

Land Acquisitions and Management
Agenda Item 5 C

Consideration of the issuance of two fifty-year natural gas transmission pipeline easements of 10.57 total acres and 10.91 total acres (permanent and temporary easement areas) respectively under the State's Linear Facilities Policy to be granted to the Florida Gas Transmission Company, LLC (FGT) within the Joe Budd Wildlife Management Area (Joe Budd WMA) and a Florida Fish and Wildlife Conservation Commission (Commission) owned parcel in Okaloosa County (Okaloosa Parcel).

COUNTY: Gadsden and Okaloosa Counties

APPLICANT: Florida Gas Transmission Company, LLC, a foreign limited liability company and an affiliate of Southern Union / El Paso.

CONSIDERATION: Per Section 253.02, F.S., the Board of Trustees of the Internal Improvement Trust Fund's (Trustees) Linear Facility Policy (LFP) and Florida Department of Environmental Protection (DEP), Division of State Lands (DSL) procedures:

- 1.) Appraised market value easement fee as approved by DEP / Division of State Lands / Bureau of Appraisal for each temporary and permanent easement area;
- 2.) Conveyance of fee simple title replacement land, at the rate of two times the value of the proposed easement and 1.0 times the value of the temporary easement, on the Commission's Florida Forever Additions and Inholdings acquisition list adjoining the WMA, for the Joe Budd WMA easement and a portion of the FGT-owned land that abuts the Okaloosa parcel; and
- 3) FGT will be required to pay for all costs of appraisal, survey, title work and environmental site assessment (ESA) if necessary for the easement areas and the replacement lands (along with further phases of the ESA and amelioration if they are recommended for the proposed easement areas). All such professional services due diligence work will require the approval of FWC and DEP and be in accordance with State of Florida statutes, rules and procedures and using DEP approved contractors.

The U. S. Fish and Wildlife Service (USFWS) will need to approve the proposed transaction relative to the Joe Budd WMA easements and replacement land as that land (the Little River Tract) was acquired by the Commission using Pittman-Robertson Act federal grant-in-aid funds. That act requires the grantee (the Commission) to retain title to the acquired property and maintain such land in conservation or risk the land reverting to the U. S. government.

The Okaloosa parcel totals 96.1 acres, more or less in Section 6, T4N, R24W, adjacent to the Blackwater River State Forest. The parcel was conveyed to the Commission by the developers of the 423-acre Emerald Bay (f/k/a Tidewater development) project planned for the Okaloosa County and Walton County coastline as a requirement of the final development orders issued by each county to offset anticipated adverse impacts to wildlife habitats attributable to the project.

ACREAGE: 1.) 3.98 acres of permanent easement, 2 temporary construction easements of 3.72 acres and 1.89 acres and a temporary access easement of 0.98 acres for the Joe

Budd WMA and 2.) 5.30 acres of permanent easement and 5.61 acres of temporary construction easement for the Okaloosa parcel, each owned in fee simple by the Commission.

FWC STAFF REMARKS: FGT is requesting the easements as part of FGT's proposed Phase VIII Project which is approximately 568 miles long, stretching from Texas through the Florida panhandle, down the western half of the Florida peninsula and then easterly across the State to Martin County. The project will cross numerous state-owned conservation lands, including two other portions of the Joe Budd WMA, where the Commission leases the land from the Trustees as lead agency and two Commission lead agency parcels in the Lake Wales Ridge Wildlife and Environmental Area. The concerned easements would allow the installation of a 36" buried natural gas transmission pipeline for approximately 3,470.68 linear feet, running east to west through the northern end of the Little River Tract of the Joe Budd WMA and approximately 4,617.36 linear feet, running east to west, bisecting the Okaloosa parcel. The Joe Budd WMA permanent easement area would be roughly rectangular with a width of 40 ft., covering 3.98 acres, while the Okaloosa parcel permanent easement area would likewise be rectangular and 50 feet in width, covering 5.30 acres.

The proposed Joe Budd WMA 40 ft. wide easement area will have overlap with the existing pipeline easement area, that is predominately ruderal. Additional land would be taken to the south which will be a mix of pine plantation and upland hardwood forest. Most of the land is rolling, but the portion to the east of Joe Budd's main entrance road, Office Road, has a more severe north to south slope. The site provides habitat for a wide variety of wildlife, including imperiled species such as the gopher tortoise and the Florida pine snake can be found that are indigenous to the upland area through which the pipeline is to run. An archeological site (the Pace Site – 8GD106) lies about 500 ft. west of Office Road and to the south of the existing and proposed pipelines. The site was analyzed for the 1993 FGT Phase III pipeline project and has been re-identified for the current project with Phase I and II cultural resources surveys and archeological inventory findings being reported to the Florida State Historic Preservation Officer (SHPO). FGT has submitted a work plan for further study to the Florida SHPO, which has been reviewed and approved. The work plan is underway with its results expected around June 2009 that will determine if the proposed pipeline may be collocated with the existing pipelines.

