Clerk of the Circuit Court **Brevard County, Florida**
400 SOUTH ST., P.O. Box 999, Titusville, Florida 32781
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Scott Ellis, Clerk

June 15, 2006

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

RE: Internal Review and Analysis
Environmentally Endangered Lands Program (EELs) Land Purchase Process
Purchase Contract dated March 23, 2006

Dear Mr. Ellis:

Pursuant to your request, we have conducted an internal review and analysis of the land acquisition made on March 23, 2006 by the EELs and The Nature Conservancy. The following is a report of findings and recommendations.

Thank you.

Sincerely,

Trudie Infantini, CPA
Internal Auditor

EXECUTIVE SUMMARY

PURPOSE

The purpose of the internal review and analysis was to verify the land acquired by the Environmentally Endangered Lands Program (EELs) was purchased according to the LAM and to make recommendations for improvement if applicable. As used herein, *Appraiser* shall mean the individual or organization performing one of the original appraisals on the subject property; *Review Appraiser* shall mean the individual or organization performing the original reviews on the original appraisals on the subject property; and *Reviewer* shall mean the individual or organization performing the reviews, as requested by the Clerk of Courts, on the original appraisals and review appraisal, on the subject property.

Finding 1: Appraisal based on unsupported zoning changes

The Hersch Property valuation was not based on current zoning by the *Appraiser*. Rather it was based on legally permissible zoning changes based on the Future Land Use Map (FLUM). The current zoning is different from the FLUM. The appraiser used a zoning which would permit higher density than the current zoning. The higher density would generate a higher land value than what currently exists. If assumptions and hypothetical circumstances are used to determine a value for a property, those assumptions and hypothetical circumstances must be clearly identified so the reader will not be misled.

Finding 2: Inconsistent application of the policies and procedures – "As-is" versus "Highest and best use"

The appraisal accepted for the Hersch property was for the "highest and best use." The appraisal for another purchase made following the Hersch acquisition used the "as-is" value as well as the highest and best use. The appraisal for the second purchase followed the EEL policy which uses the "as-is" value and clearly identifies the hypothetical scenario and assumptions made to arrive at the "highest and best use" value. The appraisal policy should be consistent for all purchases otherwise the reader will not know if all relevant data has been presented.

Finding 3: Inconsistent application of Property Value to the Program

The EELs Selection and Management Committee (SMC) have cited the level of importance of properties to be protected, yet they have not assigned a dollar value to the properties. This is not in violation of their current policies; however, they are not consistently applying valuation standards. The SMC stated during the May 22, 2006, meeting that they wanted to know the appraised value of a specific property before proceeding any further because they did not want the property, "at any price." Depending on the appraisal, they would determine if they wanted to proceed with an offer to purchase.

In contrast, the Hersch property went from an appraisal of $1,400,000 for all 122 acres (in January 2004) to $3,600,000 for the portion of property (80 acres) with the least amount of upland acres (in January 2006). No cap was placed on the monetary value of the purchase. Further, during the same meeting when the topic on the floor was the Thousand Islands the Committee members determined they only wanted the property if it could be purchased with financial partners.

The effect of not assigning a dollar value, within a set range, generates property acquisitions "at any price" and other important parcels, as defined by the SMC, may not be purchased. While the current practice of not setting a dollar value to property may save time for the SMC it provides for the purchase of parcels that have great public awareness and parcels that have greater environmental importance but little public awareness are not purchased.

Finding 4: Non-compliance with policies – had only one vote

The SMC are required to have two votes when deciding on a property considered for acquisition. They did not have the second majority vote as required by the LAM. It should be noted that no members of the SMC ever voiced any concern that they did not wish to proceed with the purchase of the property. A 2nd Majority vote is necessary to establish a genuine desire to purchase property by the SMC.

Finding 5: *Appraisers* did not disclose the transactions in the comparables that were pending involved the party selling the Hersch property to the EELs.

The *Appraisers* state all the comparables used were arm's length transactions. However, both of the pending sales, used as comparables, were related party transactions and have never even taken place (7 months after the appraisal date.) Both of the pending sales used in the comparables were related party transactions. Using pending sales is permitted; however, since neither sale took place, the seller of the property in question was a party to both pending transactions, and the *Appraisers* were made aware of the transactions by the seller, disclosure should have been made. The seller uses numerous names for business purposes and the uninformed reader may draw the wrong conclusion about the transactions.

