



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND
GOVERNMENT ACCOUNTABILITY



SUNSET MEMORANDUM

Report No. 07-S13

Department of Environmental Protection, Division of State Lands Options for Legislative Consideration

October 31, 2007

Summary

To support the Sunset Review process, the Legislature directed OPPAGA to examine the Department of Environmental Protection (DEP).¹ This memo is part of a series that reviews the department's operations, and focuses on the Division of State Lands and its purpose, organization, responsibilities, resources, and performance. The memo also offers options for legislative consideration.

OPPAGA developed five policy options for the Legislature to consider regarding DEP's land acquisition activities. These options include (1) continuing the Florida Forever Program but directing the department to make improvements to address identified problems; (2) placing the program on hiatus for one year until operational issues are resolved; (3) creating a new program to succeed Florida Forever; (4) not reauthorizing a replacement program if Florida Forever expires as anticipated; or (5) discontinuing the current program. For each option, we describe the considerations, costs, advantages, and disadvantages.

¹ Sections [11.901-11.920](#), *F.S.*

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Purpose, Organization, and Responsibilities

The Division of State Lands acquires land for conservation, recreation, water resource protection and other state needs and helps control the growth of upland and aquatic plant species. The division oversees approximately 11 million acres, including more than 7,000 lakes and 4,510 islands. The division leases lands to state agencies for parks, forests, wildlife management areas, historic sites, educational facilities, vegetable farming, and mineral, oil, and gas exploration.

The division is organized into three programs: Land Administration, Land Management, and Invasive Plant Control. These programs contain five bureaus and one office.

- **The Bureau of Public Land Administration** oversees the disposition (e.g., sale or transfer) of state surplus lands, reviews the implementation of land management plans, and ensures compliance with lease conditions.
- **The Bureau of Appraisal** oversees and manages the appraisal process to determine the fair market value of land being considered for acquisition.
- **The Bureau of Land Acquisition** negotiates the price and terms for land purchases and facilitates closings to complete transactions and acquire title to lands.
- **The Bureau of Survey and Mapping** determines land and water boundaries, performs survey and mapping services for land acquisition programs, and maintains a public lands inventory.
- **The Bureau of Invasive Plant Management** coordinates and funds statewide programs to control invasive aquatic and upland plants on state lands and waterways.
- **The Office of Environmental Services** provides staff for the Acquisition and Restoration Council, coordinates and conducts land management audits, and provides comments on proposed land uses and projects affecting natural resources of state owned lands.²

A major initiative of the Division of State Lands is the Florida Forever program, which is the state's current environmental land acquisition program. In addition to increasing environmental acquisitions, Florida Forever program goals include promoting environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land by acquisition of conservation easements. It has been estimated that the Florida Forever program will acquire 641,000 total acres before its anticipated expiration in 2010. As of July 2007, the program was about 82,000 acres away from that estimate, having purchased 559,189 acres at a cost of \$2,074,916,179. These purchases are financed through bonds, with debt service paid with a portion of documentary stamp tax revenue. The Legislature has limited these bond issues to \$300 million in any given year. As shown in Exhibit 1, the division uses a statutory formula to distribute Florida Forever funds to state agencies and water management districts for purchasing land.

² The Acquisition and Restoration Council has sole responsibility for evaluating, selecting, and ranking state land acquisition projects for the Florida Forever program. The council annually reviews all Florida Forever acquisition proposals, decides which proposals should receive further evaluation, determines the final project boundaries, and groups Florida Forever projects.

Exhibit 1

The Legislature Appropriated \$300 Million in Florida Forever Funds in Fiscal Year 2007-08

Land Purchasing Agency or Program	Florida Forever Funding Allocation	Florida Forever Funding Amount (in millions)
Department of Environmental Protection	35.0%	\$105.0
Water Management Districts	35.0%	105.0
Florida Communities Trust (Department of Community Affairs)	22.0%	66.0
Recreation Development Assistance (Department of Environmental Protection)	2.0%	6.0
Recreation and Parks (Department of Environmental Protection)	1.5%	4.5
Forestry Program (Department of Agriculture and Consumer Services)	1.5%	4.5
Wildlife Management Program (Fish and Wildlife Conservation Commission)	1.5%	4.5
Greenways and Trails (Department of Environmental Protection)	1.5%	4.5
TOTAL	100.0%	\$300,000,000

Source: Section 259.105, *Florida Statutes*, and Florida Department of Environmental Protection.

