



**ENVIRONMENTALLY ENDANGERED LANDS (EEL) PROGRAM  
SELECTION & MANAGEMENT COMMITTEE (SMC)  
November 2, 2007  
Attendance List**

***SELECTION & MANAGEMENT COMMITTEE MEMBERS***

Dave Breininger  
Mark Bush  
Ron Hight  
Ross Hinkle  
Paul Schmalzer  
Kim Zarillo

***EEL PROGRAM STAFF***

Sandy Carnival  
Laura Clark  
Mike Knight  
Chris O'Hara  
Scott Taylor

***THE NATURE CONSERVANCY***

Keith Fountain  
Anne Mayer  
Rebecca Perry

***GUESTS***

Maureen Rupe, Partnership  
Edward Slaney, Partnership  
Doug Sphar, Citizen  
Suzanne Valencia, Sierra Cub



**ENVIRONMENTALLY ENDANGERED LANDS (EEL) PROGRAM  
SELECTION & MANAGEMENT COMMITTEE (SMC)  
November 2, 2007  
Meeting Minutes**

**CALL TO ORDER:**

Ross Hinkle, Chairman, called the meeting to order at 1:15 PM.

**PUBLIC COMMENT:**

None.

**MINUTES:**

The September 28, 2007 minutes were presented for approval. The August 31, 2007 minutes are incomplete.

Ross asked for comments to the September minutes. Paul Schmalzer noted that Page 8 should be corrected to clarify that the Centerlane Holdings property was located southwest of Micco Scrub Sanctuary and west (rather than north) of the St. Sebastian River Preserve.

**MOTION ONE:**

**Paul Schmalzer moved to approve the September 28, 2007 minutes as amended.  
Ron Hight seconded the motion  
The motion carried unanimously.**

**ADMINISTRATIVE REVIEW:**

The Administrative Review was discussed.

**BOCC and ARC Update**

Mike provided information regarding recent activities by the Board of County Commissioners (BoCC) and the Acquisition and Restoration Council (ARC) in Tallahassee including:

**Thousand Islands, Reynolds Property Acquisition**

The Reynolds portion of the Thousand Islands property acquisition was approved by the BoCC on October 23, 2007.

**Hunters Brooke Property Acquisition**

The Hunters Brooke property acquisition and conservation easement donation were both tabled by the BoCC during the October 23, 2007 meeting due to concerns raised by the Clerk's Office. Mike explained to the SMC that the Clerk's information was not presented to the BoCC, or to the EEL Program, until the morning of October 23<sup>rd</sup>, which prevented the Program from being able to provide a response during the Board meeting. The Clerk's concerns and an initial letter of response from the EEL Program were reviewed during the meeting.

It is anticipated that these items will go back to the BoCC on November 13, 2007 after a final response from the EEL Program is completed, and additional information can be provided for the BoCC to review.

The contract price presented during the October 23<sup>rd</sup> Board meeting for the Hunters Brooke property was within the appraised values. During that meeting the EEL Program was directed to obtain updated appraisals for this property because there were concerns regarding the declining real estate market.

Mike explained that the Clerk's information includes miscalculations and inaccurate information and he confirmed that a copy of the Clerk's concerns and final EEL Program responses will be provided to the BoCC, the SMC, and the Procedures Committee (PC) when the responses are complete, and prior to the November 13<sup>th</sup> Board Meeting.

A copy of the Clerk's concerns and the EEL Program's October 29<sup>th</sup> and November 9<sup>th</sup> responses regarding the Hunters Brooke property are included as part of these minutes.

Ross commented on the importance of the EEL Program's response being part of the public records and the critical timing issues related to the expiration dates of the option agreements.

#### Ag Ventures/Honeybrook Dev. and Scottsmoor Partners Properties Acquisitions

The Ag Ventures/Honeybrook and Scottsmoor Partners properties acquisition contracts are scheduled to be presented to the BoCC for review and approval on November 13, 2007. Contract prices are within the appraised values.

Dave Breininger informed the group that he has completed an analysis of how many potential Florida Scrub-jay territories could be contributed by these acquisitions. The addition, and proper management of these properties, could result in an increase of 34 - 49 additional territories, essentially doubling the number of potential territories in North Brevard. This is significant in terms of Scrub-jay recovery in this area.

Ross commented that after the Hunters Brooke property, the Ag Ventures/Honeybrook Dev. and Scottsmoor Partners properties were two of the most important acquisitions that have been put on the table and he suggested it would be beneficial if one or two of the SMC members could attend the Board meeting.

Paul and Kim stated they planned to attend the meeting. Ross thanked them for planning to attend and stated that in terms of biodiversity and conservation critical sites, these sites were highest priority.

#### Request for FPL easement at Micco Scrub Sanctuary

The BoCC approved the County portion of the FPL Transmission Line Easement on the Micco Scrub Sanctuary on October 9, 2007 and ARC approved the State's portion on October 12, 2007.

### **SMC REPORTS**

#### **REAC Update**

None.

#### **Discussion, future SMC Activities**

Ross mentioned that he had asked Mike for a few minutes during the meeting to discuss the next steps for the SMC. He stated that the primary goal of the Program is the protection of biodiversity, with education and passive recreation as additional objectives and that perhaps it would be beneficial to step back and take a look at the big picture in identifying where we are and where we need to go in ensuring that the goals of the Program are met.

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Dave Breininger stated he felt it would be useful to come up with quantitative biodiversity objectives, like population goals, and that it was critical to establish what was currently known on existing sites in order to develop and evaluate monitoring processes. He reviewed information that he had compiled, and which was distributed to the SMC, regarding existing and potential Florida Scrub-jay territories at the Malabar Scrub Sanctuary.

Mark Bush stated that there were some species that recovered more quickly than the Scrub-jay and that folks who study these species could provide information on EEL Program sanctuaries as well.

Chris O'Hara, South Region Land Manager stated that staff has developed a timeline for land management at some South Region sanctuaries and, that as an FIT student; he had participated in a Gopher Tortoise study at the Malabar Scrub Sanctuary.

Dave stated that a collaborative effort between staff and the SMC would be beneficial.

Kim Zarillo stated that the SMC includes two department heads; (Ross Hinkle – Chairman, Biology Department at the University of Central Florida, and Mark Bush – Chairman of the Ecology Department and acting Chair of the Biology Department at Florida Institute of Technology) and this would be a good time to develop relationships with institutions where a collaborative effort would benefit the Program, while providing opportunities for environmental studies and education.

Ron Hight spoke of the need to monitor from an ecological standpoint and his concern that there are becoming many requests for all kinds of public use, with very few people monitoring the ecological impact.

Ross agreed that a systematic review of each of the EEL Program sanctuaries would provide for opportunities to look at the big picture goals and needs of the sites. He commented that the matrix provided by staff during the last land acquisition prioritization had been beneficial.

Mike stated that staff could provide a matrix that would include information for all sites.

Kim said that a workshop with other agencies would also be beneficial.

It was determined that the SMC will review one site at each meeting and that the Malabar Scrub Sanctuary would be reviewed at the next meeting.

#### Additional Discussion

Kim Zarillo reported that she and Mike recently met with Commissioner Voltz, Ben Jefferies and Rochelle Lawandales regarding Mr. Jefferies' ideas for a paved trail in the South Region that would link developed areas. During the meeting, Mike and Kim provided clarification that in order for the SMC to formally consider the idea, additional information needed to be provided that more clearly described the scope and purpose of the project, and that what had been described did not appear to be consistent with the goals of the EEL Program. Kim stated that she had explained to the group that the project might be appropriate for an FCT grant. Mr. Jefferies may provide additional information to the SMC for their consideration at some point in the future.

Paul Schmalzer commented on the difference between a trail and a habitat corridor.

#### **STAFF REPORTS:**

None.

## **THE NATURE CONSERVANCY:**

Keith Fountain reviewed The Nature Conservancy's November 2, 2007 Report to the SMC. (Attached)

## **AGENDA ITEMS:**

### **Kabboord Wildlife Sanctuary Management Plan**

Scott Taylor provided a review of the draft Kabboord Sanctuary Management Plan which was previously distributed to the SMC for their review and comments.

The Kabboord Wildlife Sanctuary (KWS) is 502± acres, located in Merritt Island. The Sanctuary initially consisted of 450 acres which was purchased from John J. Kabboord in 1992. The remaining 52 acres were donated as part of a mitigation project.

The property consists of a hydric hammock community with scrubby flatwoods and scrub, and an impounded marsh. The impounded marsh is managed by the Brevard County Mosquito Control District. Management of the KWS includes conservation and restoration of ecosystem function, protection against exotic species, and storm water control through the North Merritt Island Storm water Management Program. The KWS is a Category 3 Sanctuary, meaning minimal or no improvements and limited public access, due to the vulnerability of resources and/or the need for intensive management restoration. Although the Sanctuary is a Category 3, opportunities for public access within limited areas of the site will be provided and hiking, biking, canoeing/ kayaking and fishing allowed. Areas for parking are in the planning stages. This management plan identifies the following specific management goals to guide management actions at the KWS:

1. Conservation of threatened, endangered and endemic species.
2. Conservation and restoration of natural (native) communities.
3. Removal of exotic species.
4. Coordination and monitoring of the storm water management activities.
5. Provision of public access, site security, and environmental education.
6. Assessment of carrying capacity of natural resources with public uses.
7. Conservation of resources with significant historical and archeological values.
8. Documentation of historic public uses.

A possible loop trail from Kings Park, which is located to the north, through the Kabboord Sanctuary, and back up to Kings Park, is being considered as a joint project with the Parks & Recreation Department.

Scott confirmed that comments which had been received from Paul Schmalzer on the most recently distributed draft would be incorporated.

Paul Schmalzer requested clarification on the status of the policy for the removal of feral pigs. Mike explained that there were many issues involved, but that progress was being made. Dave Breininger said that he had been asked to do some modeling for a doctoral student who was doing a feral pig project at the Merritt Island National Wildlife Refuge and that the results indicated that without control, a feral pig population could easily take over an area, resulting in significant negative impacts to native plants and animals. Mike assured the group that progress on the feral pig policy was continuing. Ross explained that this was an issue that could benefit from a focused approach, and that the SMC could provide information on how the issue was being handled in other areas, and support in terms of need.

