

## FLORIDA FOREVER PROGRAM

### I. Overview

With over 17 million inhabitants, the State of Florida is among the highest and most densely populated states in the nation. Moreover, the state is growing quickly, holding nine of the eleven fastest growing metropolitan areas in the country.<sup>1</sup> Recognizing the need to protect and conserve the state's vulnerable natural areas, Governor Martinez created a commission in 1990 to assess the status of Florida's natural resources and environment. The commission found that approximately three million acres of wetlands and forests were at risk due to increasingly rapid rates of development and recommended increased funding for land acquisition programs. In the same year, Preservation 2000 (P2000) was established—a \$3 billion, ten-year, land preservation fund. P2000 successfully acquired and protected a total of 1.25 million acres of land in Florida between 1990 and 2000. In 1999, Florida Forever was established as a successor program to P2000, extending the state's authority to issue bonds for conservation and land acquisition.<sup>2</sup> Florida Forever also provides \$3 billion over ten years to protect open space.<sup>3,4</sup> Between 2000 and 2004, the State of Florida protected an additional 400,000 acres under Florida Forever Program.<sup>5</sup>

The Florida Forever Program has a clear authority to acquire and protect land based on biodiversity considerations, as well as other criteria listed in the state statute. Several agencies are authorized to prioritize land for protection and utilize prioritization processes to carry out this authority. Agencies acquiring land under the Florida Forever Program will be referencing the state wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) to different degrees.

### II. The Florida Forever Program

After overwhelming approval by Florida voters—72 percent—the Florida Legislature passed the Florida Forever Act, which established several programmatic goals, including the enhancement of “coordination and completion of land acquisition projects,” an increase in “the protection of Florida's biodiversity at the species, natural community, and landscape levels,” the protection, restoration, and maintenance of “the quality and natural functions of land, water, and wetland systems of the state,” the assurance that “sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state,” an increase in “natural resource-based public recreational and educational opportunities,” the preservation of

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<sup>1</sup> Trust for Public Land, *Funding Profile: Florida*, at [http://www.tpl.org/tier3\\_cdl.cfm?content\\_item\\_id=11424&folder\\_id=706](http://www.tpl.org/tier3_cdl.cfm?content_item_id=11424&folder_id=706) (posted March 2003).

<sup>2</sup> FL STAT. § 259.105.

<sup>3</sup> Florida Forever is not identical to P2000. For example, Florida Forever provides greater funding for urban land and parks protection (22 percent compared to P2000's 10 percent) and has a greater emphasis on conservation easements. See: Trust for Public Land, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> Telephone Interview with Mark Glisson, Acquisition and Restoration Council Staff Director, Florida Department of Environmental Protection (March 16, 2005).

“significant archaeological or historic sites,” and an increase in both “the amount of forestland available for sustainable management of natural resources” and “the amount of open space available in urban areas...”<sup>6</sup>

Under Florida Forever, \$3 billion is authorized from 2000-2010, funded by revenue bonds backed by the state realty transfer tax, or documentary stamp tax.<sup>7</sup> Funds are distributed annually (\$300 million per year) in the following manner:

- (1) 35 percent (\$105 million) to the Florida Department of Environmental Protection (FL DEP) Division of State Lands for the acquisition of lands and capital project expenditures, with priority given to acquisitions that achieve a combination of conservation goals;
- (2) 35 percent (\$105 million) to the five water management districts (WMD) of the state (St. Johns River WMD, Southwest Florida WMD, Suwannee River WMD, South Florida WMD, and Northwest Florida WMD) for acquisition of lands on water management priority lists;
- (3) 22 percent (\$66 million) to the Florida Department of Community Affairs - Florida Communities Trust (FCT) for grants to local governments or non-profit environmental organizations for the acquisition of community-based projects, urban open spaces, parks, and greenways to implement local government comprehensive plans;
- (4) 2 percent (\$6 million) to local government entities, via FL DEP’s Recreation Development Assistance Program, to provide development funds for public outdoor recreation purposes; and
- (5) 6 percent (\$18 million) to be divided equally among four state agencies (FL DEP’s Recreation and Parks, Florida Department of Agriculture’s Division of Forestry, the Florida Fish and Wildlife Conservation Commission, and FL DEP’s Greenways and Trails Program) for the acquisition of in-holdings and adjacent parcels to individually managed lands.<sup>8</sup>

Each agency administers and manages Florida Forever Program activities separately, and, according to the statute, “[t]he agencies that receive the funds shall develop their individual acquisition or restoration lists.”<sup>9</sup> Programs with a strong focus on open space acquisition for the *primary* purpose of biodiversity conservation include (as listed above): (1) FL DEP Division of State Lands; (3) FCT; and, within (5) the additions and inholdings program, the Florida Fish and Wildlife Conservation Commission, all of which staff multiple biologists and ecologists. These programs will be the focus of this discussion.

