



Clerk of the Circuit Court **Brevard County, Florida**
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Scott Ellis, Clerk

August 19, 2007

Board of County Commissioners
Viera, FL

RE: Internal Audit and Analysis of Environmentally Endangered Lands
Program (EELs) proposed land acquisition of Veronica Estates,
August 21, 2007

Dear Board of County Commissioners:

We have conducted a limited scope internal audit and analysis of the proposed land acquisition of Veronica Estates, August 21, 2007 by EELs and Brevard County. The following is a report of findings and recommendations.

Thank you.

Sincerely,

Trudie Infantini, CPA
Internal Auditor

Scott Ellis,
Clerk of Courts

EXECUTIVE SUMMARY

PURPOSE

This internal audit and analysis is limited to the proposed acquisition of Veronica Estates, August 21, 2007, by EELs and Brevard County.

Finding 1: Tract 2 of the property being acquired does not have physical access to it. The property is not bounded by roads, but rather, surrounded by other lots with different owners.

Finding 2: EELs' staff and the Selection and Management Committee (SMC) have not determined certain criteria are met before proceeding forward on an acquisition. Examples are the identification of the species and natural communities present, the conservation status of the species in terms of State rankings, and the extent to which these species exist in protected areas.

Finding 3: The Land Acquisition Manual (LAM) requires a database/spreadsheet prioritizing potential sites. We find this database does not exist with any useful detail or is not being utilized.

Finding 4: The SMC needs to have a list of properties prioritized with estimated price and the total amount of funds they have available.

Finding 5: EELs may only authorize negotiations with owners following a 2nd majority vote of the SMC. The SMC held their vote one month after the EELs Director authorized The Nature Conservancy to negotiate a contract with the owners.

Finding 6: The agenda package does not include the current 2007 summary of the natural resource attributes of the site and the ecological reasons for acquisition. Rather, it has an outdated site description from 1996.

Finding 7: The restoration and ongoing land management costs are not included in the Agenda Package. This is the 8th EELs' purchase this year without the necessary financial information.

Finding 8: TNC is contracting with landowners on randomly selected parcels without priorities prescribed by the workplan.

Finding 9: TNC requested EELs hire appraisers for TNC because, "DEP had run out of money," and EELS would, "likely sell the property to DEP at a later date."

PURPOSE

This internal review and analysis is limited to auditing the procedures followed when property is presented to the Board of County Commissioners (BoCC) for purchase by EELs and:

- ❑ That the land to be acquired by the Environmentally Endangered Lands Program (EELs) will be purchased according to the EELs Land Acquisition Manual (LAM);
- ❑ That The Nature Conservancy is following the provisions established in their contract with the BoCC on September 27, 2005; and
- ❑ That Agenda items are factually accurate and complete.

BACKGROUND

General

Brevard County voters approved a referendum, in 1990, authorizing the County to acquire, protect, and maintain environmentally endangered lands. The Brevard County Commissioners created EELs to carry out this mission.

EELs must follow the LAM and applicable Brevard County Administrative Orders and Policies when purchasing land. The land must be acquired from willing sellers, only. The BoCC must approve a waiver prior to any negotiations if land is acquired from other than a willing seller.

Criteria for Acquisition

The LAM establishes policies and procedures to follow when acquiring land. The LAM states, “The LAM is the primary document to ensure that EEL Program land acquisition decisions are consistent with the directives of the 1990 voter-approved EEL Referendum and policies of the Board of County Commissioners.” The SMC is required to determine the following for properties that are considered for acquisition (LAM, 3-23 through 3-26):

- a) The frequency of the species and natural communities in Brevard County on the subject property,
- b) The conservation status of these species and communities in terms of State rankings,
- c) The extent to which these species and communities exist in protected areas in Brevard, and
- d) The degree to which these communities support listed species.

EELs’ staff is required to create a database/spreadsheet prioritizing potential sites. Per the LAM, “A database/spreadsheet will be developed for the potential sites or groups of sites that will collate relevant information under each variable.” (LAM 3-22 & 3-36) The spreadsheet will incorporate high priority sites based on environmental data, feasibility in terms of management, and feasibility in terms of funding.

Agenda package

EELs' staff is required to put together an Agenda Report, which will be placed on the BoCC Agenda. The report must include:

- Summary of the natural resource attributes of the site and ecological reasons for acquisition; and
- Negotiation Summary Report with details about the negotiation history, purchase price, appraised values, and justification of the purchase price.

The Nature Conservancy Contract

The BoCC contracted with The Nature Conservancy (TNC) to negotiate the land purchases.