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**MOTION TWO:**

**Paul Schmalzer moved to approve the Kabboord Wildlife Sanctuary Management Plan as amended.**

**Kim Zarillo seconded the motion**

**The motion carried unanimously.**

**Malabar Scrub Sanctuary Management Plan**

The Management Plan for the Malabar Scrub Sanctuary was approved by the SMC on October 17, 2006 with the contingency that the existing concrete road (Malabar Woods Blvd.) be used for the paved trail that was being requested by Linear Trail Planners. On April 24, 2007, the BoCC approved the plan, with a revision made by staff to place the paved trail on the Marie Street firebreak. This decision was made because the alignment of the trail to link up with the existing Maries Street trailhead could not be achieved by using the existing boulevard. The plan was reviewed by the Acquisition and Restoration Council on October 12<sup>th</sup> and 13<sup>th</sup>, and was deferred to a future meeting by a unanimous vote.

Comments dated October 3, 2007 from Vickie Larson, who is a member of the ARC Council, were distributed to the SMC, along with a draft of the EEL Program's planned response to Ms. Larson's comments.

Mike reviewed some of the issues that were raised by the ARC Council including:

- Details on restoration plans.
- Additional information regarding the anticipated type and placement of the Management and Education Center.
- Further analysis on the proposed paved trail.
  - Location and design
  - Permtting Requirements
  - Water Retention Issues
  - Impacts

**Public Comment**

Maureen Rupe relayed her understanding of the ARC Committee's directions, which she felt indicated that re-evaluation of the Malabar Scrub Management Plan was deferred to whenever the plans were done. She stated that she and a small group of Brevard County citizens had attended the October 12<sup>th</sup> and 13<sup>th</sup> ARC meeting and that they had audio copies of the October 13<sup>th</sup> session for anyone who would like to listen to it.

**Additional Discussion**

Dave Breininger asked if the Florida Natural Inventories Inventory (FNAI) had provided comment on the Management Plan. Mike confirmed they had. Staff will forward the Florida Natural Areas Inventory letter to the SMC and place a copy of the information in the BoCC file.

Copies of Vickie Larson's letter, the EEL Program's response, and the FNAI letter are provided as attachments to these minutes.

Mike stated that he had been directed to come back to the SMC today with the general concerns that had been expressed by ARC, rather than the trail issue, as it was his understanding that the Committee was very clear on their position that they did not support the trail going down the east side of the Sanctuary. He stated that had he met with Barbara Meyer and Sue Hann and that there were time sensitive issues regarding a trail development grant. Clarification was provided to

them that if this issue was going to be re-addressed by the ARC Council in December, the paved trail planners need to provide the requested information in a separate document which can be returned to the ARC Council. The EEL Program will be assisting the trail planners only to the point of determining what kind of scrub and wetland permits are going to be needed, and to be sure there is a clear understanding of what they're talking about from a footprint perspective, as well as whether or not there will be water retention issues.

Mark Bush asked if the SMC would have any input into the process.

Mike said that the SMC could certainly have a say in it, but that it was his perspective that we are in the predicament that we're in because of the way that things were handled in the past, and that he had located an Agenda Report that stated the paved canal trail had been supported by the SMC, so that the trail could go over to the Marie Street corridor, and that he understood it wasn't the position of the committee at the time that the Marie Street trail should come down inside the Sanctuary, but the problem with making a decision like that was we didn't spend enough time to understand the situation. He said that unfortunately there was never enough right-of-way space there, to put the trail on the road, so it was never destined to work. So now, there is a three quarter mile of trail that was paved to Marie Street with no where to go.

Paul said that he would not agree with that wording. He said that they came to the EEL Program with the request to have that trail on the right of way of the canal, which was partly an easement right-or-way and included some Malabar Scrub Sanctuary property that was outside the fence and that the SMC did not initiate the request, or direct them to put a trail there. He stated that he was not sure that a motion could be located where the committee approved it, and that it was not clear how it was approved.

Mike agreed.

Paul stated that he didn't think that there were severe objections to it at the time, because they were paving on a canal bank, not coming into the Sanctuary, and that the point he was trying to make was that the initiative was not from the SMC to have a paved trail there. He said that apparently, the North Canal Boundary paved trail bed is on a canal bank right-of-way on property that was not being managed by the Program and that the records were not clear.

Ross stated that there was no discussion about taking any sanctuary property and he did not feel there was ever a motion.

Kim stated she felt the notification was given for information purposes.

Mike stated that he felt the Committee understood that the group needed to get to the Marie Street right-of-way and that's where they were trying to go. He said the predicament that we're in right now, is the fact that, regardless, that public entity spent that kind of money to put that trail in and now they can't get anywhere. He said that State dollars were used to pay for the projects; not only to pay for the Town of Malabar trail head at the south end of Marie Street, but also to pay for the trail head connector at Turkey Creek and those two properties were purchased with this alignment in mind. Mike stated that because of past discussions with staff, there were complicated issues with the Town of Malabar and if the new paved trail on the firebreak on the east side of the Sanctuary by Marie Street didn't get approved there would be more complicated issues with the City of Palm Bay. He said that he would prefer to just see those issues resolved. He stated that it was his personal opinion that this is not an issue that's worth fighting over and that he'd rather not see us in this predicament, but he believed it's important that we cut our

losses on this and move forward and do the other ones properly to ensure that if we're not going to support paved trails in the future, then let's be sure we follow a clear procedure for evaluating it.

Dave stated that he was not saying that the SMC did not support trails, by any means. He said that he really thinks it's a great thing to connect the preserves and have some of these trails, but the problem as he saw it, was that it was all handled very quickly and that he felt that perhaps part of the concern that ARC was having was because there isn't a systematic approach to understanding how this whole thing is laid out, and that the SMC was still not really sure what the big plans are.

Kim said that she thought that this was somewhat like the situation with the Thousand Islands; the Committee has already spoken their decision on this paved trail and this particular sanctuary, and that Mike was just telling the SMC how he is going to address it, given the directions he has received.

Ross agreed.

Kim said that all the Committee could do now was reiterate what they have already said and that the SMC information will be part of the packet. She said that the SMC approved the purchase of the Thousand Islands biologically, as a diverse part of the system, but they did not approve the dollar amount. She said that the SMC did not approve placement of the paved trail down the east side of the Sanctuary and that the issue would be addressed.

Ross stated that he agreed and ARC would have to decide.

Mike stated he felt that if the Committee wanted to make another statement that would be acceptable. He said that unfortunately staff was caught in the middle and that it was important that citizens raise the issue from a citizen perspective.

Mark mentioned his concerns about setting a precedence, that he would like to see the drainage issues studied first, and that he did not feel a 10-foot wide trail was needed.

Ross stated that what he was hearing was that the SMC stood by their original recommendation, and that, unfortunately, staff was caught in the middle. He said that the only thing staff can do is to provide the most objective, factual information it can provide; and the decision will be made by ARC.

Kim agreed.

Mark said that the SMC was in favor of passive recreation and promoting biodiversity on these sites, and that didn't include paved trails, and that as a Committee they were bound to come out against it, just by their mandate. He said that it was possible that they could be overruled.

Ross agreed that it was possible the Committee could be overruled by ARC.

Mike stated that he wanted to provide clarification on two issues:

- If a paved trail on the east side of the Sanctuary is going to be used as a fire break, it will need to be wide enough for the vehicles to drive on it.
- ARC has requested more details on the plans, but everyone needs to understand that the trail planners are not going to spend \$80,000 on a set of plans, just to go to ARC and find out if they're going to allow them to do it. ARC will be given a typical cross section of the paved trail. We're really looking at retention issues. The planners will do their best. If ARC is not satisfied with it, it may end the project, we don't know.

Ross asked if there were any more questions or discussion.

#### Public Comment

Suzanne Valencia expressed her concerns relative to recommendations for actions included in the Management Plan that were not approved by the SMC and stated that a group of citizens had met with Mike to develop language to tighten the Sanctuary Management Manual and ensure that this does not occur again. She asked for the status of the revision language and what else the citizen's group could do to assist.

#### Additional Discussion

Mike stated that there is formal language in the Land Acquisition Manual which clarifies that related acquisitions require an affirmative vote of the SMC for approval, before they can go to the BoCC but that the Sanctuary Management Manual does not have that language for the approval of management plans.

Clarification was provided that preliminary language had been reviewed by the SMC and that final language would be reviewed and approved by the SMC, as they are the group that has the authority to revise the Sanctuary Management Manual. Revisions to the Sanctuary Management Manual will also require final approval by the BoCC.

Discussion continued regarding the time table for upcoming acquisitions and when another request for a paved trail on an EEL Program sanctuary might come before the BoCC.

Ross stated that it was his opinion that the SMC should not, or could not, approve any major alterations for recreation until they had done a focused review for the management and long term sustainability for biodiversity that would look at total impact.

Kim agreed.

Chris stated that the Jordan Scrub Sanctuary Management Plan had been approved by the ARC Council at the October 2007 meeting and that it did not include any information on a paved trail.

#### Public Comment

Doug Sphar stated it was his feeling that when information was sent back to ARC for review, he felt that the SMC should provide an analysis of where the paved trail should go, so that the ARC people could consider both the political and scientific aspects, and with their wisdom, decide which was the best way to go.

#### Additional Discussion

Ross said that the SMC had stated that they did not recommend paving a new trail on the east side of the Sanctuary.

Kim said that she thought that in one of Paul's recent reports, he had mentioned that the SMC could not comment on a design that they did not have.

Paul agreed and stated that his report had also indicated that they did not know if the Endangered Species Office would require mitigation. He said that the recommendation of the SMC was to use a paved road that was already there, and that they could not provide additional comment without additional information.

#### Public Comment

Maureen Rupe stated that their prime concern was keeping the integrity of the EEL Program intact

and that they did not want political decisions made with EEL Program properties. She said that it was her perspective that the people at ARC were receptive of citizen input and that it was a strong concern for her that the SMC could be overruled.

#### Additional Discussion

Dave asked if the SMC was expected to work this out.

Mike stated that he felt it was in the EEL Program's best interest to work things out and that he did not think it was worth the battle, and that he dealt with people every day who felt the Program was too pure in the way it looks at conservation, right or wrong. He stated that he felt there was a benefit to the Program flexing and working a little more with some of these agencies.

Dave said that in order to do that, the SMC needed to have an understanding of what the big plan is, and that it would take more than a few weeks to evaluate. He stated that if folks were looking to the SMC for some sort of solution, then there may be nothing the SMC can do about it right now, but it may be better trying to figure out how to do that for the future, because the SMC did not want to be perceived as unwilling to compromise.