### ***Florida Department of Environmental Protection - Division of State Lands***

*Decision-making body.* Administered by the FL DEP Division of State Lands, funding for this section of the Florida Forever Program is overseen by the Acquisition and Restoration Council

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<sup>6</sup> The statute also specifies measures by which each of these goals should be measured. *See*: FL STAT. § 259.104(4).

<sup>7</sup> Florida Forever is supported by the same funding mechanism utilized for the P2000 Program.

<sup>8</sup> FL STAT. § 259.105(3)(a) - (g).

<sup>9</sup> FL STAT. § 259.105(3)(h).

(ARC), a body of five state agency representatives with scientific disciplines related to land, water, or environmental sciences, as well as two private citizens that are appointed by the Governor.<sup>10</sup>

*Land protection tools and strategies.* The Division of State Lands utilizes both fee title and conservation easements to protect land under the Florida Forever Program.<sup>11</sup> Twice a year, the ARC reviews, evaluates, and ranks land protection projects according to the rules set forth in the Florida code.<sup>12</sup> Potential projects first undergo an “Initial Review” by the Florida Natural Areas Inventory (FNAI) and other state agency staff, on behalf of the ARC.<sup>13</sup> During the initial review a detailed preliminary evaluation is conducted by FNAI using the state’s heritage database, aerial photography, and findings from the Florida Forever Conservation Needs Assessment.<sup>14</sup> FNAI utilizes numerous types of biological information<sup>15</sup> during the preliminary evaluation, which is used to make data layers depicting strategic habitat conservation priorities, significant landscapes, linkages and conservation corridors, under-represented natural communities, landscape-sized protected areas, natural floodplains, surface water protection, fragile coastal resources, functional wetlands, aquifer recharge areas, natural resource-based recreation, sustainable forest management issues, and significant archaeological sites.<sup>16</sup> Data for the evaluation process comes from FNAI, FFWCC, and the WMDs.<sup>17</sup> Once complete, the FNAI preliminary evaluation is provided to the ARC, which then votes to determine which projects<sup>18</sup> should under go a “Full Review.”<sup>19</sup>

Under the full review, a “Project Evaluation Report” is prepared for each potential acquisition project. The report must include “a review, including a site visit by staff, of the natural

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<sup>10</sup> FL. DEPT OF ENV’L PROT. - DIV. OF STATE LANDS, IN COOP. WITH THE ACQUISITION AND RESTORATION COUNCIL, FLORIDA FOREVER FIVE YEAR PLAN (2003).

<sup>11</sup> Glisson, *supra* note 5.

<sup>12</sup> FL. ADMIN. CODE § 18-24.

<sup>13</sup> FL. ADMIN. CODE § 18-24.004(1)(a).

<sup>14</sup> In 1999, FNAI conducted the Florida Forever Conservation Needs Assessment (FFCNA). The FFCNA provides baseline data that informs program priorities, identifies priority lands to meet conservation needs, provides a continuous monitoring mechanism for re-evaluating conservation needs, and sets up a mechanism to track and document the progress of the program. Though developed in 1999, assessment data layers are constantly being updated, and the FNAI is currently developing a site selection model to assist in selecting and identifying project locations that meet the goals of the Florida Forever Program. Telephone Interview with Gary Knight, Program Director, Florida Natural Areas Inventory (March 18, 2005). *See also:* GARY KNIGHT, AMY KNIGHT, AND JON OETTING, FL. NAT. AREAS INVENTORY, FLORIDA FOREVER: CONSERVATION NEEDS ASSESSMENT - SUMMARY REPORT TO THE FLORIDA FOREVER ADVISORY COUNCIL (2000).

<sup>15</sup> Biological data includes: species locations and inventories; natural community and ecosystem delineations; information on wildlife utilization and critical wildlife habitat; information on biodiversity hot spots; hydrology, water quality, stream information; information on ecosystem functions, processes or landscape measures; topography and elevation information; FNAI natural area information; land use/land cover; and soil types. Telephone Interview with Gary Knight, Program Director, Florida Natural Areas Inventory (March 18, 2005).