Finding 6: The *Review Appraiser* did not address the deficiencies in the appraisals as required by the LAM (page 5-43).

A review appraisal is performed, under certain circumstances, when property is appraised. According to the LAM, "Appraisal review reports will evaluate each appraisal for adherence to minimum technical standards and acceptable appraisal procedures." The *Review appraiser* does not address the issue where both appraisals state the fair market value of the property was "as-is" when the value was actually based on a zoning change. Further, the *Review appraiser* did not note the lack of disclosures by the *Appraisers*.

Finding 7: Land was acquired from other than the land owner.

The LAM and AO – 37 states the negotiation for property is to take place with the land owner. Negotiation with non-property owners is permitted if the BoCC grants a waiver. This waiver was not requested until the initial offer and all negotiations were complete and the contract was presented to the BoCC for acceptance. This action is a violation of Board Policy. Violating policies could lead to favoritism which could provide the appearance of corruption.

Finding 8: Acquisition was placed on the consent Agenda.

Land acquisitions greater than $100,000 may not be placed on the Consent Agenda. The County Manager stated she was made aware the purchase was placed on the Consent Agenda but decided not to move it because public comment would remove it from the Consent Agenda anyway. The county created the policy of requiring high dollar value purchases on the regular Agenda so the public would have the ability to voice concerns (favorable or unfavorable) to the BoCC. Improper placement may mislead the public as to the importance of an issue or the need for public input.

Finding 9: One A*ppraiser* erroneously stated the value of the existing contract to purchase the subject parcel:

The George L. Goodman appraisal report stated the subject parcel had an existing contract for sale. The report states, "…indicating that the pending purchase price equates to between $25,000 and $26,000 per gross acre. The value of the contracts is between $3,125,000 and $3,250,000." This information is inaccurate. The contract referenced, to purchase 122 (+/-) acres, was for $2,095,000. This information is supported by the deeds recorded by the Clerk of Courts and by the Addendum provided when the parcel was presented to the BoCC on March 23, 2006.

PURPOSE

The purpose of the internal review and analysis was to verify the land acquired by the Environmentally Endangered Lands (EEL) Program was purchased according to the LAM and to make recommendations for improvement if applicable.

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.

The Board of County Commissioners (BoCC) contracted with The Nature Conservancy to negotiate the land purchases.

The organization the BoCC purchased the land from is Parrish Holder Land Corporation (Parrish). The owners of Parrish Holder Land Corporation are also the owners of:

1. Gen Development
2. AG Ventures
3. Sunlake

Ownership

The property offered for sale was owned by Bernard Hersch, Debra Buchalter, and Michael Block. An application to consider the property was presented to the EELs in 2003. An offer to purchase the property was made in May 2004. Originally, the property being considered was approximately 122 acres; the parcels are located on both the north and south sides of Parrish Road. The appraisals (in 2004) valued the 122 acres at $1,406,000 and $1,510,000. The parties could not come to agreement on a price.

Gen Development had an option contract on the three (3) parcels that comprised the 122 acres plus an additional parcel of about 45 acres (owned by Roper Harding Titusville Partnership). Roper Harding Titusville Partnership, Bernard Hersch, Debra Buchalter, and Michael Block granted Gen Development the right to seek re-zoning on their four (4) parcels in June 2005. The Nature Conservancy approached Hersch to purchase the property. However, Hersch disclosed he had a contract on the property with Gen Development. Hersch gave The Nature Conservancy permission to have discussions with Gen Development regarding the acquisition.

Zoning

Gen Development applied for a zoning change on the four (4) parcels in July 2005. The zoning change was modified at the November 7, 2005 Planning and Zoning Advisory Board meeting. Gen Development requested only the northern parcel be considered for a zoning variance because he had been contacted just a "few days earlier" by the EELs to purchase the southern parcel. The zoning request on the northern parcel was to grant 188 units on about 65 acres. This was denied by the Planning and Zoning Advisory Board and by the Board of County Commissioners on December 1, 2005.

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 The Nature Conservancy and reviewed their files on the Hersch acquisition. The files included the appraisals for the Hersch property. We attended the monthly EEL Selection and Management Committee meeting held on May 25, 2006 and reviewed minutes of all the meetings from January 2003 through May 2006.