Mike said that he wanted to point out that when this issue first came out and it was being discussed, the SMC had a presentation from Sue and Murray Hann. There were some SMC comments that were received, and then he was directed to be ready to go to the BoCC by April 10<sup>th</sup>. Mike said that at the time he did not feel that there was enough time for both the Recreational and Education Advisory Committee (REAC) and the SMC to have separate meetings within a 3 week time period, so a joint meeting was called. Mike stated that he felt that the comments received from the SMC seemed to indicate that this was an issue the Program did not need to be fighting and he went out on a limb and cancelled the joint meeting because it looked like we were going to be able to find a solution. Then, unfortunately the situation changed and he was in a very awkward position.

Mark said that he had already indicated that he did not like paved trails, but if the SMC was facing a political reality where they just had to adapt, then perhaps they should remember that additional lands were purchased for conservation.

Mike clarified that the 100 acre Cameron Preserve was purchased by the Town of Malabar using Florida Communities Trust grant funds, prior to the EEL Program purchase of the Malabar East portion of the Malabar Scrub Sanctuary.

Ron Hight said that he missed the SMC meeting where the actual vote was taken, but that he did recall the meeting prior to that and from his perspective, it did look as though there might be a solution, so he could understand the situation Mike was in. He said that this was a situation where they needed to weigh, is this the battle to fight, or are we going to lose more than we gain.

Mike stated that at this time, the SMC was only being asked to review the changes to the Management Plan that were unrelated to the trail. He said staff was taking the assumption that the SMC did not support paving a new trail on the firebreak on the east side of the Sanctuary and suggested that if the SMC was going to stick with their position, that they might want to make another motion to clarify that so it could be submitted to ARC along with the other information.

Mark asked if Mike knew whether or not the BoCC wanted to go ahead with this.

Mike stated that he believed they did.

Mark asked if Mike knew if the BoCC wanted to go ahead with the Marie St. and right-of-way connections, and that in terms of battles lost and won, could it be beneficial to be flexible on this issue.

Ross stated that he believed that the SMC had already made their motion and recommendation and that it was clear that the motion stands. He said that if it's political, then it's political, and if the SMC is overridden, then they're overridden. He stated that the SMC needed to maintain objectivity, which they have done on this one, and if they're overridden there was nothing they could do about it.

#### Public Comment

Suzanne Valencia said that there was nothing they could do about it except keep it from happening again.

#### Additional Discussion

Ross said that the SMC would be working with the management plans, and go from there.

Kim reiterated that Mike just needs to put an objective presentation forward to the ARC committee and that the SMC vote stands and the SMC will move on.

Ross stated that he really empathized with the position that Mike was in, but he understood that he had to do what he had to do, and that he hadn't damaged his relationship with the SMC.

Mark asked if it would be beneficial if Mike had a resolution reaffirming the SMC's previous decision.

Mike said that he didn't think a resolution would be needed because staff would point out the SMC's position. He stated that he did need comments on the planned changes unrelated to the paved trail.

Paul said that information on the planned changes unrelated to the paved trail had been received yesterday and that he had not had time to prepare his comments.

Ross stated that he would like to look at it, too,

Mike stated that he felt it would be acceptable if the SMC sent him their concerns and then staff could make the changes. He explained that all the revisions included in the new document were underlined in red to make identification of the changed information simple.

It was determined that changes should be submitted to Mike by November 7<sup>th</sup>.

#### **Paved Trails on EEL Program Managed Lands**

This item was tabled due to time constraints.

#### **St. Lucie Consulting Property**

Mike provided background on the St. Lucie Consulting Property, which is located near the southern end of the Pine Island Conservation Area. This property went through the SMC approval process previously, and was under negotiation in 2005, when a timeframe issue came up that might have jeopardized the acquisition and, similar to the way that they assisted with the purchase of the Enchanted Forest Sanctuary, TNC moved forward on their own and purchased the property directly. During the September 28<sup>th</sup> prioritization process, this site was rated as #1, or highest priority.

Staff requested that the SMC re-confirm their original 1<sup>st</sup> and 2<sup>nd</sup> Majority Votes on this property in order to make clear that the Program would be going forward with appraisals and working towards buying the property back from TNC at the cost that they incurred during their purchase.

**MOTION THREE**

**Paul Schmalzer moved to approve a 1<sup>st</sup> majority vote on the St. Lucie Consulting property.**

**Kim Zarillo seconded the motion.**

Ross asked if there was any additional discussion. There was none.

**The motion carried unanimously.**

**MOTION FOUR**

**Mark Bush moved to approve a 2<sup>nd</sup> majority vote on the St. Lucie Consulting Property. Dave Breininger seconded the motion.**

Ross asked if there was any additional discussion.

Kim Zarillo asked if something needed to be included in the motion clarifying that the Program would be buying the property back from TNC at cost.

Mike stated that a separate motion of that type would be beneficial.

Ross asked if there was any additional discussion. There was none.

**The motion carried unanimously.**

**MOTION FIVE**

**Kim Zarillo moved that the EEL Program purchase the St. Lucie Consulting property from The Nature Conservancy at cost.**

**Ron Hight seconded the motion.**

Ross asked if there was additional discussion.

Clarification was provided that appraisals were planned for the St. Lucie Consulting property.

**The motion carried unanimously.**

**PUBLIC COMMENT**

Suzanne Valencia asked what she could do to assist with the pending revisions to the Sanctuary Management Manual.

Clarification was provided that the language would be brought to the SMC for a formal vote at the next meeting.

Maureen Rupe spoke of her support for SMC members attending the Board meetings.

**Additional Discussion**

Dave asked if the discussion that was planned for the next meeting on the Malabar Scrub Sanctuary overview could be done as a collaborative effort where everyone who had information brought it in and no one was under pressure to do a formal presentation.

The group agreed that approach would be beneficial.

**NEXT MEETING:**

It was determined that the next meeting would be held on December 5, 2007.

**ADJOURNED:**

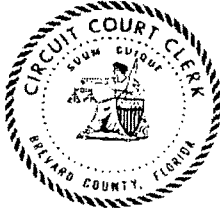
The meeting was adjourned at 4:15 PM.

## **SUMMARY OF MEETING MOTIONS:**

- Motion to approve the September 28, 2007 minutes as amended.
- Motion to approve the Kabboord Wildlife Sanctuary Management plan as amended.
- Motion to approve a 1<sup>st</sup> Majority Vote on the St. Lucie Consulting property.
- Motion to approve a 2<sup>nd</sup> Majority Vote on the St. Lucie Consulting property.
- Motion to approve that the EEL Program purchase the St. Lucie Consulting property from TNC at cost.

## ***Attachments:***

- Scott Ellis concerns regarding the EEL Program's acquisition of the Hunters Brooke Property. *(10 pages)*
- EEL Program responses of October 29, 2007 *(3 pages)* and November 9, 2007 *(6 pages)* to Scott Ellis concerns on Hunters Brooke property.
- TNC Report. *(2 pages)*
- Vickie Larson letter of October 3, 2007. *(4 pages)*
- EEL Program response to Vickie Larson's letter. *(2pages)*
- FNAI letter to ARC relative to the Malabar Scrub Sanctuary. *(2 pages)*



**Clerk of the Circuit Court**

**Brevard County, Florida**

400 SOUTH ST., P.O. Box 999, Titusville, Florida 32781

<http://www.brevardclerk.us>

**Scott Ellis, Clerk**

October 21, 2007

Scott Ellis  
Clerk of Courts  
400 South Street  
Titusville, FL 32781

RE: Internal Review and Analysis  
Environmentally Endangered Lands Program (EELs) Land Purchase  
Proposed Purchase Contract dated September 24, 2007 for the Hunters  
Brooke parcel

Dear Mr. Ellis:

Pursuant to your request, we have conducted a limited scope, internal audit and analysis of the proposed land acquisition of the Hunters Brooke parcel by the Board of Brevard County through the EELs Program. The following is a report of findings and recommendations.

Thank you.

Sincerely,

Trudie Infantini, CPA  
Internal Auditor

## EXECUTIVE SUMMARY

### **PURPOSE**

The purpose of the audit and analysis was to verify that land acquisition policies and procedures are being followed, that the appraisals were factually accurate and provided sufficient support to justify the value conclusions. The purpose was also to verify the issues noted in the Auditor General's report dated 2007 were not present in Brevard County's land purchase.

**Finding 1: The appraisers used the same three properties for comparables and have plagiarized each other's work. The common three comparables are exact duplicates of each other in the appraisals.**

The appraisers' used the same three properties as comparable sales. The parcels are located outside Brevard County. One must question the amount of collaboration that went into the appraisals. They also copied two pages of discussion on the 'comprehensive land use plan'; one page of 'extraordinary assumptions'; and the paragraph outlining the 'history of the property.'

**Finding 2: The appraisers ignored the documented facts in the Wetland Boundary Determination. They misstated the wetland, upland, and submerged land acreage stating the acres they chose to use were an 'Extraordinary Assumption' in their appraisals. They also misstated the easement acreage to be wetlands rather than uplands.**

A Wetland Boundary Determination was independently acquired by the EELs' staff. The appraisers were provided with the May 16, 2007 report on May 17. They choose to use the wetland statistics provided by the owner rather than the information determined in the report. The appraisers also state the 59 easement acres used by FPL is *assumed to be* wetlands. However, the photograph of the easement reflects the easement to be on uplands.

**Finding 3: The appraisers did not use comparables with relatively the same percentage wetlands and based the appraised value on the price per gross acre.**

The highest ratio of wetlands to uplands in the comparables was 49% upland to 51% wetland. The price per gross acre was \$12,000 for that parcel, yet the price per upland acre was \$24,500. Had the appraisers valued the land using \$24,500 per upland acre the value would have been \$12,900,000. This price does not factor in the lack of public water and sewer which was available in the comparables.

**Finding 4: The Nature Conservancy (TNC) exceeded the maximum appraisal offer.**

TNC was authorized to offer between \$9,273 and \$10,385 per acre for the 3,238 acres less the submerged land. The maximum offer was based on 985 upland acres. The seller

was also required to remove the conservation easement. Instead, TNC agreed to \$12,000 per acre, allowed the conservation easement to remain on the property with the provision the seller is permitted to donate the restricted easement, and the seller was permitted to keep an additional 186 buildable acres. The stated maximum should have been decreased significantly since the upland percentage decreased from 30% to about 18%.