In addition, the Legislature makes available funds annually to the department for payment in lieu of taxes to qualifying counties and local governments for all actual tax losses incurred because of Florida Forever acquisitions; in Fiscal Year 2007-08, the Legislature appropriated \$1.36 million for this purpose.

Resources

The Legislature appropriated \$1 billion in trust funds and general revenue and 177.5 positions for the Division of State Lands for Fiscal Year 2007-08 (see Exhibit 2). The division's general revenue appropriation (\$100,000,000) was for land acquisition and the design and construction of restoration projects, including the Everglades restoration and the Henderson Creek/Belle Meade projects.

Exhibit 2

The Legislature Appropriated Over \$1 Billion to the Division of State Lands for Fiscal Year 2007-08

Program	General Revenue	Trust Funds	Total	FTE
Land Administration	\$100,000,000	\$892,229,657	\$992,299,657	45
Land Management	0	64,032,975	64,032,975	103
Invasive Plant Control	0	44,244,047	44,244,047	29.5
Total Funds	\$100,000,000	\$1,000,556,679	\$1,100,556,679	177.5

Source: 2007 General Appropriations Act.

Performance

The Division of State Lands' legislative outcome measures demonstrate mixed results, with some programs not achieving established performance standards. Additionally, prior audits and evaluations of the division's activities have identified concerns with various aspects of its programs, especially in the area of land acquisition.

The division achieved established standards for four of its seven legislatively mandated performance measures in Fiscal Year 2006-07 (measures achieving established standards are highlighted in Exhibit 3). For example, the division was successful in purchasing lands below approved levels, with purchase prices at 80% of approved values for parcels. In addition, the division's Land Management program exceeded timeliness standards for completing most requests and applications for leases, easements, and land use agreements.³ Moreover, the division met its legislative standard for controlling invasive aquatic plants.

³ The division did not meet timeliness standards for completion of uplands instrument requests/applications. According to the division, deadlines are not met by external customers in returning executed documents, which negatively affects overall timeliness.

Exhibit 3

The Division of State Lands Met Standards for Four of Seven Performance Measures in Fiscal Year 2006-07

	Standard	Actual Performance
Land Administration		
Percent of parcels closed within agreed upon timeframe	75%	68%
Purchase price as a percent of approved value for parcels	92%	80%
Annual percent increase in acreage of land (or interests therein) on the Florida Forever List	6%	-.25%
Land Management		
Percent of uplands instrument requests/applications completed within 12 months as compared to those received timely	95%	66%
Percent of submerged lands lease instruments completed within 12 months as compared to those received	95%	116%
Percent of asset management instrument requests/applications completed within 12 months as compared to those received timely	100%	115%
Invasive Plant Control		
Percent of Florida's public water bodies in which invasive aquatic plants are under maintenance control	97%	98%

Source: Florida Department of Environmental Protection.

However, the division's Land Administration program did not meet its goal to increase the amount of acreage on the Florida Forever list, which includes land acquisition projects organized into groups.⁴ Under the current performance goals, the department strives to "grow the list by 6% each year in order to assure that a sufficient amount of land is available for acquisition." The department stated that it did not achieve this goal because the standard was based on the number of acres included in the original 2001 Florida Forever list, which has not been adjusted as the list has changed over time. According to the department, "The trend in actual acreage placed on the list slowed during the life of the program." The program also did not meet the standard for closing parcels within agreed upon timeframes. The department explained this result by reporting that the program had opportunities to purchase key parcels for large dollar amounts and placed the purchase of smaller parcels on hold.

External and internal reviews of the Division of State Lands have highlighted concerns regarding the division's performance, particularly with regard to its land acquisition activities. For example, a prior OPPAGA report concluded that while land acquisitions had achieved positive results, it was difficult to conclude that the state bought the best lands possible because the division lacked an integrated process for identifying the best land to purchase.⁵

In addition, several Auditor General reports have identified concerns about the division's land acquisition processes.⁶ Most recently, a 2007 audit found that the department's appraisals continue to be problematic. For example, the Auditor General's review of a sample of specific acquisitions and dispositions disclosed that

⁴ The Florida Forever list includes land acquisition projects that have been nominated for inclusion by federal, state, and local government agencies, conservation organizations, or private citizens. The Acquisition and Restoration Council evaluates and selects projects from these nominees and groups them into three lists—full fee projects, less-than-fee projects, and small parcels projects. After projects are approved and grouped, the overall Florida Forever list is submitted to the Governor and Cabinet for approval. The Governor and Cabinet may remove projects from the list but cannot otherwise change the list.

