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*Defending Florida's Ecosystems
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October 26, 2007

Florida Communities Trust Governing Board
Division of Housing and Community Development
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

**Re: City of Stuart's Proposed Sale of Conservation Land for the
Construction of the Green River Parkway**

Dear Members of the Florida Communities Trust Board:

On behalf of the Haney Creek Greenway Group and the Martin County Conservation Alliance, we write to ask the FCT to reject the City of Stuart's proposed sale of conservation land purchased under the Preservation 2000 program for use in the construction of the "Green River Parkway."

Several months ago, we thanked the Board for rejecting a proposed land swap between the City of Stuart and Martin County to provide for the construction of this road. We urge you to reject this latest attempt by the City of Stuart and Martin County to seek approval under FCT's "Linear Policy" to destroy nearly a quarter of the acquired lands needed for the Haney Creek Preservation and Greenway project in order to accommodate this unneeded road. Approval of this sale and modification to the Haney Creek project management plan would not only jeopardize the implementation of this project, but it would set a dangerous precedent and seriously undermine the purpose of the Preservation 2000/Florida Forever Program.

Introduction

Six years ago, Haney Creek Greenway Group began a local movement to restore Haney Creek, a tidal-influenced waterway, which flows out to the St. Lucie Estuary. In 2000, the City of Stuart purchased what is now the 40-acre Haney Creek Greenway area, through the Florida Communities Trust ("FCT") Program Preservation 2000.

The "Haney Creek Watershed Improvement and Greenways Project" (98-045-P8A) provides a comprehensive approach to improving water quality, enhancing natural resources, and expanding recreational and educational opportunities in the 1,500 acre Haney Creek Watershed. The project provides a host of benefits to the community and the environment. These benefits include:

- The preservation of approximately 84 acres of native lands and environmentally sensitive habitat;

- Improvements to nearby stormwater discharges into the St. Lucie River through a flow-way marsh;
- The Protection and restoration of native ecological communities that contain viable upland and wetland habitats, which are sufficiently large to remain functional over time;
- The creation of a greenway and wildlife corridor, which would ultimately provide a link from the Savannas Preserve to the St. Lucie River;
- The creation of improved resource-based outdoor recreation opportunities, including nature trails, boardwalks and an elevated observation tower as well as canoe/kayak landings;
- The creation of improved environmental education opportunities.

We support the endeavors of the City of Stuart and Martin County to restore and preserve the Haney Creek area for endangered and protected species, and to reduce storm water impacts to improve the St. Lucie River and estuary. These measures have been successful thus far. Recently, however, a local road-building project, known as the Green River Parkway threatens the integrity of the Haney Creek Greenway.

In 2006, Martin County wanted to trade 40 acres of conservation land, purchased with funds raised by a “Lands For You” voter referendum, to the City of Stuart for 20 acres of Haney Creek Greenway area to which the city holds title. Martin County planned to use those 20 acres of Haney Creek Greenway to build a road from Jensen Beach Boulevard to US 1, through the conservation area, for the stated purpose of relieving traffic congestion. In October 2006, the FCT rejected the City and County’s proposed land swap.

Then, in December 2006, the City of Stuart approved the sale of 8.34 of those same 20 acres of Haney Creek Greenway to Martin County, so that Martin County can align Green River Parkway from the south to Jensen Beach Boulevard to Baker Road and then south-southwest to State Road 707.

Before the City of Stuart may obtain approval for a modification of the Haney Creek Greenway area management plan originally established by the FCT, FCT has asserted that it must make a determination under its “Linear Policy” that:

1. There is no reasonable alternative to the proposed modification land use; and
2. The land use has minimal impact to the site.

As we explain below, there are reasonable alternatives to the proposed modified land use. In addition, an extension of the parkway (which is adjacent to the Savannas State Park Preserve)

would have significant adverse impacts on wetlands, federal and state listed scrub jay and gopher tortoise populations and impede ongoing efforts to restore the Haney Creek Watershed Basin and the St. Lucie River. The road will go through at least 11 jurisdictional wetlands as well as federally and state listed species habitat. The primary goals of the entire project are at a very significant risk.

Furthermore, the proposal is contrary to the laws and rules governing the management of state conservation land. Moreover, the approval of this land sale and modification to the Greenway's management plan will establish a dangerous precedent where local governments could use the program as a land bank to accommodate major capital improvements projects such as roads. This would place the purpose and the future of this program, and others like it, in serious jeopardy.