**Finding 5: The Selection and Management Committee (SMC) voted on June 27, 2007 to acquire the 3,238 acres of the Hunters Brooke property. Without any approval from the SMC approximately 386 upland acres were removed from the acquisition.**

The Nature Conservancy (TNC) was authorized to purchase the entire Hunters Brooke property provided the existing conservation easement was removed. However, TNC modified the offer, without consent of EELs, to purchase 2,852 acres. Approximately 386 upland acres were removed from the approved parcel. TNC is authorized to negotiate on behalf of EELs but not to make decisions beyond the agreed to parameters.

**Finding 6: The EELs Director requested TNC to make an inaccurate statement in TNC's monthly report to the SMC.**

Mike Knight, the Director of EELs, requested TNC to state in their December 2006 monthly report that they had a willing seller application from Hunters Brooke even though they did not receive a willing seller application for until March 2007.

**Finding 7: The appraisers failed to reference encumbrances and liens on the subject property.**

The subject property is currently encumbered by a conservation easement, an agreement to sell developed lots, and has a lien on it. However, the appraisers state in the 'General Underlying Assumptions' section that , "All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within the report."

**Finding 8: The three comparables used by both appraisers have access to public water and sewer, but feel these are similar properties. The subject property does not have access to water or sewer.**

The Auditor General commented in his 2007 report regarding land acquisitions that appraisers were failing to provide support for valuation conclusions based on the comparables offered in their appraisals. This appears to be the case with these appraisals as the three common comparables used all had access to public water and sewer. Most are already accepted as a PUD. The subject property does not have a PUD.

**Finding 9: The Agenda states the acquisition is 2,358 acres consisting of 1494 of wetlands and 864 (36%) of upland acres. This is incorrect. The acquisition is 2,852 acres, 530 (18%) of upland acres.**

## **PURPOSE**

The purpose of the limited scope internal audit and analysis was to verify the appraisals provided sufficient support to justify the value conclusions stated and that they were factually accurate.

## **BACKGROUND**

### **General**

Brevard County voters approved a referendum requiring the County to issue bonds in the amount of \$55,000,000 to acquire, protect, and maintain environmentally endangered lands. The bonds are paid back by taxes levied on property owners. The County Commissioners created the EELs to carry out this mission.

The EELs follows the land acquisition manual (LAM) when purchasing land. Land is to be purchased from willing sellers only. Sellers may offer their property for purchase to the EELs or the property may be referred. If the property is referred, organization members and the staff contact the property owners to see if they would be interested in selling their land. The LAM requires two appraisals for potential acquisitions and a review of those appraisals if they exceed a given dollar threshold (\$500,000 in this case). The appraisals must conform to the Uniform Standards of Professional Appraisal Practice and the review appraisal documents any deviations the original appraisals made from the standards.

## **SCOPE**

We reviewed the LAM to find the steps that must be taken to purchase a property and Brevard County Administrative Orders and Policies on land purchases. We interviewed staff with the EELs and parties subject to liens or encumbrances on the subject property. We reviewed the EELs files on the property offered for sale and the Modern Inc. conservation easement donation.

We reviewed the appraisals dated May 2007 and the review appraisal dated September 2007 for the property offered for sale. We performed an analysis on the comparable transactions cited in the appraisals that were used to determine fair market value. We also compared the appraisals to each other.

## FINDINGS AND RECOMMENDATIONS

**Finding 1: The appraisers used the same three properties for comparables and have plagiarized each other. The common three comparables are exact duplicates of each other in the appraisals.**

The appraisers' used the same three properties as comparable sales. The parcels are located outside Brevard County. One must question the amount of collaboration that went into the appraisals. They also copied the paragraph outlining the 'history of the property'; two pages of discussion on the 'comprehensive land use plan'; and one page of 'extraordinary assumptions'.

The following is a list of the duplication between the two appraisals:

	Appraiser	
	<u>Miller's pages</u>	<u>Crouse's pages</u>
Extraordinary Assumptions	9 - 10	43 - 45
History	27	14
Comprehensive Land Use	30 - 31	47- 49
Comparables	Addenda	Comparable section

Failure of the appraisers to conduct independent research yield the equivalence of a single appraisal.

**Finding 2: The appraisers ignored the documented facts in the Wetland Boundary Determination. They misstated the wetland, upland, and submerged land acreage stating the acres they chose to use were an 'Extraordinary Assumption' in their appraisals. They also misstated the easement acreage to be wetlands rather than uplands.**

A Wetland Boundary Determination was independently acquired by the EELs' staff. The appraisers were provided with the May 16, 2007 report on May 17. They choose to use the wetland statistics provided by the owner rather than the information determined in the report. The appraisers also state the 59 easement acres used by FPL is *assumed to be* wetlands. However, the photograph of the easement reflects the easement to be on uplands.

Finally, the original appraisal was based on 3,238 acres. When the acreage was reduced to 2,852 acres the appraisers reduced the wetlands, uplands, and submerged land proportionately, although the 386 acres removed from the calculation were mostly upland acres.

The resulting acreage used in the EELs Agenda package and the appraisers valuation indicates 30% of the property being acquired is upland (864 out of 2,352 acres). The actual amount is closer to 18% being uplands (527 out of 2,852 acres).

Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. These may be used only if the appraiser has a reasonable basis for the extraordinary assumption. However they used the wrong wetland acreage.

**Finding 3: The appraisers did not use comparables with relatively the same percentage wetlands and based the appraised value on the price per gross acre.**

The highest ratio of wetlands to uplands in the comparables was 49% upland to 51% wetland. The price per gross acre was \$12,000 for that parcel, yet the price per upland acre was \$24,500. Had the appraisers valued the land using \$24,500 per upland acre the value would have been \$12,900,000. This price does not factor in the lack of public water and sewer which was available in the comparables.

**Finding 4: The Nature Conservancy (TNC) exceeded the maximum appraisal offer.**

TNC was authorized to offer between \$9,273 and \$10,385 per acre for the 3,238 acres less the submerged land. The maximum offer was based on 985 upland acres. The seller was also required to remove the conservation easement. Instead, TNC agreed to \$12,000 per acre, allowed the conservation easement to remain on the property with the provision the seller is permitted to donate the restricted easement, and the seller was permitted to keep an additional 138 buildable acres. The stated maximum should have been decreased significantly since the upland percentage decreased from 30% to about 18%.

**Finding 5: The Selection and Management Committee (SMC) voted on June 27, 2007 to acquire the 3,238 acres of the Hunters Brooke property. Without any approval from the SMC approximately 386 upland acres were removed from the acquisition.**

The Nature Conservancy (TNC) was authorized to purchase the entire Hunters Brooke property provided the existing conservation easement was removed. However, TNC modified the offer, without consent of EELs, to purchase 2,852 acres. Approximately 386 upland acres were removed from the approved parcel. TNC is authorized to negotiate on behalf of EELs but not to make decisions beyond the agreed to parameters.

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Mike Knight, the Director of EELs, requested TNC to state in their December 2006 monthly report that they had a willing seller application from Hunters Brooke even though they did not receive a willing seller application for until March 2007.

**Finding 7: The appraisers failed to reference encumbrances and liens on the subject property.**

The subject property is currently encumbered by a conservation easement, an agreement to sell developed lots, and has a lien on it. The appraisers state in the ‘General Underlying Assumptions’ section that, “All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within the report.” Therefore, they have no legal requirement to disclose this information.

The conservation easement contains a clause stating no development is permitted on the easement. Rather than having the conservation easement removed, as requested by EELs staff, TNC agreed to permit the owners (Hunters Brooke) keep the easement and donate it to the County.

A lien was placed on the subject parcel due to nonpayment of survey services provided to Hunters Brooke in about May 2006. The lien is for \$75,000 and remains unpaid to date.

Maronda Homes provided a mortgage to Hunters Brooke for \$2,000,000 in May 2005. The mortgage is outstanding. Hunters Brooke and Maronda entered into another agreement which provides for Hunters Brooke to develop the land and Maronda Homes will purchase the developed lots. This agreement is still in place, however, it will be removed if the sale to the County goes through.

Finally, the property is encumbered by a restructured mortgage held by People’s Bank. Park Avenue Bank loaned Hunters Brooke \$10,000,000 in May 2005. Park Avenue restructured the mortgage June 2006 by replacing the \$10,000,000 with \$10,500,000. People’s bank repaid the mortgage from Park Avenue in October 2006. The new mortgage to People’s Bank is for \$12,500,000.

**Finding 8: The three comparables used by both appraisers have access to public water and sewer, but feel these are similar properties. The subject property does not have access to water or sewer.**

The Auditor General commented in his 2007 report regarding land acquisitions that appraisers were failing to provide support for valuation conclusions based on the comparables offered in their appraisals. This appears to be the case with these appraisals as the three common comparables used all had access to public water and sewer. Most are already accepted as a PUD. The subject property does not have a PUD.

**Finding 9: The Agenda states the acquisition is 2,358 acres consisting of 1494 of wetlands and 864 (36%) of upland acres. This is incorrect. The acquisition is 2,852 acres, approximately 530 (18%) of upland acres.**

**The following is the duplication of work which can be found in both appraiser's reports.**

**Miller's pages 30-31 correspond to Pomeroy's pages 47-50  
Comprehensive Land Use Plan/Access**

The comprehensive land use plan for Brevard County designates the subject as Residential 1:2.5, (1 unit per 2.5 acres) and Agricultural. The residential land use designations adopted as part of the Future Land Use Map represent maximum density thresholds. Approved densities may be lower than the maximum allowed by a residential land use designation as a result of environmental constraints identified in applicable objectives and policies of the Conservation Element which impose more stringent density guidelines.

The County shall not extend public utilities and services outside of established service areas to accommodate new development in Residential land use designations, unless an overriding public benefit can be demonstrated. This criterion is not intended to preclude acceptance of dedicated facilities and services by the County through MSBU's, MSTU's and other means through which the recipients pay for the service or facility. The Residential 1:2.5 land use designation permits low-density residential development with a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within this element. An increase may be considered with a Planned Unit Development, where deemed compatible by the County with adjacent development, provided that minimum infrastructure requirements are available. Such higher densities should be relegated to interior portions of the PUD tract, away from perimeters, to enhance blending with adjacent areas and to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses.