<sup>16</sup> FL. NAT. AREAS INVENTORY, FLORIDA FOREVER CONSERVATION NEEDS ASSESSMENT TECHNICAL REPORT (2000).

<sup>17</sup> Knight, *supra* note 15.

<sup>18</sup> Based on FNAI evaluations, the ARC has developed the “Florida Forever Priority List,” which lists potential acquisition projects grouped into two categories. The first category includes top priority projects that are expedited through the application process, and the second category includes lower priority projects that require matches of up to 50 percent in order to be funded. Telephone Interview by Christina Kennedy with Eva Armstrong, Florida Department of Environmental Protection - Division of State Lands (June 30, 2003).

<sup>19</sup> Knight, *supra* note 15.

resources' physical, hydrological, recreation, archaeological, historical, and geographic characteristics ... to determine (1) [t]he number of Florida Forever goals and measures that are met by the project and the extent to which the project contributes to meeting each of those goals, and (2) [t]he number of Florida Forever criteria<sup>20</sup> that are met by the project..."<sup>21</sup> After reviewing the Project Evaluation Report, the ARC must hold a public hearing. Projects may be approved, approved with amendments, or rejected.<sup>22</sup> Approved projects are classified into two categories, based on their priority for funding.<sup>23</sup>

### ***Florida Communities Trust***

*Decision-making body.* The Florida Communities Trust (FCT) is overseen by a Governing Board that consists of six members, including the Secretary of the Department of Community Affairs, the Secretary of the Department of Environmental Protection, and four members appointed by the Governor. The four appointed members must represent a former elected official of a metropolitan municipality, the development community, a former elected county official, and a 501(c)3 non-profit organization.<sup>24</sup>

*Land Protection Tools and Strategies.* FCT provides for open space acquisition through a grants program. Funds are available to county governments, municipal governments, and nonprofit environmental organizations for community-based parks, open spaces, and greenways that further the outdoor recreation and natural resource protection needs identified in local government comprehensive plans.<sup>25</sup>

The general application evaluation procedure involves analysis and scoring of potential projects by FCT staff.<sup>26</sup> There are currently 58 evaluation criteria relating to outdoor recreation and open space, recreational trail systems and greenways, educational opportunities, natural and biological

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<sup>20</sup> Florida Forever project criteria are as follows: "(a) the project meets [the multiple statutory programmatic goals described above]; (b) the project is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources; (c) the project enhances or facilitates management of properties already under public ownership; (d) the project has significant archaeological or historic value; (e) the project has funding sources that are identified and assured through at least the first 2 years of the project; (f) the project contributes to the solution of water resource problems on a regional basis; (g) the project has a significant portion of its land area in imminent danger of development, in imminent danger of losing its significant natural attributes or recreational open space, or in imminent danger of subdivision which would result in multiple ownership and make acquisition of the project costly or less likely to be accomplished; (h) the project implements an element from a plan developed by an ecosystem management team; (i) the project is one of the components of the Everglades restoration effort; (j) the project may be purchased at 80 percent of appraised value; (k) the project may be acquired, in whole or in part, using alternatives to fee simple, including but not limited to, purchase of development rights, hunting rights, agricultural or silvicultural rights, or mineral rights or obtaining conservation easements or flowage easements; (l) the project is a joint acquisition, either among public agencies, nonprofit organizations, or private entities, or by a public-private partnership." FL STAT. § 259.105(9).

<sup>21</sup> FL. ADMIN. CODE § 18-24.005 (2)(b).

<sup>22</sup> FL. ADMIN. CODE § 18-24.005 (3) - (4).

<sup>23</sup> FL. ADMIN. CODE § 18-24.006.

<sup>24</sup> Florida Department of Community Affairs - Florida Communities Trust, *Governing Board Members*, at <http://www.dca.state.fl.us/ffct/FAQ.htm> (last visited May 16, 2005).

<sup>25</sup> Florida Department of Community Affairs - Florida Communities Trust, *Florida Communities Trust*, at <http://www.floridacommunitydevelopment.org/fct/index.cfm> (last visited May 16, 2005).