The Green River Parkway Extension Is Impermissible Under FCT's Linear Policy.

FCT periodically utilizes a non-rule policy commonly referred to as the "Linear Facilities Policy" to evaluate requests for management plan modifications to allow linear facilities and related appurtenances on the project site. This policy, which is not promulgated by rule in the Florida Administrative Code, and has never been the subject of formal rulemaking, may allow for the construction of certain facilities on conservation lands so long as certain criteria are met. It appears that the Board will be reviewing the City's proposal primarily under this policy so we start our analysis here.

1. Reasonable Alternatives to the Proposed Modification Exist.

Under FCT's linear policy, the City must show that (1) no reasonable alternatives to the proposed modification exist and (2) the land use is designed to have a minimal impact to the site. Several alternatives exist and the City has been less than candid in its statement on reasonable alternatives.

The City characterizes the parkway as an "urgently needed" road but provides few details in support of this assertion. The County has stated that the primary purpose of the road is to alleviate traffic congestion on US 1. However, the City fails to inform this Board that the Florida Department of Transportation (FDOT) approved a 2003 PD&E study on the widening of US 1 in Northern Martin County to reduce traffic congestion in the area. In fact, the MPO, the Treasure Coast Regional Planning Council, and the City of Stuart support the plan to widen US 1 in Northern Martin County (to eight lanes).¹ Moreover, the *Green River Parkway Transportation Corridor Alternatives Analysis Reevaluation Report*, which the City relies on to

¹ See Florida Department of Transportation, *US 1 Corridor: Land Development Policy Study, US 1/Federal Highway PD&E Study*, Executive Summary (September 2003).

support its position, states that the Green River Parkway extension is actually an alternative to widening US 1.²

Yet, the City fails to bring this alternative to the Board's attention. Instead, it limits its "alternatives analysis" to the proposed alignment of the road, without ever mentioning whether it has carefully considered "off-site" alternatives. Other offsite alternatives include widening Savanna road to the east, which also contains sufficient rights of way, and expanding Goldenrod to the west, to provide greater access to commercial centers adjacent to US Highway 1. The City fails to mention these reasonable alternatives as well.

Not only has the City failed to discuss these offsite alternatives, but also the City has not attempted to explain why it cannot modify the proposed alignment to reduce its impacts to FCT lands. Neither the City nor the County has identified any design alternatives, which could avoid or reduce impacts to FCT lands. Reasonable design alternatives could include road curvatures, reducing the road from four to two lanes in certain areas, bridging, or other specific design measures. Instead, the City instructs the Board to look at two reports that purportedly support its position that no alternatives exist. The City needs to demonstrate why it is technically or financially infeasible or impracticable for the County to develop an alignment, which would reduce the road's impacts to FCT lands.

Even assuming for the sake of argument that no other onsite alternatives exist, a position the City fails to support in its submittal to the Board, the City is almost entirely responsible for any "hardship" it now faces. Since 1996, the County has considered building this road. Throughout this time, several potential alternative alignments (at least four) were available to the County. Some of these alternative routes would have avoided impacts to these FCT lands, including "alternative four" which was identified in a 1996 Protected Species Report for the project site.³ A 1999 GIS map also shows a number of low impact alternatives that were available at the time.⁴

Nevertheless, the County failed to pursue these alternatives by acquiring nearby properties and establishing rights of way in an effort to avoid any impacts to FCT lands. As a

² *Green River Parkway Transportation Corridor Alternatives Analysis Reevaluation Report*, Section 1.1., Page 1 (August 2002).

³ *See Scrub-Jay and Listed Species Report for Green River Parkway Alternatives 1, 2, 3, and 4 Martin County, Florida*, Prepared by Blythe Environmental, Inc. for Martin county Engineering Department (July 1996).

⁴ <http://terraserverusa.com/PrintImage.aspx?T=1&S=13&Z=17&X=358&Y=1882&W=2&D=28+Feb+1999&P=2+km+NE+of+North+River+Shores%2c+Florida%2c+United+States&Lon=-80.264709&Lat=27.228838>

result, the City now comes to the Board ten years later seeking permission to use almost a quarter of its conservation lands to accommodate this project.