According to Ms. Courtney Harris, Planning Director for the City of Titusville, Hunters Brooke Titusville, LLC applied for an annexation and Large Scale Comprehensive Plan amendment for +/- 2,828 acres of property located north and south of Fox Lake Road and west of Carpenter Road. The applicants were requesting a PUD land use and zoning designation to build a mixed-use community consisting of 1,980 residential units, up to 30,000 square feet of commercial space, and a school. The City staff was very supportive of the application but the major issue for the City was the access, since the only one existing was Fox Lake Road. The City has a code requirement that any residential development with more than 50 units must have a second access road. The most logical access connection was to State Road 50, and this would be through land owned by the U.S. Fish and Wildlife. USF&W was not willing to commit to the access at the time of the application due to a lawsuit they were involved with against a local property owner who owned property in the area (and I believe this property owner sold the current owners the subject property). However, they did indicate that they were willing to negotiate an access when this lawsuit was over. The applicants requested the City to hold the application in April of 2006. Since a year has passed, we consider the application closed.

## Summary

It appears the most significant issue standing in the way of developing the subject property is offsite access. The subject has legal access from the north, south and the east, however none of the offsite access roads are improved to a level that could support a residential development, even at the densities allowed under the current zoning and future land use designations. The property owners have investigated the offsite access issue and concluded the most probable and cost effective roads to improve. These roads include widening the existing Fox Lake Road bridge over Interstate 95 and widening State Road 405 from Fox Lake Road to State Road 50. The cost would be significant to upgrade these roads, however the owners, Hunters Brooke, believes they would be entitled to impact fee credits for the excess capacity created from the widening projects.

Discussions with Brevard County and City of Titusville representatives indicate the access is the biggest hurdle for developing the subject property. Based on the information we have obtained, it is our opinion that if the access issue is resolved, it is very likely a land use change would be granted and development as stated above would be allowed.

## Miller's pages 9-10 correspond to Pomeroy's pages 43 and again stated on 44-45 Size

Brevard County (the Client) indicates the total acreage to be appraised is 3,253 acres and the Brevard County Property Appraiser's office indicates the total acreage to be 3,287.87 acres. The property owner indicates the total acreage is 3,238, which includes 542 acres of potential sovereign lands, 1,711 acres of wetlands and 985 acres of uplands. It is an *Extraordinary Assumption* that the subject property is comprised of 3,238 gross acres and without any significant encumbrances that would have an impact on market value or marketability.

The Maps provided by the property owner breaks down the acreage into three categories, open water, wetlands and uplands. There are 542 acres within the two lakes on the property and considered "Potential Sovereign Wetlands". Sovereign lands are described as navigable waters and lands below the Ordinary High Water Line. For the purpose of this appraisal, the Potential Sovereign Wetlands are deducted from the total size for valuation purposes. It is an *Extraordinary Assumption* that the subject property is comprised of 2,696 acres of usable lands. According to the legal description and boundary survey furnished by the property owner's representative the property contains several out parcels within the boundaries. These out parcels do not appear to be critical for development. Therefore, it is an *Extraordinary Assumption* that it does not have any significant impact on market value or marketability.

According to Schedule B-II of the Title Commitment provided by the client, the oil, gas and mineral rights and reservation contained in that certain Warranty Deed recorded in Deed Book 347, Page 551 have been partially released as to the right of entry and exploration. There are no known oil, gas or mineral deposits in the immediate area, therefore it is an *Extraordinary Assumption* that it does not have any significant impact on market value or marketability.

### **Extraordinary Assumptions**

The following Extraordinary Assumptions were used in this appraisal:

Brevard County (the Client) indicates the total acreage to be appraised is 3,253 acres and the Brevard County Property Appraiser's office indicates the total acreage to be 3,287.87 acres. The property owner indicates the total acreage is 3,238, which includes 542 acres of potential sovereign lands, 1,711 acres of wetlands and 985 acres of uplands. It is an *Extraordinary Assumption* that the subject property is comprised of 3,238 gross acres and without any significant encumbrances that would have an impact on market value or marketability.

The Maps provided by the property owner breaks down the acreage into three categories, open water, wetlands and uplands. There are 542 acres within the two lakes on the property and considered "Potential Sovereign Wetlands". Sovereign lands are described as navigable waters and lands below the Ordinary High Water Line. For the purpose of this appraisal, the Potential Sovereign Wetlands are deducted from the total size for valuation purposes. It is an *Extraordinary Assumption* that the subject property is comprised of 2,696 acres of usable lands. According to the legal description and boundary survey furnished by the property owner's representative the property contains several out parcels within the boundaries. These out parcels do not appear to be critical for development. Therefore, it is an *Extraordinary Assumption* that it does not have any significant impact on market value or marketability.

According to Schedule B-II of the Title Commitment provided by the client, the oil, gas and mineral rights and reservation contained in that certain Warranty Deed recorded in Deed Book 347, Page 551 have been partially released as to the right of entry and exploration. There are no known oil, gas or mineral deposits in the immediate area, therefore it is an *Extraordinary Assumption* that it does not have any significant impact on market value or marketability.

### **Additional information in the body of the appraisal which is in direct conflict with the appraisal Extraordinary Assumptions, which makes them Extraordinary.**

The *Preliminary Wetland Boundary Determination* report outlines the subject property as:

- Upland Community Types (913.3+/- acres)
- Wetland Community Types (1,790.6+/- acres)
- Surface Waters (549.1+/- acres)

Total 3,253 Acres

Summary of Wetland/Surface Water and Upland Cover Acreage.

Overall Property = 3,253± Acres (100%)

Wetlands/Surface Waters = 2,339.7± Acres (72%)

Uplands = 913.3± (28%)

The *Preliminary Wetland Boundary Determination* report is shown in the addendum.



**BREVARD COUNTY**  
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE  
MEMORANDUM**

TO: Peggy Busacca – County Manager  
FROM: Mike Knight – EEL Program Manager  
THROUGH: Don Lusk – Parks and Recreation Director  
CC: Selection and Management Committee, Procedures Committee  
DATE: October 29, 2007  
RE: Hunters Brooke Property Appraisals

As requested, I have completed a preliminary review of the Clerk's Office concern that some of the data included in the appraisals for the Hunters Brooke property had been "plagiarized", and that the comparable sales used by each appraiser were similar. Although the EEL office is completing a more in-depth response to the Clerk's report dated October 21, 2007 and provided to us at the Board meeting on October 23, 2007, I believe it is important to address this issue first, as it seemed to be of significant interest to the Commissioners.

Both appraisers that worked on this project have provided statements regarding the issue of sharing factual data related to the subject property, and they are included below. We have not received the Review Appraisers written comments, but these will be included in the final report back to the BOCC on the overall "audit". The Review Appraiser did provide verbal input by phone to EEL staff following the October 23 BOCC meeting to confirm that this issue was discussed during the review process, and it was not considered a problem or violation of USPAP because it involved sharing factual data on the property only.

EEL appraisal policies state:

*"Any appraisal review required by this manual will evaluate appraisals for adherence to minimum technical standards and acceptable appraisal procedures. All 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, and will be required in accordance with State policy to submit a fully completed Bureau of Appraisal, Appraisal Checklist with each appraisal report."*

*"All appraisals prepared for the EEL Program must comply with the procedures and requirements set forth in Section 259.041 (7) Florida Statutes, Rule 188-1.006 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 (USPAP). 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.”

All of the above policies were followed with respect to the Hunters Brooke appraisal process.

The EEL Program must also follow the DEP, Bureau of Appraisal's Supplemental Appraisal Standards for Board of Trustees Land Acquisitions. *“The purpose of these standards is twofold. First, to supplement the use of the Uniform Standards of Professional Appraisal Practice (USPAP) and to set forth general principles applicable to the appraisal of property for acquisition by the Board of Trustees of the Internal Improvement Trust Fund (BOT; second, to achieve uniformity of narrative appraisal reports through a format that may serve as a general guide.”*

*“These supplemental appraisal standards have been prepared to assure uniformity of appraisal requirements among the various agencies which acquire lands”. “Although these standards are developed to encourage uniform approaches to appraisal problems and to provide a guide for adequate supporting data and other factual information used to develop opinions of market value, they are not intended to limit the scope of appraisal investigations or bias the independent judgment or value opinions of appraisers employed by the State.”*

“C-4.01 COOPERATIVE EFFORT” (from the DEP Supplemental Appraisal Standards)  
*“Cooperation between appraisers assigned to the project is especially encouraged and may include the sharing of analysis, reasoning and conclusions; however, the final value estimate shall be the responsibility of the contracted appraiser.”*

The following responses related to this issue were received from the two appraisers that completed the Hunters Brooke property appraisals.

From James I. Miller, MAI, SR/WA, State Certified General Appraiser, Florida Certificate No. 0000122:

*“The Uniform Standards of Professional Practice are directed at the standards which appraisers are required to apply in the preparation of real estate appraisals and review appraisals. The standards are directed at the methodology used to develop an independent estimate of value.*

*The Department of Environmental Protection-Division of State Lands takes the lead regarding the valuation of environmentally endangered lands. To that end they have formulated “Supplemental Standards” which in the State of Florida have the same force and effect as the Uniform Standards. These apply to all appraisal reports and are required to be followed for appraisers maintained on the Approved Appraiser List.*

*Over the years the DEP/State Lands has been severely criticized for the long time frame taken to acquire endangered lands. This is due in part to the extended appraisal time frame and the time to review. The irregularity in factual data has led to extended review time where appraisers utilizing differing factual data have arrived at significantly differing values.*

*To that end DEP/State Lands adopted a requirement that all appraisers exchange factual data. This exchange of data was even extended to the point of exchanging highest and best use conclusions and even valuation ranges. As St. Johns River Water Management*

*District's Director of Land acquisition I fought such extended exchange. It is common practice to exchange factual data including comparable sales, however we do not exchange highest and best use conclusions and certainly do not exchange valuation conclusions.*

*While we did exchange sales with the other appraiser I had absolutely no knowledge of the sales that were used by the other appraiser. Contrary to the Audit Report and Testimony to the Board we did not use the same three (3) sales. We in fact used four (4) sales. To the extent they were identical to those of the other appraiser I have no way of knowing.*

*As you well know I provide appraisal and review services throughout the State of Florida. I can assure you that all of our work is completed in strict conformance to the Uniform Standards of Professional Appraisal Practice and the Supplemental Standards of the Division of State Lands as it relates to the preparation of real estate appraisal and review appraisal services.*

*I welcome the opportunity to review the above with you or your staff as well as the Brevard County Board of County Commissioners.”*

From Ronald Crouse, ASA, CRA, State-certified general appraiser #RZ0000670:

*“...in regards to the appraisers sharing data on the Hunters Brooke Property. We have reviewed the Uniform Standards Of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions and find no violation of standards or guidelines, which relate to this issue. Please let us know if you have any further questions.”*

In summary, it is completely appropriate and encouraged for appraisers working on the same project to share pertinent factual data to ensure the accuracy of the appraisals. Judgments and opinions related to value are always independent. In this particular case, the appraisers shared their factual data, meeting summary information related to the subject parcel, and comparable sales data. The data was individually confirmed by each of the appraisers. During the EEL and TNC staff review of the appraisals, the language similarities were noted and verbally brought to the attention of the review appraiser by phone. The review appraiser confirmed that it was not a violation of USPAP because it was common to share factual data on the subject parcel.