<sup>26</sup> FL. ADMIN. CODE § 9K-7.008.

resources,<sup>27</sup> landscaping and restoration, water quality, historic resources, and community planning.<sup>28</sup> Applicants are responsible for providing available information, including GIS-based assessments and FNAI data.<sup>29</sup> Once FCT staff have conducted the preliminary evaluation, the Governing Board holds a public selection meeting where projects are ranked and selected.<sup>30</sup> Once projects have been approved for funding, FFWCC and FCT staff ground-truth the project. Grant recipients must also submit a management plan for FCT approval before monies can be released. The plan must describe how the project site will be managed to achieve project goals and objectives and meet the terms and conditions of the grant contract.<sup>31</sup>

The grant program does require a match of 25 percent from counties with populations greater than 75,000 and municipalities with populations greater than 10,000. Smaller counties and cities and eligible nonprofit environmental organizations<sup>32</sup> may apply for a 100 percent grant award.<sup>33</sup> Evaluation of grant applications does include consideration of the level of match provided by the applicant.<sup>34</sup>

### ***Florida Fish and Wildlife Conservation Commission***

*Decision-making body.* The Additions and In-holdings portion of the Florida Forever Program is administered by multiple state agencies (as listed above), including the FFWCC, which is the focus of this section. Review and approval of land acquisition projects are overseen by the FFWCC after completion of a resource conservation and operational planning regime, described further below.<sup>35</sup>

*Land protection tools and strategies.* Both fee title and conservation easements are available to protect land under the FFWCC's Additions and In-holdings Program; however, only fee title has been used to date. Prioritization of land for potential acquisition is incorporated into the agency's land management planning process. The component of the planning process that identifies and prioritizes land acquisition strategies is called Optimum Resource/Optimum Planning Boundary/Resource Conservation Planning. The Resource Conservation Planning protocol includes several levels of criteria, e.g. conservation of fish and wildlife habitat that

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<sup>27</sup> Natural and biological resource criteria include the following: whether the land cover on the site consists of predominately natural communities that have not been impacted by human disturbance or alteration; whether the project site contains natural communities identified by the FNAI as priority land or a Habitat Conservation Area; whether the project site contains habitat recognized as typically suitable for one or more listed animal species; whether the project site contains critical habitat typically suitable for one more listed species and is located in a Strategic Conservation Area as identified by the FFWCC; whether the project site creates wildlife corridors or expands existing parks; and others. Florida Department of Community Affairs - Florida Communities Trust, Florida Forever Application Form FCT-3 (on file with author).

<sup>28</sup> *Id.*

<sup>29</sup> Telephone Interview with Grant Gelhardt, Environmental Administrator, Florida Communities Trust (March 23, 2005).

<sup>30</sup> FL. ADMIN. CODE § 9K-7.008.

<sup>31</sup> FL. ADMIN. CODE § 9K-7.011.

<sup>32</sup> Nonprofit environmental organizations are not required to provide a match, but they are required to submit a management endowment fund of ten percent. Gelhardt, *supra* note 29.

<sup>33</sup> FL. ADMIN. CODE § 9K-7.003(4).

<sup>34</sup> Florida Department of Community Affairs - Florida Communities Trust, *supra* note 27.

<sup>35</sup> Telephone Interview with Gary Cochran, Land Acquisition Specialist, Florida Fish and Wildlife Conservation Commission (March 29, 2005).

adjoins or is in-holding to other FFWCC lands and whether land is part of or within an original land acquisition project boundary. The process involves high-level GIS land conservation analysis using both FFWCC and FNAI data sets and ground-truthing by FFWCC staff. Several types of biological information are analyzed, including: species locations and inventories; species life history information; natural community/ecosystem delineations; information on wildlife utilization or critical wildlife habitat; information on biodiversity hot spots; hydrology, water quality, and stream information; information on ecosystem functions, processes or landscape measures; topographic and elevation information; soil types; and other biological data. In addition to resource reviews, operational management issues are also considered.<sup>36</sup> The planning process is used to rank potential land parcels on an Additions and In-holdings List (A&I List), which is then used to target acquisition projects and guide purchasing decision-making.<sup>37</sup> The ARC evaluates and approves land management plans according to the statutory criteria governing the management of conservation lands.<sup>38</sup>

### III. Protection in Perpetuity

Florida statutes do allow for state lands acquired under the Florida Forever Program to be sold if the land no longer fulfills the state's conservation needs. Land may only be disposed if the state's Board of Trustees<sup>39</sup> approves the action by a 75 percent vote. In that case, the FL DEP must inspect the land and report on whether development of the parcel would affect the state's conservation practices and priorities.<sup>40</sup> In practice, the authority to dispose of acquired lands has been utilized on rare occasion in the 15-year history of the Florida Forever and P-2000 Programs.<sup>41</sup>

Long-term management of lands acquired by the state is supported by the Conservation and Recreation Lands (CARL) Trust Fund, also funded by documentary stamp taxes. Funding is provided to land management agencies based on a formula that takes into account the amount of acreage under management by the agency, as well as management costs.<sup>42</sup> While the state holds title to all acquired lands, multiple agencies are responsible for land management. Each agency has individual land management plans and techniques that include strategies for management, restoration, monitoring, and other specifications, all of which require the review and approval of the ARC prior to implementation.<sup>43,44</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Telephone Interview with Mark Glisson, Acquisition and Restoration Council Staff Director, Florida Department of Environmental Protection (July 6, 2005).

