **Will the conservation lands donation be accompanied by a financial commitment from the donating entity (e.g., a developer or a homeowners' association) to fund the management and maintenance cost (as determined by ERM) to preserve land in perpetuity, either through an endowment trust fund or an annual assessment fee that will be adjusted annually, based on the inflation rate as tied to the consumer price index?; and**

No. The Association shall not commit any financial resources with the land donation.

- 9) **Will the party/entity donating the conservation lands pay all costs associated with the donation, including by not limited to title commitment, surveys, recording fees, and taxes?**

Yes. The Association will be responsible for all costs associated with the transfer of the land.

Additional Considerations:

- 1) **Does the conservation land contain storm water retention areas that perform primary storm water treatment?; and**

No.

- 2) **Does the conservation land contain water control structures that will need to be operated and maintained by ERM?; and**

No.

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South Florida Water Management District
November 10, 2006
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- 3) Will the donating entity agree that it will not object to the County's future land management activities, including but not limited to prescribed burns, vegetation removal by mechanical methods or herbicide treatments, and hydrologic alterations (unless they adversely affect drainage on the adjacent parcels) within the conservation land and/or natural area?

The Association will not object to the County's future land management activities prescribed burns, vegetation removal by mechanical methods or herbicide treatments, and hydrologic alterations (unless they adversely affect drainage on the adjacent parcels) provided the County gives prior notice of those activities.

Thank you for taking the time to consider our application. Please feel free to contact me regarding the above or any other questions that may arise. We look forward to hearing from you soon.

Sincerely,
Gerstin & Associates


Dara S. Siegel, Esq.

Dara S. Siegel, Esq.

From: Dara S. Siegel, Esq. [Dara@Gerstin.com]
Sent: Tuesday, March 20, 2007 8:08 AM
To: 'rwalesky@co.palm-beach.fl.us'
Subject: Carleton Oaks

Mr. Walesky -

I tried calling this morning, but somehow I was never connected to a voicemail or a person who could take a message for you. I hope this email reaches you.

I have spoken with a representative of the Carleton Oaks Homeowners Association and he advised they may be willing to come up with a one time \$20,000 payment to go along with the transfer of the property. The board of directors would have to approve this. He also requested an estimate of what it would cost to transfer the property.

Please feel free to contact me to discuss.

Thank you,
Dara Siegel

Dara S. Siegel, Esq.



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Title Insurance; Commercial & Residential Real Estate;
Business Litigation & Transactions; and
Community Associations.

Ad 7/28/06
76 7/28/06

Agenda Item #: 7C-1

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

minutes 4-3
10/1/06 approved

AGENDA ITEM SUMMARY

Meeting Date: July 11, 2006 () Consent (X) Regular
() Workshop () Public Hearing

Department
Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

Copies 7/28/06
NRS/D. Hilling AIS, cert #
FSS - AIS, cert # 1
AC - AIS, cert # 1

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Policy for the Acceptance of Conservation Lands whereby the County may accept, on a case by case basis, an interest in conservation lands (fee simple or long-term lease) from developers or homeowner associations (HOAs). This land would be incorporated into the Natural Areas Program and managed by the County's Department of Environmental Resources Management (ERM).

Summary: At the April 18th meeting of the Board of County Commissioners, staff was requested to explore a new County policy providing for transferring the ownership and management responsibilities of private conservation lands operated and maintained by developers or HOAs to the County. ERM staff has investigated this potential policy, identified procedures that would guide this process, and developed criteria for consideration when requests are made for transfer of this interest. Several of these criteria include, but are not limited to, connectivity with other County-managed natural areas, the environmental condition of the conservation lands, the restrictions that may encumber the conservation lands, and whether monetary contributions for conducting the maintenance are included in the offer to have the County take over the ownership and management of these conservation lands. ERM staff recommends the Board approve the Policy for the Acceptance of Conservation Lands as presented. Countywide (SF)

Background and Policy Issues: ERM developed a policy whereby the County would consider on a case-by-case basis, taking over the ownership and management of private conservation lands when requested to do so by developers or HOAs. Presentation of this policy for the Board's consideration fulfills the directive given to ERM by the Commissioners at the April 18, 2006 meeting.