The proposed Okaloosa 50 ft. wide easement area is to border the existing FGT pipeline to the south and is predominately ruderal. The new pipeline easement area is expected to overlap with the existing pipeline easement area. The area is predominately uplands, with an understory of yaupon and oaks. The area provides habitat for a wide variety of wildlife including potential habitat for imperiled species such as the red cockaded woodpecker, the Bachman's sparrow, the eastern indigo snake and the gopher tortoise.

Avoidance and Minimizing Impacts: Owners and operators of linear facilities must avoid locating on natural resources lands unless no other practical and prudent alternative is available. The test of practicality and prudence is to compare the social, economic and environmental effects of the alternatives.

FGT has tried to stay within the existing pipeline easement area where there is sufficient width to allow the installing of the new pipeline to be done in a safe manner. Where that is not possible, FGT has worked to minimize the width of the new easement area, overlapping the existing easement area where possible. Though not planned within the two concerned areas, FGT will implement horizontal directional drilling, a steerable trenchless method of installing underground pipes in a shallow arc along a prescribed bore path by using a surface launched drilling rig, to minimize impacts on major wetlands and water crossings. Trench excavation will be predominant method of pipeline installation.

Compensation: FGT is required to pay the fair market value of the easement areas to the Commission based upon an appraisal approved by DEP / Division of State Lands / Bureau of Appraisal for each temporary and permanent easement area. FGT will provide replacement land to the Commission at the rate of two times the value of the proposed easement and 1.0 times the value of the temporary easement, on the Commission's Florida Forever Additions and Inholdings acquisition list adjoining the Joe Budd WMA. The replacement land will need to abut and become a part of the Joe Budd WMA in accordance with USFWS requirements. The replacement land for the Okaloosa parcel will come from adjoining FGT land.

Review and Approval Process: FWC staff has determined the proposed use outlined by FGT to be incompatible with the purpose for which the WMA lands were acquired (wildlife conservation). Consequently, in order to consider and obtain approval for the proposed incompatible use of the conservation land, at a minimum, the following would be required:

- (1) Agreement by FGT to compensate the Commission as outlined above;
- (2) Agreement by FGT to mitigate, to the greatest extent practicable, the residual impacts of the proposed use;
- (3) Agreement by FGT to pay all of the costs required to complete the transactions;
- (4) Review and approval of the necessary documents (easements, deeds, etc.) and products (title work, surveys, appraisals, environmental site assessments, natural resource assessment, etc.) to verify compliance with all of the state and federal standards required to grant the easement(s) on Commission federal grant-in-aid and state-owned lands and necessary for DEP and Commission approval and for the Commission to accept title to the replacement land;
- (5) Conveyance of the replacement property to the Commission is to be free and clear of any encumbrances of any kind;
- (6) Approval of the FGT Joe Budd easement area request by United States Fish and Wildlife Service (USFWS);
- (7) Recommendation for approval by the Acquisition and Restoration Council (ARC); and
- (8) Approval of the BOT.

Staff has acknowledged to FGT that we recognize its need for the concerned parcels and that we will, subject to the Commission approval, assist in the pursuit of requesting approval for the proprietary use, under the terms and conditions outlined herein, in order for FGT to move forward as necessary in the installation of the pipeline. However, staff has also informed FGT that recommending or granting approval for the proposed proprietary uses within the two easement areas will, in no way be construed nor bind the Commission to recommend or grant consent for any required regulatory permits necessary to undertake the installation of the pipeline.

In summary, there are many issues and requirements remaining to be resolved. Final approval will be considered only upon documentation by FGT that it has satisfied all of the statutes, rules, regulations, policies and requirements associated with allowing linear facility uses upon state and federal grant-in-aid conservation land sufficient for Commission staff to recommend final approval.

In an effort to keep the Commission informed of pending action, staff would provide the Commission with an information package prior to the Executive Director's final approval which is in keeping with the practice used for the standing delegation to approve acquisition agreements. This will give each member of the Commission an opportunity to review the proposed final approval package and to express any concerns about it. If any member of the Commission objects to the proposed final approval package, final approval would be reserved for Commission action.

FWC STAFF RECOMMENDATION: APPROVAL CONTINGENT UPON FGT'S COMPLIANCE WITH ALL OF THE REQUIREMENTS SET FORTH IN THE CONDITIONS OUTLINED IN 1 THRU 8 ABOVE TO THE SATISFACTION OF FWC and DEP STAFF AND ANY OTHER CONDITIONS REQUIRED BY ARC, BOT AND USFWS.