⁵ *Justification Review: State Lands Program Florida Department of Environmental Protection*, Report No. 01-07, February 2001

⁶ *Department of Environmental Protection Acquisitions of Lands by the State January 1, 2000, Through December 31, 2001*, Report No. 03-115, February 2003; *Department of Environmental Protection Administration of State-Owned Lands Operational Audit*, Report No. 2004 -119, February 2004; *Department of Environmental Protection Acquisition, Disposition, and Exchange of State Land Operational Audit*, Report No. 2005 -203, June 2005; *Department of Environmental Protection Land Acquisitions Operational Audit*, Report No. 2008-019, September 2007.

- documentation supporting the Babcock Ranch acquisition gave an appearance of influence of the appraisal amounts by the department in the establishment of value estimates of contracted fee appraisers;
- inconsistencies and deficiencies in the highest and best use analyses and conclusions of appraisals for the Overstreet Ranch and Tiger Island acquisitions may have affected the value estimates for those parcels; and
- there was lack of documentation of the department's appropriate consideration of the prior sale, the value estimates in the appraisal reports, and the negotiation process of the Three Rivers acquisition.

The Department of Environmental Protection's Inspector General also has identified significant concerns about the division's land acquisition operations.⁷ A March 2007 review of the division's Florida Forever program management found that acquisition priorities were subject to outside pressure and influences and projects were often moved forward or delayed on the acquisition list with minimal communication regarding the reasons for the changes.⁸ At the time of this review, the division reported that it could not meet its land acquisition spending commitments through the rest of Fiscal Year 2006-07 because of a lack of available funds, due largely to an over-commitment of funds resulting from aggressive acquisition activity. To address these concerns, the Inspector General made several recommendations.

- The division should consistently use processes to effectively prioritize and plan an acquisition strategy based on the goals of the Florida Forever program, given funding for the remaining program years. Information regarding funding availability should be made available for prioritizing efforts, and deviations from acquisition prioritizing plans should be justified and well documented.
- In the remaining years of the Florida Forever program, the division should monitor acquisition efforts and determine the extent to which the program has met its goals. The division should factor these monitoring efforts into the planning process.
- The division should adopt written policies to ensure that the process for prioritizing and committing funds is properly documented, justified, and accounted for in department records.

To address the concerns identified in these reports, we recommend that the Department of Environmental Protection prepare a report for the 2008 Legislature detailing how it is addressing identified land acquisition problems. At a minimum, the report should address the department's appraisal process, prioritization of potential land acquisitions, monitoring activities, and the amount of additional land in acres needed to meet the Florida Forever and future goals.

Options for the Legislature's Consideration

Florida has a unique environment and continues to develop quickly. The Florida Forever program was established to help protect critical lands from development and thus avoid environmental and water quality problems and loss of species. However, buying land is expensive, removes property from local tax rolls, and results in the state incurring long-term land management costs. In lieu of purchasing land, the Legislature has authorized other conservation tools such as buying development rights, which keeps the land in private hands and on local tax rolls but can be controversial, as taxpayers cannot directly use the land for recreation and other purposes. These and other issues should be considered as the Legislature makes decisions about statewide land acquisition policies.

⁷ *Review of Florida Forever Program Funds Management and Other Issues in the Division of State Lands For the Period July 2006 through February 2007*, Report No. IA-03-03-2007-54, March 2007.

⁸ According to department officials, the Office of Inspector General is currently working on several audits, reviews, and advisory projects to address these deficiencies.

While there has been long-term public and legislative support for conservation land acquisition programs in Florida, an ongoing question has been “How much conservation land should the state buy?” There is a lack of consensus among stakeholders about the answer to this question, with some asserting that current state land holdings are adequate to meet conservation needs and others expressing the belief that the state should continue to acquire more land.