Attachments:
1. Policy for the Acceptance of Conservation Lands

Recommended by: Richard P. Walubry 6/19/06
Department Director Date

Approved by: [Signature] 6/22/06
County Administrator Date

APPROVED
BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF JULY 11 2006
Judith Crook D.C.
MINUTES & RECORDS SECTION

POLICY FOR THE ACCEPTANCE OF CONSERVATION LANDS

Palm Beach County ("County") will consider the acceptance of conservation lands to be donated to the County for management by the Department of Environmental Resources Management ("ERM") on a case-by-case basis. In order to donate conservation lands to the county, the party or parties owning the conservation lands must send a written request to ERM for evaluation. The written request must include proof of ownership of the property and authority to convey an interest in the property to the County. ERM will review the request, using the following considerations as guidelines to determine if acceptance of the conservation lands will further the goals of ERM and the County's Natural Areas Program:

- 1) Will the conservation lands be conveyed to the County by way of a long-term non-revocable lease and management agreement (i.e., agreement for more than fifty (50) years) or deeded fee simple to the County?; and
- 2) Is the conservation land: a) immediately adjacent to and contiguous with an existing natural area managed by ERM and is it configured such that its inclusion into the adjacent natural area will provide an exceptional benefit to the management of the natural area by adding desirable habitat for listed species or evening-out or squaring-off the natural area's boundaries; or b) not immediately adjacent to an existing natural area but consisting of at least 15 acres of scrub or scrubby flatwoods habitats or 50 acres or more of other wetland/upland habitat type?; and
- 3) Is the conservation land a continuous piece of property that is not affected by roads, structures, irregular boundaries or other configurations that would make management of the preserve more difficult or costly?; and
- 4) Is the conservation land free of nonnative or invasive vegetation (i.e., less than 5% coverage)?; and
- 5) Is the conservation land currently in compliance with any and all permit requirements associated with the property, including but not limited to any monitoring, reporting, and survivorship requirements specified in all applicable permits?; and
- 6) Is the conservation land clear of restrictions, such that it can be included into an adjacent natural area and managed subject to both the County's Natural Areas Ordinance (94-13) and other land management activities that ERM deems necessary to maintain or restore native vegetation communities within the conservation land, such as prescribed burns?; and
- 7) Is the conservation land clear of restrictions such that public access on the property is allowed for passive resource-based recreational and educational activities?; and
- 8) Will the conservation lands donation be accompanied by a financial commitment from the donating entity (e.g., a developer or a homeowners' association) to fund the management and maintenance cost (as determined by ERM) to preserve land in perpetuity, either through an endowment trust fund or an annual assessment fee that will be adjusted annually, based on the inflation rate as tied to the consumer price index?; and
- 9) Will the party/entity donating the conservation lands pay all costs associated with the donation, including but not limited to title commitment, surveys, recording fees, and taxes?

If during the evaluation by ERM, the considerations numbered 1-9 are all answered in the affirmative, ERM will recommend to the Board of County Commissioners ("BCC") that the conservation lands be accepted by the County for management by ERM. If the answer to any of the above cited 9 considerations is negative, ERM will recommend approval or denial of the

Attachment 3

management request based on the given circumstances and overall environmental benefit of accepting the conservation lands. ERM may also look at additional factors, including but not limited to, the following:

1. Does the conservation land contain storm water retention areas that perform primary stormwater treatment?; and
2. Does the conservation land contain water control structures that will need to be operated and maintained by ERM?; and
3. Will the donating entity agree that it will not object to the County's future land management activities, including but not limited to prescribed burns, vegetation removal by mechanical methods or herbicide treatments, and hydrologic alterations (unless they adversely affect drainage on the adjacent parcels) within the conservation land and/or natural area?

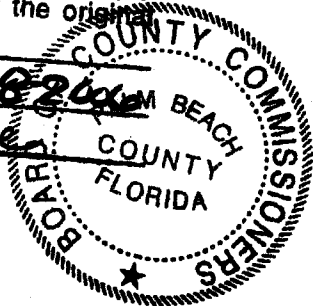
After evaluation of all of the above cited considerations, ERM will make a recommendation to the BCC. The recommendation will include the rationale for the recommendation and identification of any potential impacts to the County, such as costs for the land management activities or the need for increased staffing to manage the conservation lands. If the recommendation is to accept the conservation lands donation, ERM will work with the County Attorney's Office ("CAO") and the Property and Real Estate Management Division ("PREM") to prepare the necessary agenda item for the BCC to consider accepting the conservation lands for management by ERM. If the BCC votes to accept the conservation lands donation and the associated land management responsibilities, ERM will work with the CAO and PREM to close any necessary real estate transactions and establish any needed funding mechanisms for the management activities. If the recommendation is to not accept the donation or long term lease and management agreement, the requesting party or parties will be notified of the decision in writing and thanked for the opportunity to consider the donation.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk & Comptroller certify

this to be a true and correct copy of the original
filed in my office on JUL 11 2006

dated at West Palm Beach, FL on 7-18-2006

By Judith Crostler
Deputy Clerk



Attachment 3