We reviewed the appraisals performed in 2004 and 2006 and a review appraisal. The standards for preparing an appraisal and performing a review appraisal, as required by the LAM, were compared to the standards followed in the appraisals performed on the property. We performed an analysis on the comparable transactions cited in the appraisals that were used to determine fair market value. The Planning and Zoning file (located at the Brevard County Planning and Zoning office) for the Hersch property was used to compare findings stated in the appraisal to what took place.

FINDINGS AND RECOMMENDATIONS

Finding 1:

Appraisal based on unsupported zoning changes

The Hersch Property valuation was not based on current zoning by the *Appraiser*. Rather it was based on legally permissible zoning changes based on the Future Land Use Map (FLUM). The current zoning is different from the FLUM. The appraiser used a zoning which would permit higher density than the current zoning. The higher density would generate a higher land value than what currently exists. If assumptions and hypothetical circumstances are used to determine a value for a property, those assumptions and hypothetical circumstances must be clearly identified so the reader will not be misled (per the Uniform Standards for Professional Appraisal Practice).

The "as-is" valuation must be based on current zoning. The assumed zoning changes are not consistent with the discussions between the Planning and Zoning Commission and the Board of County Commissioners on an adjacent property. The Minutes from the Planning and Zoning Commission, December 1, 2005, indicated the rezoning application on the adjacent property was denied. The zoning changes were also denied by the Brevard County Commissioners on December 1, 2005. The Fish and Wildlife Commission had accepted a plan for 129 units. (This was discussed under the heading "**Zoning**").

The appraisals from Clayton, Roper & Marshall and George Goodman, MAIs, state they have estimated the "as-is" market value, yet the assumption made to arrive at the dollar value was a zoning change; therefore the estimate is not "as is". The appraisers did not determine that the county would be willing to make a land use designation change, based on the Planning and Zoning Commission meeting and the Brevard County Commission meeting that took place on December 1, 2005.

The assumption that the County Commissioners would permit rezoning at the level needed was inconspicuously located on page 46 of the appraisal report prepared by George L. Goodman. However, the adjacent property potential zoning is the very same justification used to determine the number of allowable units that would be permitted on the Hersch property.

The Uniform Standards of Professional Appraisal Practice, Standards Rule 1-3 state:

> *"(An appraiser must)…identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations…, and* ***…****An appraiser must analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraisers highest and best use conclusion(s)."*

Recommendation: We recommend The Nature Conservancy accept only appraisal values that reflect the zoning parameters currently in place and zoning changes that could reasonably be expected to occur. Further, all assumptions and hypothetical circumstances should be properly disclosed as required by USPAP.

Response: The appraiser did clearly document in his report that the zoning changes proposed on December 1, 2005 for the north parcel were denied. However the discussion at this zoning meeting indicated that a more appropriate density of 99 units per acre would likely be accepted if requested by the owner. It was this discussion that supported the valuation of the subject property at 129 units. (The density of 99 units on the adjacent parcel that the appraiser determined was reasonably probable represented a slightly higher level of density than the 129 units proposed for the subject parcel). The development plan also took into account the associated wetlands on the property.

Rebuttal: The appraisers did not provide sufficient support to establish "reasonably probable" as required when making assumptions.

- The entire basis in the appraisal to get the number of developable lots up to 129 for the subject parcel was a passing comment made by Commissioner Prichard December 1, 2005 during a Board Zoning Meeting, that, "it was mentioned earlier they could do 99 homes; then there were some rudimentary numbers and they come up with 79 without the open space concept…"
- The comment referenced above was due to a zoning change request during the November 7, 2005 Planning and Zoning Advisory Board Meeting by Gen Development. This change to grant 188 units on the 65± acres adjacent to the southern parcel was unequivocally denied during that meeting and the BoCC meeting on December 1, 2005.
- The appraisers took the comment and denial referenced (directly above this bullet) to conclude 129 units would be approved by the BoCC.
    - Mr. Goodman stated in his appraisal, "Although the BoCC were not inclined to approve the requested 188 units (2.94 units per acre) on the north side of Parrish Road, they (the BoCC) suggested a site plan consisting of 99 single-family units." *THEY* (the BoCC) did not suggest a site plan of 99 single-family units. Commissioner Prichard said he heard it mentioned.
    - Mr. Roper took the comment a step further and states in his report, "the Board indicated that a development of 100± units would likely be approved." This statement is totally unsubstantiated.
- The owner would not be willing to develop the limited number of properties discussed on the north, more developable, property. The owner stated in the BoCC December 1, 2005 meeting, "to be able to run water and sewer, curb streets, and put the full gamut of improvements on 99 lots would not work."
- Finally, the appraisers are comparing the north parcel to the south parcel, as if they were similar. The south parcel has about 32% wetlands plus and Indian Mound and two eagle's nests while the north property has about 1% wetlands and does not have an Indian Mound or eagle's nests.