Additional information will follow regarding the remaining issues raised in the Clerk's Office report dated October 21, 2007.



**BREVARD COUNTY**  
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE  
MEMORANDUM**

November 9, 2007

To: Board of County Commissioners

From: Mike Knight – Program Manager  
Brevard County EEL Program

Through: Peggy Busacca – County Manager  
Don Lusk - Parks and Recreation Director

RE: Clerk of the Court’s letter dated August 19, 2007

Cc: EEL Selection and Management Committee  
EEL Procedures Committee

This memo is to address the Internal Audit performed by the Clerk’s Office, submitted to the Board dated October 21, 2007 regarding the acquisition of the Hunters Brooke property.

**Clerks Finding 1:**

**The appraisers used the same three properties for comparables and have plagiarized each other’s work. The common three comparables are exact duplicates of each other in the appraisals.**

The appraisers’ used the same three properties as comparable sales. The parcels are located outside Brevard County. One must question the amount of collaboration that went into the appraisals. They also copied two pages of discussion on the comprehensive land use plan; one page of extraordinary assumptions; and the paragraph outlining the history of the property.

**EEL Response:**

The State of Florida Supplemental USPAP Guidelines clearly state that appraisers are encouraged to share factual data, including comparable sales regarding the subject property they are appraising. The primary purpose for this is to ensure consistency regarding the baseline data for the property. One appraiser provided the other with his written report on the factual data of the subject property. This data included comparable sales, Comprehensive Land Use Plan, extraordinary assumptions and history of the property. This is not a violation of USPAP standards, and is encouraged under the DEP Supplemental Appraisal Standards. Staff did inquire about the similar language used in

the reports during their review, and the review appraiser confirmed it was not a violation of the standards.

See below and excerpt from the DEP Supplemental Appraisal Standards that the EEL Program is required to follow.

*“C-4.01 COOPERATIVE EFFORT”* (from the DEP Supplemental Appraisal Standards)  
*“Cooperation between appraisers assigned to the project is especially encouraged and may include the sharing of analysis, reasoning and conclusions; however, the final value estimate shall be the responsibility of the contracted appraiser.”*

**Clerks Finding 2:**

**The appraisers ignored the documented facts in the Wetland Boundary Determination. They misstated the wetland, upland, and submerged land acreage stating the acres they chose to use were an “Extraordinary Assumption” in their appraisals. They also misstated the easement acreage to be wetlands rather than uplands.**

A Wetland Boundary Determination was independently acquired by the EELs’ staff. The appraisers were provided with the May 16, 2007 report on May 17. They chose to use the wetland statistics provided by the owner rather than the information determined in the report. The appraisers also state the 59 easement acres used by FPL is assumed to be wetlands. However, the photograph of the easement reflects the easement to be on uplands.

**EEL Response:**

The acreage of a property is typically represented as an “Extraordinary Assumption” due to the fact that there is often a discrepancy between the acreage depicted by the Property Appraiser and what is provided to EEL by the owner. Although the property boundary is the same, the actual amount of acres within it cannot be precisely determined until a final survey is performed by the EEL Program prior to closing. It is for this reason that all EEL Option Contracts contain a clause that allows for correction of the purchase price in the event the final survey determines a contradictory acreage. The appraisers were provided with what was determined to be the most accurate acreage data, which in this case, came from property data submitted by the owners that was not available to EEL prior to the completion of the wetland survey.

Regarding the FP&L easement acreage, the audit report is misrepresenting the statement made by the appraiser. The appraisal report actually states that it is assumed that at least some of the FP&L easement runs through wetlands. The photo in the appraisal report referenced in the audit can in no way be used to determine the existence or non-existence of wetland soil types and vegetation. According to the habitat coverage maps for the site, approximately 50% of the FP&L easement located on the subject property is wetland habitat.

**Clerks Finding 3:**

**The appraisers did not use comparables with relatively the same percentage wetlands and based the appraised value on the price per gross acre.**

The highest ratio of wetlands to uplands in the comparables was 49% upland to 51% wetland. The price per gross acre was \$12,000 for that parcel, yet the price per upland acres was \$24,500. Had the appraisers valued the land using \$24,500 per upland acre the value would have been \$12,900,000. This price does not factor in the lack of public water and sewer which was available in the comparables.

**EEL Response:**

The EEL Program contracts with DEP appraisers that are qualified to select and evaluate comparable sales for property appraisal purposes. The two appraisers selected the most appropriate comparable sales that were available. In addition the third review appraiser evaluated the comparables to be appropriate for this project.

The audit report extrapolated the \$24,500 by applying the appraisers values to the upland portions of the property only. This is not an appropriate extrapolation because it assigns no value to the wetland portions of the property. In addition, the auditors' calculations of acreage are incorrect because she is including the 200 acre conservation easement and the 186± acre cut out as "buildable acres". The audit report fails to recognize that significant portions of these sections of the property contain both wetlands and submerged lands. For this reason, it is not appropriate to consider all of it "buildable acres". The auditors calculation used 913 uplands (from wetland study), subtracted 386 "buildable acres" (for conservation easement and eastern cut-out) to show 527 acres of uplands, multiplied by a self-created per acre value of \$24,500 to end up with \$12,900,000. This assumes no value for wetlands.

**Clerks Finding 4:**

**The Nature Conservancy (TNC) exceeded the maximum appraisal offer.**

TNC was authorized to offer between \$9,273 and \$10,385 per acre for the 3,238 acres less the submerged land. The maximum offer was based on 985 upland acres. The seller was also required to remove the conservation easement. Instead, TNC agreed to \$12,000 per acre, allowed the conservation easement to remain on the property with the provision the seller is permitted to donate the restricted easement, and the seller was permitted to keep the additional 186 buildable acres. The stated maximum should have been decreased significantly since the upland percentage decreased from 30% to about 18%.

**EEL Response:**

The Negotiation Strategy identifies the maximum offer value that is approved by EEL staff for negotiations through TNC with the owners. This value is represented as a maximum lump sum value OR a per acre value. In this situation the referenced per acre value in the Negotiation Strategy was exceeded by \$217 due to acreage revisions related to the conservation easement and development cutouts. However, the Negotiation Strategy clearly states that the maximum offer approved for the property was

\$28,000,000. The audit report miscalculates the acreage by including the conservation easement and the eastern cutout as all uplands (as noted in our response to Finding 3), and the auditor developed her own cost per acre for the property based on upland acres alone. She assigned no value to the remaining wetland (not sovereign lands) portion of the property.

**Clerks Finding 5:**

**The Selection and Management Committee (SMC) voted on June 27, 2007 to acquire 3,238 acres of the Hunters Brooke property. Without any approval from the SMC approximately 386 upland acres were removed from the acquisition.**

The Nature Conservancy (TNC) was authorized to purchase the entire Hunters Brooke property provided the existing conservation easement was removed. However, TNC modified the offer, without consent of EELs, to purchase 2852 acres. Approximately 386 upland acres were removed from the approved parcel. TNC is authorized to negotiate on behalf of EELs but not to make decisions beyond the agreed to parameters.

**EEL Response:**

Due to the inability to determine the exact acreage of a property until a complete survey is done, the EEL policies do not require re-approval by the SMC when acreages are adjusted as a result of negotiations with owners. In situations where substantial changes to the footprint of the property are impacted by negotiations that may have an impact on the ecological value of the purchase, staff seeks input from the SMC. Staff was fully aware of the progress of the negotiations. In addition, the final contract is reviewed by the SMC prior to submittal to the BOCC.

**Clerks Finding 6:**

**The EELs Director requested TNC to make an inaccurate statement in TNC's monthly report to the SMC.**

Mike Knight, the Director of the EELs, requested TNC to state in their December 2006 monthly report that they had a willing seller application from Hunters Brooke even though they did not receive a willing seller application until March 2007.

**EEL Response:**

The original application was received from the owners on December 1, 2006. It was subsequently modified and the revised application (dated March 2007) was the only copy in the file during the auditors review. This initial application is now in the file. The Program Manager did not make an inaccurate statement. Had the auditor requested clarification from staff regarding this and most of the other findings, a response could have been provided.

**Clerks Finding 7:**

**The appraisers failed to reference encumbrances and liens on the subject property.**

The subject property is currently encumbered by a conservation easement, an agreement to sell developed lots, and has a lien on it. However, the appraisers state in the “General Underlying Assumptions” section that, “All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within the report.”

**EEL Response:**

Appraisers are required to reference encumbrances on the property that are relevant to the final determination of value. The conservation easement parcel was removed during negotiations to be donated to the County. The referenced lien on the property had expired before negotiations began, and the mortgage was not considered to be a factor in the appraised value since it would be cleared at closing.

**Clerks Finding 8:**

**The three comparables used by both appraisers have access to public water and sewer, but feel these are similar properties. The subject property does not have access to water or sewer.**

The Auditor General commented in his 2007 report regarding land acquisitions that appraisers were failing to provide support for valuation conclusions based on the comparables offered in their appraisals. This appears to be the case with these appraisals as the three common comparables used all had access to public water and sewer. Most are already accepted as a PUD. The subject property does not have a PUD.