Over the past 30 years, Florida has purchased approximately 3.7 million acres of land for environmental, recreational, and preservation purposes.⁹ A 1994 baseline estimate by the Florida Fish and Wildlife Conservation Commission asserted that approximately 11.7 million acres, or about 33% of the land area of the state, should fall into some type of conservation land use.¹⁰ Currently, about 27% of the state’s lands are managed for conservation.¹¹

The Legislature has not established a statewide policy on the amount of conservation land state agencies should acquire. However, the Legislature has established goals for the state’s primary acquisition program, Florida Forever, that include increasing the number of acres available for public recreation; of functional wetland systems protected; and available for sustainable forest management. While these goals allow the Legislature to track progress in the amount of land purchased, they are general in nature and do not identify the amount of acreage needed to meet these goals.

As noted above, recent audits and evaluations of the Division of State Lands have identified significant concerns about its acquisition and monitoring activities. Conservation and research organizations that provided feedback during our review expressed similar concerns. Specifically, these stakeholders were critical of the division’s project selection process, method for prioritizing land purchases, and appraisal process. In general, stakeholders expressed the opinion that the division may be acquiring land of questionable conservation value.

Given that the current state land acquisition program is nearing expiration, and significant concerns have been reported regarding the operation and monitoring of the Florida Forever program, this is an appropriate time for the Legislature to consider issues about future acquisitions. To help facilitate its decision-making, we recommend that the Legislature direct the Department of Environmental Protection to propose a comprehensive land acquisition policy that includes consideration of the type of lands and total number of acres necessary for the state to achieve conservation goals. This proposed policy would assist the Legislature in considering options for the state’s acquisition program.

Exhibit 4 below identifies five policy options for the Legislature to consider. These options include continuing the Florida Forever Program but directing the department to make improvements to address identified problems (Option 1), placing the program on hiatus for one year until operational issues are resolved (Option 2), creating a new program to succeed Florida Forever (Option 3), not reauthorizing a replacement program if Florida Forever expires as anticipated (Option 4), or discontinuing the current program (Option 5). The exhibit outlines the policy options and describes the considerations, costs, and advantages and disadvantages associated with each option.

⁹ *August 2007 Report of the Florida Forever Program*, Department of Environmental Protection.

¹⁰ *Closing the Gaps in Florida’s Wildlife Habitat Conservation System*, Florida Game and Fresh Water Fish Commission, 1994.

¹¹ *Protecting Wild Florida: Preserving the Best and Last Wilderness of Florida, Forever*; The Nature Conservancy, 2006.

Exhibit 4

The Legislature Could Consider Several Options to Modify the Division of State Lands Acquisition Program

Option	Advantages	Disadvantages	Potential Cost Implications
Option 1 - Continue the Florida Forever Program			
<p>Continue the program at the current rate of funding (\$300 million per year).</p>	<ul style="list-style-type: none"> ▪ Facilitates the continued acquisition of conservation lands. ▪ May result in long-term savings as current property acquisitions may avoid need to pay a higher price for lands in future years. 	<ul style="list-style-type: none"> ▪ Requires significant expenditure of state funds during period of budget shortfalls. ▪ If the Division of State Lands does not resolve identified problems in acquisition processes, land purchases may not be of highest conservation quality.² 	<ul style="list-style-type: none"> ▪ Total debt accumulation of approximately \$900 million for the remaining years of the program, with an additional interest expense of approximately \$666 million.¹ ▪ Estimated management costs for land acquired each year will be approximately \$4.5 million annually.³ ▪ Varying annual expenditures for payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll.
Option 2 - One Year Florida Forever Program Moratorium			
<p>Discontinue acquisition of new conservation lands for one year to allow division to correct identified problems in purchase practices.</p>	<ul style="list-style-type: none"> ▪ Eliminates state acquisition-related expenditures for one year. ▪ Allows Division of State Lands time to make improvements and address the identified problems in acquisition processes, including developing a process to effectively prioritize, plan, and monitor an acquisition strategy based on the goals of the Florida Forever program. 	<ul style="list-style-type: none"> ▪ According to the department, may expose the state to liability for failing to perform on current acquisition contracts that extend into future funding cycles. ▪ Reduction of funds for land acquisition would affect multiple state and local government entities that currently receive Florida Forever funds. ▪ New conservation lands would not be acquired during the moratorium. ▪ Some conservation lands may not be available for purchase after moratorium is lifted. ▪ Price of land may increase during moratorium. ▪ May result in negative environmental impacts (e.g., loss of threatened and endangered species; diminished water quality; growth of exotic, invasive species) during moratorium. 	<ul style="list-style-type: none"> ▪ Avoids for one year debt accumulation of approximately \$300 million and related interest expense for these bonds. ▪ Avoids for one year approximately \$4.5 million in management costs for newly acquired lands. ▪ Avoids for one year increased payments-in-lieu of taxes made to local governments when newly acquired lands are taken off tax roll.
Option 3 - Create New Program to Succeed Florida Forever			
<p>When Florida Forever reaches its anticipated expiration date in 2010, replace it with a new acquisition program. Potential models include</p> <ul style="list-style-type: none"> ▪ Division of State Lands as central agency; ▪ separate centralized land purchasing entity; ▪ public-private partnership; and ▪ privatization. 	<ul style="list-style-type: none"> ▪ Facilitates the continued acquisition of conservation land. ▪ Previously unavailable land may be acquired. ▪ May result in long-term savings because continuing property acquisitions may avoid need to pay a higher price for lands in future years. ▪ Allows policymakers to resolve identified problems in state acquisition processes and structure the program according to legislative goals. 	<ul style="list-style-type: none"> ▪ Requires significant expenditure of state funds. ▪ If a new acquisition model (e.g., public-private partnership, privatization) is adopted, start-up time and costs may be significant. 	<ul style="list-style-type: none"> ▪ Results in the accumulation of new debt. ▪ Increases management costs for newly acquired land. ▪ Varying annual expenditures for payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll.