Therefore, the possible number of units of the referenced property was not established. The zoning was NOT approved on the north side and the south property is not even comparable to the north.

Finding 2:

Inconsistent application of the policies and procedures – "As-is" versus "Highest and best use"

The appraisal accepted for the Hersch property was for the "highest and best use." The appraisal for the Thousand Islands used the "as-is" value as well as the highest and best use. The appraisal for the Thousand Islands followed the EEL policy which uses the "as-is" value and clearly identifies the hypothetical scenario and assumptions made to arrive at the "highest and best use" value. The appraisal policy should be consistent for all purchases otherwise the reader will not be aware of all relevant data. The misinformation led the BoCC to pay an additional $2,326,000 for the property.

Recommendation: We recommend consistent application of the policies and procedures for land acquisition.

Response: The term "Highest and Best Use" is used to define the uses that are considered legally permissible and reasonably probable. Zoning changes if considered reasonably probable are in this category.

Staff agrees with the auditor that it is important to use consistent terminology among all reports for historical clarity. The EELs will provide further clarification to all of its appraisers within the scope of work for future appraisals.

Finding 3:

Inconsistent application of Property Value to the Program

The EEL Selection and Management Committee (SMC) has cited the level of importance of properties to be protected, yet they have not assigned a dollar value to the properties. The SMC stated during the May 22, 2005, meeting that they wanted to know the appraised value of a specific property before proceeding any further because they did not want the property, "at any price." Depending on the appraisal, they would determine if they wanted to proceed with an offer to purchase.

In contrast, the Hersch property went from an appraisal of $1,400,000 for all 122 acres (in January 2004) to $3,600,000 for the portion of property (80 acres) with the least amount of upland acres (in January 2006). Further, during the same meeting when the topic on the floor was the Thousand Islands the Committee members determined they only wanted the property if it could be purchased with financial partners.

The effect of not assigning a dollar value, within a set range, generates property acquisitions "at any price" sometimes and other important parcels, as defined by the SMC, are not purchased. While the current practice of not setting a dollar value to property may save time for the SMC it provides for the purchase of parcels that have great public awareness and parcels that have greater environmental importance but little public awareness are not purchased.

Recommendation: We recommend the SMC members follow the LAM. The EEL Selection and Management Committee Action (page 5-33 of the LAM) phase states, "The First Majority Vote authorizes EEL staff to expend EEL funds on aerial photographs, appraisal maps, expanded site assessments, appraisals, title reports and other due diligence items that are required to further determine ecological values, ***economic values*** and property status." (Emphasis added) Committee members should be able to state the maximum they would be willing to pay for a property because they may feel a property costs too much in relationship to the resources (funds) available and the amount of land to be acquired for that cost.

We also suggest the EEL Procedures Committee consider revising the LAM. The manual is too vague on the specific requirements for the SMC. Further, the requirements are stated in numerous places and are inconsistent at times and difficult to follow.

Response: The EEL Selection and Management Committee (SMC) does not apply financial value standards to land under consideration for acquisition (see pg. 1-10 LAM: Role of SMC). The SMC does however set prioritization levels on lands identified for acquisition based on environmental criteria identified in the LAM (see pg. 3-23 thru pg. 3-26 of the LAM). The SMC does not review specific appraisal information on property acquisitions due to the confidentiality rules for appraisals that the EELs operates under (see pg. 5-44 of the LAM). The SMC does complete a final review of general contract terms and approximate value as part of the process for moving forward with purchase contracts to the County Commission (see pg. 5-45 of the LAM).

The SMC routinely discusses the pursuit of acquisition partners for all acquisitions identified by the EELs. The Parrish Holder property is within a state-approved project area (Brevard Coastal Scrub Ecosystem Project) and is eligible for state funding reimbursement.