**EEL Response:**

The comparable sales ranged from \$12,000 - \$22,000+ per gross acre. The appraisers clearly noted the differences between the comparables and the subject property, including the availability of public water, sewer and zoning (PUD’s). The appraisers valued the subject parcel consistent with the low end of the comparable sales. The lower comparable sale was not zoned as a PUD, and was actually zoned at a lower density (AG5- 1 unit per 5 acres) than the subject parcel (1 unit per 2.5 acres). It is logical that even though the lower comparable sale had sewer and water and the subject parcel did not, the higher density of development allowed on the subject parcel balanced out the differences.

**Clerks Finding 9:**

**The Agenda states the acquisition is 2,358 acres consisting of 1494 of wetlands and 864 (36%) of upland acres. This is incorrect. The acquisition is 2,852 acres, 530 (18%) of upland acres.**

**EEL Response:**

The audit report is incorrectly calculating the acreage. The Agenda Report is correct. The audit report is starting the calculation using the acreage submitted on the Willing

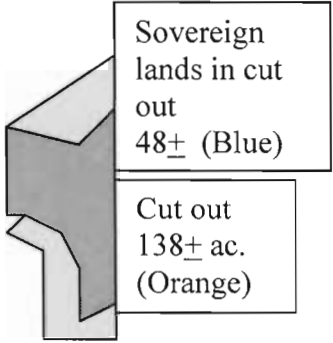
Seller Application, which is 3238, which includes the sovereign lands. The correct baseline acreage is 2696 as stated on the Negotiation Strategy, which excludes the sovereign lands. Again, the audit report is also misrepresenting the upland acres by including all the acres of the conservation easement and the eastern cutout as uplands. Significant wetlands and sovereign lands exist within both of these cutouts.

## Hunters Brooke Property Acreage Breakdown (Based on GIS data calculations)

200 acre Easement

Application acres  
3238 Includes all  
parcels and 542  
sovereign lands,  
1494 wetlands,  
and 864 uplands.

QuickTime™ and a  
TIFF (Uncompressed) decompressor  
are needed to see this picture.



The Nature Conservancy's Report to Brevard County's Selection and Management Committee

Maytown Flatwoods

**Owner Name** AG Ventures LLC/Honeybrook Dev. Corp. **Acres** 539.54 **Appraisal Date** 4/13/2006 **Offer Date** 9/20/2006 **Comments** 11/13/2007: Board to consider assignment of option.  
**Project:** None **FF Site:** No **Status:** Contract

NIRL

**Owner Name** Forte Macaulay(aka: Scottsmoor Partners LLC) **Acres** 852.66 **Appraisal Date** 5/3/2007 **Offer Date** 8/17/2007 **Comments** 11/13/2007: Board to consider assignment of option.  
**Project:** None **FF Site:** No **Status:** Contract  
 Gaizo **Acres** 19.00 **Appraisal Date** 9/11/2006 **Offer Date** 3/30/2007 **Comments** 9/24/2007: In closing.  
**Project:** BLWY **FF Site:** Yes **Status:** In Closing

Fox Lake

**Owner Name** Aura Properties, Inc. **Acres** 85.35 **Appraisal Date** 10/31/2007 **Offer Date** 10/31/2007 **Comments** Willing seller application submitted to EEL.  
**Project:** BCSE **FF Site:** Yes **Status:** Application  
 Hunters Brooke Titusville, LLC **Acres** 2,852.00 **Appraisal Date** 7/19/2007 **Offer Date** 8/29/2007 **Comments** 11/13/2007: Board to reconsider assignment of option.  
**Project:** BCSE **FF Site:** Yes **Status:** Contract  
 RJM Investments, Inc. **Acres** 30.00 **Appraisal Date** 11/1/2007 **Offer Date** 11/1/2007 **Comments** Possible willing seller.  
**Project:** BCSE **FF Site:** Yes **Status:** Landowner Contact

Grisson Parkway

**Owner Name** Veronica Estates **Acres** 206.87 **Appraisal Date** 2/28/2007 **Offer Date** 5/29/2007 **Comments** 9/24/2007: In closing.  
**Project:** BCSE **FF Site:** Yes **Status:** In Closing

Sykes Creek

**Owner Name** Johnson **Acres** 99.20 **Appraisal Date** 4/5/2006 **Offer Date** 3/26/2007 **Comments** 8/29/2007: In closing.  
**Project:** NONCARL **FF Site:** No **Status:** In Closing

**East Merritt Island Impoundment**

<u>Owner Name</u>	<u>Acres</u>	<u>Appraisal Date</u>	<u>Offer Date</u>	<u>Comments</u>
Boyd & Sykes Creek Property, Inc	148.10	5/19/2006	9/10/2007	11/27/2007: Board to consider assignment of option.
<b>Project:</b> BLWY <b>FF Site:</b> Yes <b>Status:</b> Contract				
DiChristopher	162.32	5/19/2006	9/10/2007	11/27/2007: Board to consider assignment of option.
<b>Project:</b> BLWY <b>FF Site:</b> Yes <b>Status:</b> Contract				

**Rockledge**

<u>Owner Name</u>	<u>Acres</u>	<u>Appraisal Date</u>	<u>Offer Date</u>	<u>Comments</u>
Schopke/Barge	11.60	3/8/2007	3/24/2007	9/24/2007: In closing.
<b>Project:</b> BCSE <b>FF Site:</b> Yes <b>Status:</b> In Closing				

**Malabar**

<u>Owner Name</u>	<u>Acres</u>	<u>Appraisal Date</u>	<u>Offer Date</u>	<u>Comments</u>
Hossain (fka: Albury)	1.47	5/3/2007	6/20/2007	11/27/2007: Board to consider assignment of option.
<b>Project:</b> BCSE <b>FF Site:</b> Yes <b>Status:</b> Contract				

# Memorandum

**To:** Mr. Chris O'Hara, Brevard Co. EEL Program

**CC:** ARC  
Keith Singleton, DEP DSL OES  
Carolyn Kindell, FNAI

**From:** Vickie Larson, ARC Member

**Date:** 10/3/2007

**Re:** Comments regarding Malabar Scrub Sanctuary Management Plan Final Draft 2007

The following are questions, format and technical comments regarding the Malabar Scrub Sanctuary Management Plan Final Draft 2007.

#### General Format comments:

- 1) inconsistency in the use of capitalization in referencing Tract 1 and Tract 2. These are proper nouns as used in the report therefore they should be capitalized.
- 2) incorrect use of and or. Please do not use these two words next to each other; select the most appropriate for the sentence.
- 3) inconsistency in referencing species. Convention is common name with italicized scientific name in parenthesis. After the scientific name has been given the common name is used without scientific reference. In many locations, the scientific name has been repeated. Only the common names of bird species are capitalized. Common name of Florida Scrub-jay, not jay or scrub jay (p 25-26). See p 17 paragraph 7. See p 23 paragraph 4. See p 24 paragraph 6. See p 32 paragraph 2 and 4.
- 4) Line spaces needed between: p 18 paragraph 3 and 4, p 19 paragraph 1 and 2, p 37 between header and paragraph 4. See p 42 paragraph 2 and 3.
- 5) Section III. SITE DESCRIPTION AND LOCATION (p 5) Please include reference to Tract 2 road easement that bisects the property that is not owned by the state or county (refer pg 30).
- 6) b. Geology (p 9-10) last line of last paragraph reference should read Swain, et. al. 1995. All lines of the text quote from Paul Schmalzer should be indented.
- 7) b. Vegetation (p 17) Fifth paragraph replace "plant" communities with "natural" communities. FNAI Classification is for natural communities.
- 8) b. Vegetation (p 17) paragraph 1 Figure 6 should be capitalized.
- 9) Figure 6. The Blvd is incorrectly characterized as ruderal, should be road.

- 10) b. Vegetation (p 23) paragraph 4. Move to the beginning of the natural community descriptions (p 17).
- 11) b. Vegetation (p 23) paragraph 4. Three invasive species are listed on p 36 but are not listed here. Also refer to item 2 regarding species name conventions.
- 12) d. Designated species Animals What are T&E mammal species on-site? Florida mouse is listed in Appendix D but not mentioned here.
- 13) d. Designated species Reptiles and Amphibians Please reflect the status change for the gopher tortoise. Eastern indigo and Florida pine snake listed in Appendix C not mentioned here. Paved trail is not mentioned as planned on-site development. No mention of the impact of paved trail on gopher tortoise.
- 14) d. Designated species Birds Page 25 paragraph 6 last line should read...open sandhill habitat, so the selective timbering...
- 15) d. Designated species Birds Page 26 there is no mention of wading bird species, sandhill cranes and use of sanctuary by migrants. All of these species are listed in Appendix B.
- 16) a. Archeological (p 18) Has DHR been contacted to conduct preliminary survey?
- 17) c. Land-Use History (p 28-29) Paragraph 5, line 2 extra space after Resolution Trust Corporation. Paragraph 5, line 9 Should read ... "the internal roadways are evident." Page 29, paragraph 1, line 1 no indentation. Spell out WGML.
- 18) d. Public Interest (pg 30) Paragraph 2, line 9 Appendix J should be capitalized.
- 19) A. Natural Trends (p 30) Paragraph 3. Water quality is mentioned as a primary natural trend influencing the diversity of the site; however, it is not discussed in the section.
- 20) A. Natural Trends (p 30) Paragraph 6. Figure 12 is cited prior to Figures 10 and 11. The core conservation area is mentioned but the context of the paragraph in this section is not clear.
- 21) A. Natural Trends (p 31) Paragraph 2. How does communication with Dave Breininger assure viability of Florida Scrub-jays? Please comment on how MSS management will address the natural trend in Florida Scrub-jays.
- 22) B. Human-Induced Trends (p 31) Paragraph 5. Management and Education Center is mentioned without reference to proposed project site. Later in the document it is states that the proposed facility sites are on Figure 12. No proposed site locations have been presented. I cannot approve the Management and Education Center facility in management plan without information on site location.
- 23) B. Human-Induced Trends (p 31) Paragraph 6. Why is pave trail necessary in addition to the existing Blvd? Plan states that, "EEL will not be responsible for construction or management of the paved trail." Who would be responsible and what is their affiliation with DEP DSL? Details of this arrangement must be presented and verified to assure all compliance with statements within the management plan. The total width of planned paved trail impact equals 16 ft. This is wider than is necessary for a firebreak. This is wider than is necessary for biking.
- 24) B. Human-Induced Trends (p 31) Paragraph 6. Line 11. correct word "within"