The Conservancy Tasks include:

- PROGRAM WORKPLAN: TNC will assist the County in (i) developing appropriate criteria to carefully prioritize and implement land acquisition projects, and (ii) applying these criteria to satisfy the land acquisition goals of the EEL Program;
- LANDOWNER CONTACT: TNC will contact landowners identified by the EEL Program workplan to determine their willingness to consider the sale of an interest in their property to the County;
- DUE DILIGENCE: TNC will coordinate the County's hiring of any contractors required for due diligence products, including title information (ownership and encumbrance reports), title commitments, mapping, surveys and environmental site assessments;
- LEGAL: TNC will provide the County with legal expertise and opinion when developing and reviewing contractual agreements or conservation easements for the purchase or protection of environmentally sensitive lands.

SCOPE

We reviewed the LAM, TNC Agreement for Professional Services, and Brevard County Administrative Orders and Policies to detail the steps that must be taken to purchase a property. We reviewed the Agenda Items. We interviewed staff with EELs. The minutes of all the meetings from January 2003 through June 2007 were read. We attended a site visit of potential EELs acquisitions and two Selection and Management Committee meetings.

FINDINGS AND RECOMMENDATIONS

Acquisition deficiencies

Finding 1:

Tract 2 of the property being acquired does not have physical access to it.

Tract 2 of the subject property is not bounded by roads, but rather, surrounded by other lots with different owners. The appraiser, Miller, states on page 25 of his report, “Most of the Tract 2 lots are wetlands and have no physical access.” He goes on to say on page 26, “the forested wetlands cover the entire tract and there are no improved access roads for Tract 2.”

EELs would not be able to maintain the property because it could not access it.

Recommendation: We recommend the BoCC decline this purchase because it does not have access to the property and would not be able to maintain it.

Finding 2:

Procedural Non-Compliance by EELs staff and the SMC

EELs’ staff and the Selection and Management Committee (SMC) have not determined certain criteria are met before proceeding forward on an acquisition. Examples are:

1. The identification of the species and natural communities in Brevard County on the subject property,
2. The conservation status of these species and communities in terms of State rankings,
3. The extent to which these species and communities exist in protected areas in Brevard, and
4. The degree to which these communities support listed species.

The appraiser, Daryl Williams, states 91% of Tract 2 and 69% of Tract 1 are wetlands. Smith Environmental Services states the wetlands on the parcel are primarily freshwater marsh and mesic wetland hardwoods. Neither of these natural communities is listed as ‘high priority’ on the LAM chart in the appendix. Failure to follow policies and procedures may result in the acquisition of a parcel that is not “environmentally unique and irreplaceable and valued as an ecological resource.” (LAM, 2-15)

Recommendation: We recommend BoCC halt acquisitions until compliance with the LAM can be adhered to. We recommend the SMC and EELs' staff identify the species and natural communities on all potential sites for acquisition and the extent to which they exist in Brevard County. This should be completed prior to moving forward on the acquisition of any other parcels. Failure to do so will result in continued non-compliance with the voter-approved referendum of 1990 and with the governing document for land acquisitions.

Finding 3:

Procedural Non-Compliance by the EEL Program Staff

The Land Acquisition Manual (LAM) requires a database/spreadsheet prioritizing potential sites. We find this database does not exist with any useful detail or is not being adhered to. Per the LAM, "A database/spreadsheet will be developed for the potential sites or groups of sites that will collate relevant information under each variable." (LAM 3-22 & 3-36) The spreadsheet will incorporate high priority sites based on environmental data, feasibility in terms of management, and feasibility in terms of funding. The subject parcel was never specifically seen by the SMC prior to contract negotiation. The general area was seen over 10 years ago. Therefore, conditions could have changed on the subject parcel without the knowledge of the SMC.

Failure to create the spreadsheet or use it may result in funds being exhausted before more desirable property can be purchased. This budgeting is necessary to allocate the financial resources available in comparison to the environmentally endangered sensitivity of the project.

Recommendation: We recommend the SMC and EELs' staff create the required spreadsheet/database that considers all potential sites for acquisition. This should be completed prior to moving forward on the acquisition of any other parcels. Failure to do so will result in continued non-compliance with the voter-approved referendum of 1990 and with the governing document for land acquisitions.

Finding 4:

EELs does not have a prioritized list of properties with their estimated cost.

The SMC needs to have a list of properties prioritized with estimated price and the total amount of funds they have available. This will provide the necessary perspective given the random selection of parcels. This will assist them when they try to aggregate their purchases and factor in maintenance. This did not take place with the subject parcel because the SMC was not aware of the pending purchase until TNC had already negotiated a contract with the owner.

Recommendation: We recommend EELs work with the SMC to create a listing of properties under consideration or that they desire to purchase. This list should contain the estimated cost to purchase, the aggregate amount if all the properties were purchased, the total amount available to purchase the land, and a priority ranking.