Rebuttal: The SMC, EELs' staff and TNC should be applying financial value standards. The LAM on pages 3-22 and 3-26 references the spreadsheet/database that is to be employed by the SMC when determining the value of the subject properties. The spreadsheet will incorporate high priority sites based on environmental data, feasibility in terms of management, and feasibility in terms of funding. The SMC, EELs' staff and TNC should compare appraisal valuation with the environmental valuation.

Finding 4:

SMC held only one of the two required votes

The Selection and Management Committee (SMC) are required to have two votes when deciding on a property considered for acquisition. SMC had the first majority vote to consider the acquisition of the Hersch property on July 7, 2003. They did not have the second majority vote as required by the LAM. It should be noted that no members of the SMC ever voiced any concern that they did not wish to proceed with the purchase of the property. The minutes of the meetings leading up the purchase indicated the members wished to have the property purchased. They formally had a motion to incorporate the parcel in question into the Brevard Coastal Scrub Ecosystem Project (BCSE). A 2nd Majority vote is necessary to establish a genuine desire to purchase property by the SMC.

Recommendation: We recommend the SMC follow the LAM policies when purchasing land for the program by documenting the 1st and 2nd votes or revise the manual so the land acquisition process is easier to follow.

Response: The SMC did pass a unanimous 2nd Majority Vote on this property at the time this property was formally submitted to the State as a boundary amendment to the Brevard Coastal Scrub Ecosystem Project.

Rebuttal: This is not reflected in the minutes. The Hersch property was first introduced to the EELs in 1996. The first majority vote took place on July 7, 2003 for all 122 acres and the vote was referenced in the meeting minutes as the "first majority vote." The BCSE Boundary Amendment vote on September 22, 2003 includes the Hersch property in the revised boundary amendment but no mention is made of the required 2nd majority vote. As of the meeting on February 17, 2004, the Hersch acquisition was contingent upon acquiring **both** parcels – the 82± acres and the additional property comprising the 122 acres. On February 8, 2005 (S/B July 29, 2005) mention was made by an SMC member that the 82± acres parcel would be considered, however no vote took place to purchase only part of the previously agreed parcel. Only two SMC members were present when a willingness to pursue just 82± acres was discussed. This is hardly a majority vote. Therefore, the project is in violation of the policies and procedures established following the voter-approved referendum of 1990.

Finding 5:

Unexecuted contracts and related-party transactions were used for comparable *sales*

The *Appraisers* state all the comparables used were arm's length transactions. However, both of the pending sales, used as comparables, were related party transactions and have never even taken place. Both of the pending sales used in the comparables were related party transactions. Using pending sales is permitted; however, since neither sale took place the seller of the property in question was a party to both pending transactions and the A*ppraisers* were made aware of the transactions by the seller. Disclosure should have been made. The seller uses numerous names for business purposes and the uninformed reader may draw the wrong conclusion about the transactions.

The following transactions were with the related party:

> AG Ventures to Undisclosed party. AG Ventures is owned by Gen Development and/or the owners of Gen Development. This sale never took place and should not have been used as a comparable to support the price arrived at as fair market value.
>
> Roper Harding to Gen Development. One party in this transaction is Gen Development. This pending contract was contingent upon Gen Development obtaining the zoning change mentioned in the ownership section of the report. The zoning denial took place on December 1, 2005 and the appraisal took place in January 2006, therefore this contract should not have been presented as a comparable to support the price arrived at as fair market value.
>
> Sunlake to Hole in the Wall sale. Sunlake is owned by John, John, and Charles Genoni (the owners of Gen Development).

Recommendation: We recommend EEL staff follow their new process for hiring appraisers rather than taking recommendations from The Nature Conservancy on the selection of which appraisers to use. The appraisers selected should disclose all relevant information in the appraisal rather than use the "due diligence" performed by the individual they are purchasing the property from.

Response: The referenced pending comparable sales, as per state appraisal guidelines, were not used to reconcile the value of the subject property. The state guidelines require a minimum of three closed sales. Pending contracts may be used to reflect the current market trends. The appraised price per acre for the subject property was over $10,000 below the average price per acre of the required three closed comparable sales.