- 25) B. Human-Induced Trends (p 31) Paragraph 5.
- Who are the representatives of this Greenways and Trails project? Is this part of the Florida Greenways and Trails system?
  - Is the North Boundary Canal Trail within the MSS property boundary?
  - Statement unclear “The extension of paved trail south from the end of phase II is planned along the eastern boundary of MSS with the possibility of the paved section be routed around the out-parcel.” Should phase II be phase I in this sentence?
  - The out-parcel has been identified as a proposed acquisition in Figure 3. Why would you make a trail around this parcel significantly fragmenting it from contiguous habitat if you intend on acquiring it?
  - How do you pave a 12’ wide, 4800” long road without impacts? What are the secondary impacts related to this bike traffic? To consider this recreational activity within the MAA the use impacts must to be described and the specific responsibilities identified between EEL and other parties?
  - North section of the paved trail is not an existing firebreak according to Figure 10?
  - Where will the fence around MSS be place in relationship to the paved trail?
- 26) Figure 12. Trail heads are not labeled on the map. Describe the physical type of trails and then label them by the type of permitted activity. This map is too confusing to understand clearly. Each trail should be labeled by recreational use category and trail name. What is access trail? It is not mentioned anywhere.
- 27) Figure 10. Do you plan to build a firebreak adjacent to the North Boundary Canal Trail? The firebreak in this area is shown as proposed.
- 28) B. Human-Induced Trends (p 31) Paragraph 6. Carrying capacity must be determined. You have identified human-induced trends as a problem yet your management plan intends on creating more.
- 29) a. Permitting (p 33) There is no mention of mitigation that would be required for the paved bike trail except in Appendix J “Letter from the Program Director” where Mike Knight offers suggestion for mitigation. Why is this not mentioned within the context of the management plan?
- 30) b. Other Legal Obligations (p 35) Paragraph 5. Legal obligations with other parties have not been adequately defined to approve a pave trail “road” within the MSS.
- 31) a. Fire (p 36) Paragraph 1, line 6. Replace “will” with “is”.
- 32) c. Habitat Restoration (p 37) Paragraph 6. Is the CCA the primary location for habitat restoration? What do you plan to do? This section is very vague. I suggest identifying some specific areas and stating your plans for restoration. I see more development in this plan than restoration or management.
- 33) c. Habitat Restoration (p 37) Paragraph 7. This statement does not relate to restoration. This statement is also in consistent with other statements in the management plan. As stated previously the proposed location of the facility must be identified.

- 34) F. Public Access and Passive Recreation (p38) Horseback Riding and Mountain Biking. How do you justify closing off trails when negative impacts are seen but agree to pave a section that actually imposes impacts? Which trails will mountain bikers use? See comments for Figure 12 Item #26.
- 35) F. Public Access and Passive Recreation (p 42) Paragraph 1, line 1. Plan states that the impacts for the proposed facilities and amenities are minimal yet they have not been defined anywhere in the document. It seems clear that passive recreation can be obtained, including the use of mountain bikes, without a paved trail.
- 36) F. Public Access and Passive Recreation (p 42) Paragraph 2. The proposed sites for the education and management center are not on Figure 12.
- 37) GOAL: CONSERVATION OF ECOSYSTEM FUNCTION Strategy 3 Protect communities from deleterious impacts deriving from external influences. The paved trail as proposed does not comply with this GOAL or its underlying strategies and actions.
- 38) GOAL: CONSERVATION OF NATURAL COMMUNITIES Strategy 4 and 5. The MSS management plan does not adequately address the actions within these two strategies regarding restoration. More specific information on restoration needs to be addressed.
- 39) GOAL: ASSESSMENT OF CARRYING CAPACITY OF NATURAL RESOURCES Strategy 10. The MSS Management plan does not adequately address the actions within this strategy. The both primary and secondary impacts related to public use must be evaluated to assure that the sanctuary can handle this high use that has been described and planned. Don't wait until after facilities and amenities are in place to determine that the impacts are detrimental to the resources.
- 40) GOAL: GENERAL UPKEEP AND SECURITY OF THE PROPERTY Strategy 13. These actions cannot be comprehensive considering the vague management strategy related to the proposed trail. For example, is fencing planned for the east side? Will the paved trail be outside the fence? I am not convinced that all these points have been considered.
- 41) Please review the Management Policy Statement and the Management Prospectus within the Brevard Coastal Scrub Ecosystem (Appendix F p 65). The paved trail as proposed does not meet the primary goals for management of the Brevard Coastal Scrub Ecosystem.
- 42) Appendix J "Letter from the Program Director". EEL has not followed the recommendation provided by their Selection and Management Committee in addressing the paved trail. Information provided in Appendix J regarding management options were not addressed in the management plan. Other options for locating the paved trail were not adequately examined prior to EEL comment on the South Brevard Linear Trail. MSS and EEL are under no obligation to provide this amenity as proposed in this management plan.

*Information reviewed during November 2, 2007 SMC meeting.  
To be incorporated into the Malabar Scrub Sanctuary Management Plan.*

**Response to comments provided by Vickie Larson 10/3/07**

The numbers correspond with the Memo referenced above.

1. Will change.
2. Staff will correct this where found.
3. Will change.
4. Will change.
5. This is not the section to discuss easements and right of ways. Please refer to pg 30
6. Will change.
7. Will change.
8. Figure 6 is capitalized.
9. FNAI does not have a classification for "road". The word ruderal refers to plants growing in waste or poor areas. Figure 6 is a plant community map and it is my belief that ruderal better describes the plants in this area. Using road implies that no plants are growing in this area.
10. Will change.
11. This paragraph discusses the primary exotics that require more treatment at this sanctuary. We will better define level of infestation on pg 36.
12. It has been observed in the past but current status is unknown.
13. Will change.
14. Will change.
15. No specific management will take place for these species of birds. They will benefit from a habitat management approach.
16. DHR has provided a Master Site File and Document Review. DHR staff does not perform phase 1 surveys. Any ground disturbance activity at MSS will have a phase 1 perform by state certified surveyor before the project begins.
17. Will change.
18. Will change.
19. Staff will add content to correct this oversight.
20. The core conservation areas are designed to protect area from heavy recreational use.
21. Perhaps local experts would be a better term to use. The management goals for MSS are to help reverse the recent trends in Florida scrub jay populations. Dave is the primary expert in Brevard County.
22. EEL will identify location options on a map that have been disturbed. References will be made within the text.
23. Addressed by Mike Knight's e-mail response 10-4-07.
24. Will change.
25. Human- Induced Trends
  - The Brevard County MPO has been the lead on this project
  - Partially, the City of Palm Bay has an easement along parts of the northern boundary as a maintenance road for the canal. This is where the first 2 phases of the paved trail have been constructed.

*Information reviewed during November 2, 2007 SMC meeting.  
To be incorporated into the Malabar Scrub Sanctuary Management Plan.*

- The trail along the eastern boundary is Phase III, I will try to label this better.
  - Every effort will be made not to isolate this out parcel, there is currently no willing seller.
  - An inter-local agreement will be needed between EEL, P & R and the Town of Malabar. Trail design will require EEL approval before construction begins. Secondary impacts may include drainage and increase use of the site.
  - Correct.
  - The new paved trail will be constructed within and adjacent to the existing boundary fence.
26. The letter P denotes trailheads. I believe the uses allowed on specific trails are explained in the text and figures used. I will add discussion about the “access trail” in the text. I will also add a definition of multi use.
27. Yes
28. Impacts will be monitored over time and levels of use will be adjusted as needed.
29. The SMC has not reviewed a proposal for mitigation. Staff is not recommending on-site mitigation be required for this project.
30. Refer to # 29. This will be part of the design process.
31. Will change.
32. The CCA was established to separate it from other public use areas.
33. Will remove.
34. Refer to Appendix J. Malabar Scrub Linear Trail Project.
35. Refer Appendix J Malabar Scrub Linear Trail Project comments.
36. Refer to # 22.
37. We do not disagree.
38. A restoration plan will be developed for this site that will be reviewed and approved by the Selection and Management Committee.
39. The facilities and amenities are placed in areas to minimize impacts. Within the recreation plan the EEL Program reserves the right to close trails if impacts are too high.
40. Refer to # 25.
41. This is correct.
42. Addressed in an e-mail response from Mike Knight.



MEMORANDUM

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Tallahassee, FL 32303  
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www.fnai.org

To: Chris O'Hara, South Region Land Manager,  
Brevard County EEL Program  
From: Carolyn Kindell, Managed Areas Biologist  
Date: October 10, 2007  
Subject: Comments on Malabar Scrub Sanctuary Management Plan

Thank you for receiving these comments.

Since acquisition of most of this property in 1994, the number of resident Florida scrub-jay groups has declined due to degradation of habitat from lack of management action, primarily lack of prescribed fire. Although the site certainly lacked proper habitat management prior to acquisition, please address in the plan text why the Florida scrub-jays continued the decline since the property came under County management. It would be helpful to identify the barriers to managing for Florida scrub-jay to date, and what the county has done to address those barriers.

The plan needs an action under Strategy 7, page 45, to implement a Florida scrub-jay habitat management plan for the site. The current plan does not adequately address how this site will be managed for Florida scrub-jays, or how often and to what level of detail the population will be monitored. Do Florida scrub-jay monitoring and habitat management plans exist? If so, please add more detail from them into this plan (for example, include timeframes for restoration and monitoring activities, and reference the plans – or append them to this plan. If such habitat restoration and monitoring plans do not exist, then establishing such should be specific action items under Strategy 7.

The plan states the Core Conservation Area was designated due to its ecological significance (pg 30). The area is mapped as scrubby flatwoods natural community, which is indeed ecologically important. However, according to our data, the eastern portion of the Sanctuary supports numerous rare species, including Florida scrub-jays. The plan should explain in more detail what the Core Conservation Area designation means in terms of management and land use, and why other areas, that appear to be very important ecologically were excluded from this designation.

We are very concerned about the lack of approval of this plan by the County's Selection and Management Committee, apparently due to a lack of thorough understanding of the impacts of a proposed paved trail on the eastern side of the Sanctuary. We advise that the plan not commit to installation of such a



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facility until the ecological ramifications, particularly with respect to Florida scrub-jays habitat, have been fully examined and understood by the SMC. Placement of such a facility on the edge of the property seems appropriate; however I recommend that the USFWS be consulted to determine whether or not mitigation for scrub-jay habitat is warranted.



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