Option	Advantages	Disadvantages	Potential Cost Implications
Option 4 - Do Not Replace Florida Forever Program Upon Expiration			
If the Florida Forever program expires in 2010, do not authorize a replacement program.	<ul style="list-style-type: none"> ▪ Reduces long-term state debt obligation and acquisition-related expenditures. ▪ Would enable agency staff to concentrate on the management of previously acquired lands. ▪ Staff of Division of State Lands could be reduced. 	<ul style="list-style-type: none"> ▪ New conservation lands would not be acquired. ▪ Reduction of funds for land acquisition would affect multiple state and local government entities that currently receive Florida Forever funds. ▪ May result in negative environmental impacts (e.g., loss of threatened and endangered species; diminished water quality; growth of exotic, invasive species). 	<ul style="list-style-type: none"> ▪ Avoids accumulation of additional debt related to land acquisition. ▪ Eliminates management costs for newly acquired lands. ▪ Eliminates payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll. ▪ Department officials estimate that 7 FTEs with acquisition-related responsibilities could be eliminated. In addition, the department reports that the number of acquisition-related service contracts would be reduced, avoiding the expenditure of approximately \$5.6 million annually.
Option 5 - Discontinue Florida Forever Program			
Discontinue acquisition of new conservation lands starting in Fiscal Year 2008-09.	<ul style="list-style-type: none"> ▪ Reduces long-term state debt obligation and acquisition-related expenditures. ▪ Would enable agency staff to concentrate on the management of previously acquired lands. ▪ Staff of Division of State Lands could be reduced. 	<ul style="list-style-type: none"> ▪ According to the department, may expose the state to liability of failing to perform on current acquisition contracts that extend into future funding cycles. ▪ Reduction of funds for land acquisition would affect multiple state and local government entities that currently receive Florida Forever funds. ▪ New conservation lands would not be acquired. ▪ May result in negative environmental impacts (e.g., loss of threatened and endangered species; diminished water quality; growth of exotic, invasive species). 	<ul style="list-style-type: none"> ▪ Avoids total debt accumulation of approximately \$900 million, with an additional interest expense of approximately \$666 million. ▪ Eliminates management costs for newly acquired lands. ▪ Eliminates payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll. ▪ Department officials estimate that 7 FTEs with acquisition-related responsibilities could be eliminated. In addition, the department reports that the number of acquisition-related service contracts would be reduced, avoiding the expenditure of approximately \$5.6 million annually.

¹ Interest debt estimate is \$226.1 million at 6% for a 20-year bond.

² According to department officials, the division has developed, implemented, and continues to improve a work plan development process that focuses on natural and historical resources as the primary foundation for decisions on which parcels of land should be acquired. In addition, the department reports that the Acquisition and Restoration Council is also re-evaluating its processes for ranking projects and guiding the division in what are the most important Florida Forever projects.

³ Estimate does not include all land management expenses, as agencies also receive land management funding from other sources, such as agency trust funds.

Source: OPPAGA analysis.