Rebuttal: The Roper appraisal clearly used the related-party, unconsummated transactions. The response does not address the lack of disclosure of the related party issues discussed. Mr. Roper states that generally sale contracts are given less weight, yet Mr. Roper gave one contract 21% weight toward the final valuation and the other sale contract (which was only verified by the owner of the subject property) was given 18% weight. Mr. Goodman states, "Pending Contract 1 and Sale 3 are considered superior to the subject…which sets the upper end of the value range." Therefore both appraisers used the unconsummated, related-party sales to determine the final value.

Finding 6:

The review appraisal did not follow the standards as required by the LAM (page 5-43).

A review appraisal is performed, under certain circumstances, when property is appraised. According to the LAM, "Appraisal review reports will evaluate each appraisal for adherence to minimum technical standards and acceptable appraisal procedures." The *Review appraiser* does not address the issue where one appraisal states the fair market value of the property was "as-is" when the value was actually based on a zoning change. Further, the *Review appraiser* did not note the lack of disclosure by the *Appraiser*.

Recommendation: We recommend EEL staff follow their new process for hiring appraisers and require them to report deviations from the standards as required by the LAM.

Response: The appraisers reports provided opinions as to the "market value of the fee simple interest." This value is based on zoning changes that were identified as being reasonably probable. Collectively this represents the "Highest and Best Use" of the property. Although the term "As Is" was used in the Thousand Islands, the more appropriate term should have been "Highest and Best Use".

Rebuttal: The "As is" term employed by Mr. Roper is not the market value that would be paid by a willing buyer. The zoning used to establish value for the appraisal is not "reasonably probable" as required by the appraisal standards. Further, "highest and best use" is defined by the appraiser as, "that reasonable and probable use that will support the highest present value as of the effective date of the appraisal." The number of lots that could be developed was not established by the appraiser. See the Rebuttal for Finding 1.

Finding 7:

The Board did not approve waiver before negotiations began

The LAM and AO – 37 state the negotiation for property is to take place with the land owner. Negotiation with non-property owners is permitted if the BoCC grants a waiver. This waiver was not requested until the final sales contract was presented to the BoCC for acceptance. This action is a violation of Board Policy. Violating policies could lead to favoritism which could provide the appearance of corruption.

TNC negotiated for the Hersch property with the individual having an option to purchase the property from Hersch. The BoCC paid $3,636,000 for the land which was purchased simultaneously by Parrish for $1,310,000. The premium paid by BoCC was $2,326,000. The options held by Parrish allowed him to acquire the north 38± acres and the southern 82± acres for a total of $2,120,000.

Recommendation: TNC should have negotiations only with the property owners as required by the LAM and Administrative Order (AO) 37. AO 37 states, "Negotiations shall not be conducted with persons holding contract to purchase or option on the subject property. Property shall be purchased directly from the property owner. Initial offer will be made directly to the owner."

Response: The EELs is aware of the County policy related to negotiations with landowners. All negotiation details for this acquisition were reviewed by the county's Land Acquisition Review Committee in advance and disclosed to the County Commission. A waiver of the policy was requested and approved by the BOCC.

Rebuttal: This is not in any meeting minutes of the BoCC prior to the purchase of the subject property**.** The waiver was granted after-the-fact rather than prior to negotiating which is a violation.

Finding 8:

Acquisition was placed on the consent Agenda.

Land acquisitions greater than $100,000 may not be placed on the Consent Agenda. The County Manager stated she was made aware the purchase was placed on the Consent Agenda but decided not to move it. The county created the policy of requiring high dollar value purchases on the regular Agenda so the public would have the ability to voice concerns (favorable or unfavorable) to the BoCC. Improper placement may mislead the public as to the importance of an issue or the need for public input.

Recommendation: The County Manager should follow AO-37 and place the land acquisitions were they belong on the meeting Agendas.

Response: Placing the item on the Consent Agenda was an accident that will not occur again.

Finding 9:

One *Appraiser* erroneously stated the value of the existing contract to purchase the subject parcel:

The George L. Goodman appraisal report stated the subject parcel had an existing contract for sale. The report states, "…indicating that the pending purchase price equates to between $25,000 and $26,000 per gross acre. The value of the contracts is between $3,125,000 and $3,250,000." This information is inaccurate. The contract referenced, to purchase 122± acres, was for $2,095,000. This information is supported by the deeds recorded by the Clerk of Courts and by the Addendum provided when the parcel was presented to the BoCC on March 23, 2006.