Finding 5:

The EELs Director authorized The Nature Conservancy to negotiate a contract with the owners without authorization.

EELs' staff may only authorize negotiations with owners following a 2nd majority vote of the SMC. The SMC held their vote one month after the EELs Director authorized The Nature Conservancy to negotiate a contract with the owners of the subject parcel.

Failure to follow LAM policies could lead to property being purchased that is not the highest priority to the SMC. Further, EELs' staff could operate outside their authority and buy property for other agencies.

Recommendation: We recommend EELs staff negotiate with owners only after they have received authorization from the SMC.

AGENDA PACKAGE ERRORS AND OMISSIONS

Finding 6:

Supporting documentation for acquisition was omitted from the Agenda Package.

The agenda package is required to include a summary of the natural resource attributes of the site and ecological reasons for acquisition. The agenda package does not include this supporting information, which would establish that the purchase fulfills the requirements of the voter-approved referendum.

The agenda package does not include the current 2007 summary of the natural resource attributes of the site and the ecological reasons for acquisition. Rather, it has an outdated site description from 1996. Failure to provide the required information could lead the BoCC to make an incorrect decision based on insufficient information.

Smith Environmental Services performed the recent site visit in January 2007 at EELs' request. Smith's site report states 77% of the soil on the property are freshwater marsh and mesic wetland hardwoods. That leaves, at most, 23% of the property to represent the Natural Community Groups A & B, that are 'high priority'. The soil necessary to maintain scrubby flatwoods and mesic flatwoods, the 'high priority' communities desired, must be well-drained. Yet, 91% of Tract 2 and 69% of Tract 1 is considered wet.

Recommendation: We recommend EELs establish a process to verify the accuracy and completeness of Agenda packages prior to submission to the County Manager. We also recommend using the most current data available (the 2007 report by Smith) rather than data that is 10 years old.

Finding 7:

The restoration and ongoing land management costs are not included in the Agenda Package. This is the 8th EELs' purchase this year without the necessary financial information.

The Agenda package failed to identify and enumerate the land management costs associated with the purchase. The Agenda package stated there will be land management costs associated with this property post-acquisition, however, they have not been determined. The LAM has only three (3) Criteria for Acquisition Selection (page 3-22).

1. Determination of high priority sites based on environmental criteria;
2. Determination of management requirements and feasibility, to included the expected cost for management; and
3. Determination of which high priority environmental sites are feasible acquisition options.

Failure to pre-determine the costs associated with the land management of a property could place an undue burden on the EELS budget for management. Further, this is a violation of the Criteria for Acquisition Selection. This is the 8th time this year EEL's staff has provided Agenda packages that omitted the costs associated with land restoration and management. The other land acquisitions were:

Johnson	May 2007
Nevins	May 2007
Jeffreys	May 2007
Espinoza	April 2007
Boyd	January 2007 (pulled from Agenda at the last minute)
DiChristopher	January 2007 (pulled from Agenda at the last minute)
Schopke/Barge	July 2007

Failure to provide the required information could lead the BoCC to make an incorrect decision based on insufficient information.

Recommendation: We recommend the EEL Program staff verify the Agenda package contains all the required elements prior to submitting it to the County Manager.

TNC ERRORS AND OMISSIONS

Finding 8:

TNC failed to follow the Landowner Contact requirement (Agreement for Professional Services, 9-27-05, Exhibit A, paragraph 2.02).

TNC is contracting with landowners on randomly selected parcels without priorities prescribed by the workplan. The SMC never designated, specifically, the subject parcel for acquisition. The 1st majority vote by the SMC was to designate over 20,000 acres of land for inclusion in the Coastal Scrub Ecosystem Initiative in 1996. The subject parcel was never brought before the SMC again until after TNC had negotiated a contract to purchase the land.

Recommendation: We recommend BoCC demand that TNC comply with their contractual requirement by negotiating parcels after approval by the SMC.

Finding 9:

TNC requested EELs obtain appraisals for the subject property although the acquisition was never presented to the SMC.

TNC requested EELs obtain appraisals for the subject property because, “Since DEP is out of money, the County is going to appraise the Veronica Estates ownership.” Also, since, “The County will likely attempt to sell these to DEP at some point...” The previous quotes were from an e-mail from an employee with TNC to an employee with DEP, December 12, 2006.

The request for an appraisal from TNC to EELs, November 16, 2006, states, “As we had discussed previously, the state is not able to move forward on the Veronica Estates appraisals. Please bid out for appraisers and a reviewer for the property as soon as possible.”

Recommendation: We recommend EELs demand that TNC comply with contract provisions.