<sup>39</sup> The Board of Trustees is composed of four members—the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture—and votes on all conservation lands in the state, whether acquired through the Florida Forever Program or otherwise. FL STAT. § 253.02.

<sup>40</sup> *Id.*

<sup>41</sup> Telephone Interview with Gary Cochran, Land Acquisition Specialist, Florida Fish and Wildlife Conservation Commission (July 15, 2005).

<sup>42</sup> CARL funding (including long-term and interim management money) varies from year to year. In 2004, the fund received \$58 million. In 2005, the fund received \$63 million. Glisson, *supra* note 5.

<sup>43</sup> For example, FL DEP- Division of State Lands' management strategies often rely on U.S. Fish and Wildlife Service provisions for "strategic habitat conservation areas" and "vegetative diversity monitoring." Glisson, *supra*

## IV. State Wildlife Action Plan

The Florida wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) is being developed as part of the state's Wildlife Legacy Initiative (WLI). Under the supervision of the FFWCC, the WLI seeks to create, fund, and implement a strategic vision for conserving Florida wildlife. The plan serves as one component of the WLI and will outline species and habitats of concern, as well as related management priorities and strategies. FFWCC has constructed a wildlife action plan that updates and integrates decades of existing conservation plans into a single state strategy. The other two components of the WLI involve the building of partnerships to implement conservation actions at the local, regional, and state level and the creation of a foundation for a long-term, adequate funding source.<sup>45</sup>

Each Florida Forever program will likely utilize Florida's wildlife action plan differently. For example, FFWCC's Inholdings and Additions Program is presently integrating the plan into its acquisition prioritization process implicitly by using many of the same data sets and ground-truthing. FFWCC staff also anticipate more extensive use of the plan in the future.<sup>46</sup> FCT, FL DEP, and FNAI staff do envision utilizing the plan and its supporting data in recommending land acquisition priorities,<sup>47</sup> but are not yet sure how it will be incorporated since they were only minimally engaged in the plan's development.<sup>48</sup>

## V. Summary

Florida Forever Programs have a strong statutory mandate to protect wildlife and biodiversity through the purchase of land. Indeed, projects funded under the program must contribute to eight goals, including increasing "the protection of Florida's biodiversity at the species, natural community, and landscape levels."<sup>49,50</sup> Furthermore, Florida Forever Programs are also authorized to prioritize land in a biologically meaningful manner. The FL DEP and FNAI, FCT, and FFWCC all utilize the authority to prioritize and conserve land acquisition based on biodiversity considerations. The state wildlife action plan will be incorporated into the Florida Forever Program to varying degrees.

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note 5. In contrast, FFWCC requires long-term management plans with distinct components and criteria. Cochran, *supra* note 35.

<sup>44</sup> Glisson, *supra* note 5.

<sup>45</sup> Florida Fish and Wildlife Conservation Commission, *Welcome to Florida's Wildlife Legacy Initiative*, at <http://myfwc.com/wildlifelegacy/> (last visited May 23, 2005).

<sup>46</sup> Cochran, *supra* note 35.

<sup>47</sup> The ARC and the Trustees prioritize land based on recommendations, FNAI assessment, and public testimony.

<sup>48</sup> Knight, *supra* note 15; Gelhardt, *supra* note 29.

<sup>49</sup> The law also provides benchmarks to measure progress toward the biodiversity goal, including, "[t]he number of acres acquired of significant strategic habitat conservation areas; [t]he number of acres acquired of highest priority conservation areas for Florida's rarest species; [t]he number of acres acquired of significant landscapes, landscape linkages, and conservation corridors, giving priority to completing linkages; [t]he number of acres acquired of underrepresented native ecosystems; [t]he number of landscape-sized protection areas of at least 50,000 acres that exhibit a mosaic of predominantly intact or restorable natural communities established through new acquisition projects or augmentations to previous projects; [and/or] [t]he percentage increase in the number of occurrences of endangered species, threatened species, or species of special concern on publicly managed conservation areas."

<sup>50</sup> FL STAT. § 259.105(4).