Recommendation: We recommend the appraisers verify the information contained in their appraisal report.

Response: The pending contract referenced in this finding was not used by the appraisers for final reconciliation of value for the subject parcel. It should be understood that five (5) comparables were referenced by Mr. Goodman in his report. Two (2) were pending contracts. The three (3) closed comparable sales that are required according to the appraisal guidelines fully support the appraised value of the subject property. The actual price per acre paid by the county was actually $10,000 less per acre than the average of the three closed comparable sales in Mr. Goodman's report. This audit finding merely identifies an incorrect contract amount for a pending sale contract that had no bearing on the value assigned to the property.

Rebuttal: The audit finding is not merely identifying an incorrect contract. The finding is continued support for the inaccuracies in the appraisals obtained. Also, the pending contracts were used by both appraisers to determine the final value:

> Mr. Goodman states on page 57 of his appraisal that, "pending contract 1 and Sale 3 are considered superior to the subject …which sets the upper end of the value range." All five of the comparables used by Mr. Goodman were considered superior to the subject property. Mr. Roper placed 18% and 21% weight (page 52 of the Clayton, Roper, Marshall appraisal) on the two comparables pending sales, with the related party, that never took place to generate his "Adjusted Unit Value" to provide the unit market value of $29,500 per unit.

Finding 10:

Appraisal and Review Appraisal deficiencies noted by the *Reviewer* hired by the Clerk of Courts of Brevard County:

The Clerk of Courts of Brevard County requested additional review appraisals performed on the two appraisals and the review appraisal that were performed in January and March 2006, respectively. The original appraisals were performed by George L. Goodman Consulting, Inc. and Clayton, Roper & Marshall. William H. Benson performed the original review appraisal. Glen Kemp performed reviews of the above mentioned appraisals and review appraisal. A summary of issues he found on each appraisal follows. The review documents, in their entirety, are attached hereto. Portions of the summary were written (directly) by Glen Kemp.

George L. Goodman Consulting, Inc.-

1. The appraiser states the report is complete and self-contained. However, it does not contain a sufficient number of reliable land sales. Further, it does not provide adequate support for the highest and best use conclusion (no discussion about supply of and demand for single family lots in unincorporated north Brevard).
2. The appraiser states the north and south properties, 122± acres, is under contract for approximately $25,000 to $26,000 per acre. This contract price (which equaled $3,125,000 to $3,250,000) was not reconciled to the market value estimate arrived at by the appraiser.
3. The appraiser states that public sewer is available but does not accurately describe the limiting factors and costs associated with bringing sewer service to the subject.
4. The appraiser states the south parcel must be rezoned to yield the higher density (and market value) yet fails to disclose this as a special assumption, limiting condition, or extraordinary assumption. If the zoning change was denied it would negate the market value estimate provided by the appraiser.
5. The land sales used in the comparables had different units per acre permitted, or expected, than that of the south parcel; however, neither sale was viewed as superior or inferior to the south parcel; nor were they adjusted in value.
6. The appraiser's Certification states the market value for the property was $3,612,000, subject to the assumptions and limiting conditions. Since he did not reference the change in zoning density, from 1 unit per 5 acres to 1.53 units per acre, would be necessary to achieve the stated market value it is implied his Certification is "as-is." This is not correct. The stated market value is "as if rezoned and site plan approved."
7. The appraiser used land contracts in which a principal to the pending sales were with the individual with whom the option to purchase the subject property lie. These comparables compromise the integrity of the market value estimate.

Clayton, Roper, & Marshall. -

1. The appraiser's Certification states the market value for the property was $3,810,000, subject to the assumptions and limiting conditions. Since he did not reference the change in zoning density, from 1 unit per 5 acres to 1.53 units per acre, would be necessary to achieve the stated market value it is implied his Certification is "as-is." This is not correct. The stated market value is "as if rezoned and site plan approved."
2. The appraiser states the southern parcel must be rezoned to yield the higher density (and market value) yet fails to disclose this as a special assumption, limiting condition, or extraordinary assumption. If the zoning change was denied it would negate the market value estimate provided by the appraiser.
3. The appraiser did not support the highest and best use conclusion.
4. The appraiser states that public sewer is available but does not accurately describe the limiting factors and costs associated with bringing sewer service to the subject.
5. The zoning density change required to achieve the market value was not supported by evidence that it would take place. The argument presented does not support the conclusion.
6. The appraiser used the same principal as the option holder, in three land contract comparables. A market should contain many buyers and sellers; therefore, the reliability of the comparables may be questioned.
7. The reviewer of this appraisal believes unreasonable conclusions were reached since the appraiser used inadequate market data to support the highest and best use conclusion, and only two reliable sales.

William H. Benson, Review Appraisal-

1. The reviewer failed to verify the subject's proximity to public sewer service.
2. The reviewer failed to consider the zoning change necessary to affect the market value provided by the original appraisers.
3. The reviewer failed to acknowledge the lack of supporting evidence to establish the zoning change would be approved. The appraiser states the subject property must be rezoned to yield the higher density (and market value) yet fails to disclose this as a special assumption, limiting condition, or extraordinary assumption. If the zoning change was denied it would negate the market value estimate provided by the appraiser. The appraiser did not support the highest and best use conclusion.
4. The reviewer failed to identify the lack of support for the appraiser's highest and best use conclusions (inadequate discussion about supply and demand factors.)

Response: Appraisers are hired for their expertise related to the valuation of land. Appraisers certify to the County that the information included in their reports is accurate. As is required, the EELs contracts for Professional Appraisal Services from State-approved appraisers and is required to procure two independent appraisals and an additional independent third-party review of those appraisals. In addition, both County staff and the Nature Conservancy staff check the appraisals for accuracy and reasonableness. Neither County staff nor The Nature Conservancy staff are appraisers,

and therefore are not qualified to make value assessments of property. The County's process for obtaining land appraisals involves contracting with certified appraisers to certify their professional opinions to the County regarding the "highest and best use" of the land under consideration. In addition, the appraisers are bound by both County policies and State appraisal guidelines established by the Division of State Lands, Bureau of Appraisals.

> The BOCC / EEL policy as stated in the LAM states: "*All appraisals and reviews will be prepared by MAI appraisers contracted by the EEL Program, provided by Brevard County as permanent appraisal review staff or identified by the Division of State Lands (DSL), Bureau of Appraisal as part of an inter-agency acquisition project (as defined by a Multi-Party Acquisition Agreement). 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 (see Page 5-41, 4-d: Appraisal Reports), and will be required in accordance with State policy to submit a fully completed Bureau of Appraisal, Appraisal Checklist with each appraisal report.*"

One of the primary reasons for utilizing more than one appraiser is due to the fact that value opinions form appraiser to appraiser can vary. One of the roles of the review appraiser is to verify that the appraisals are done to the required standards.

In summary, the EEL Program follows all required land acquisition policies established by the State of Florida, and the Board of County Commissioners. These policies are clearly identified within Brevard County Policy BCC-24 and the BOCC-approved LAM. Our review of the Clerk's audit findings indicate that no policies were violated associated with the purchase of the Parrish Holder property. Although the Clerk's audit seems to suggest a difference of opinion regarding the methodology used to evaluate vacant land, the procedures utilized by the EEL Program and the contracted appraisers were consistent the required policies and appraisal guidelines.

The EEL Program will continue to welcome feedback on the land acquisition process in the ongoing effort to ensure that the Program operates efficiently, is accountable for the use of tax payer funds, and progresses towards it's directive of protecting and preserving biological diversity through responsible stewardship of Brevard County's Natural Resources.

Rebuttal: We recommend the EELs use other appraisers due to all the above referenced issues.

We have three areas in the Response that we would like to address:

1. The first sentence states the appraisers are hired for the expertise related to the valuation of land, however, they made value determinations based on unlikely zoning changes and unconsummated, related-party, transactions for comparables.
2. The fourth sentence state both County Staff and TNC check the appraisals for accuracy and reasonableness. Yet the next sentence states County Staff and TNC are not qualified to make value assessments of property. How can one review for reasonableness without having a general understanding of values in a given property location?
3. Next, the EEL Program follows all required land acquisition policies established. This is not true because the SMC did not have a 2nd Majority vote to buy the land. There was no quorum to agree to pursue just the southern parcel, and there is no spreadsheet defining high priority sites based on environmental data, feasibility in terms of management, and feasibility in terms of funding. Also, AO-37 was not followed and the item was placed on the Consent Agenda rather than the New Business section.