We submit this situation is analogous to self-imposed hardship doctrine in the zoning context. Ordinarily, one who purchases property in a certain known zoning classification cannot claim as a hardship, factors that existed at the time he or she acquired the property. Thus, a self-imposed hardship (such as by purchasing property under existing zoning and then applying for a variance) is not the kind of hardship that should be granted. Simply put, when the owner himself by his own conduct creates the exact hardship, which he alleges to exist, he certainly should not be permitted to take advantage of it.⁵ Similarly, the Board cannot allow the City and County to take advantage of any self-imposed dilemma and permit the destruction of these valuable conservation lands.

2. The Road Will Have Significant Impacts to the Site.

In addition to showing that no reasonable alternatives exist, the City must also show that the road will have minimal impacts to the site. This is hardly the case. To gauge the magnitude of this road-building project and its potential impacts to the environment, we direct the Board's attention to the number of permits the County must obtain before it goes forward with the proposed project. For instance, because the road will require impacts to at least 11 different wetlands, some of which occur on the 8-acre site, the County has had to apply for an environmental resource permit from the South Florida Water Management District and a dredge and fill permit from the Army Corps of Engineers. The latter has triggered consultation with the United States Fish & Wildlife Service under the Endangered Species Act because of the project's potential impacts to protected species such as the Florida Scrub-jay.⁶

While the City may claim in its letter to the Board that the alignment will minimize impacts to wetlands, scrub-jay habitat, and other environmentally sensitive lands, the City offers little documentation in support of its statements. For instance, the County is required under the state wetland permitting rules and Section 404 of the Clean Water Act (CWA) to demonstrate that it has taken all reasonable measures, to avoid and minimize impacts to wetlands.⁷ A showing under either of these permitting schemes that the County has minimized impacts to wetlands could provide support for the City's assertions but neither the Corps nor the District has

⁵ See *Josephson v. Autrey*, Fla. 1957, 96 So.2d 784 (Fla. 1957); *Elwyn v. City of Miami*, 113 So.2d 849, 852 (Fla. 3d DCA 1959).

⁶ See September 29, 2006 Public Comments from Haney Creek Greenway Group and Martin County Conservation Alliance to U.S. Army Corps of Engineers Re: Permit Application No. SAJ-2004-12264 (electronic version without exhibits) (Attachment A); March 13, 2007 Letter from Haney Creek Greenway Group to U.S. Fish & Wildlife Service (without exhibits) (Attachment B).

⁷ See 40 C.F.R. § 230.10; South Florida Water Management District, *Basis of Review*, 4.2.1.

issued a permit to the County. In fact, the District has expressed concern over the County's ability to mitigate impacts to local resources.⁸ Thus, it is entirely unclear if the alignment would minimize wetland impacts to the extent the City concludes in its March 21, 2007 letter to FCT.

The same is true about protected wildlife species. The U.S. Fish & Wildlife Service has not issued its opinion of the project yet and has contacted the County on more than one occasion, expressing considerable concern about the project over the past several years.⁹ Following surveys and reports conducted by the County's own consultants in 1996 and again in 2001¹⁰, the Service expressed concern that the proposed roadway would affect scrub-jays. At the time the Service reviewed the project, the County had submitted a corridor design for the parkway, identifying four possible alignments. According to the Service, all of these alignments "traverse through occupied Florida scrub-jay habitat."¹¹ In addition, the Service noted that each of the Parkway's alignments would require the destruction of habitat occupied by scrub-jays. The agency expressed significant concern:

"The direct effects of land clearing for road construction and clear zones will likely result in adverse impacts to resident scrub-jays. Furthermore, the indirect effects of vehicle traffic on roadways adjacent to occupied scrub-jay territories are likely to cause road mortality, especially on high-speed (greater than 45 mile per hour) highways."¹²

Based on the information provided to the Service at the time, the Service concluded that "it appears that minimization of impacts to scrub-jays has not been adequately considered in the

⁸ See June 23, 2006 Letter from South Florida Water Management District to Creech Engineers, Re: Green River Parkway (South).

⁹ See May 20, 1996 Letter From U.S. Fish & Wildlife Service to Martin County; August 24, 2001 Letter from U.S. Fish & Wildlife Service to Martin County.

¹⁰ See *Scrub-Jay and Listed Species Report for Green River Parkway Alternatives 1, 2, 3, and 4 Martin County, Florida*, Prepared by Blythe Environmental, Inc. for Martin County Engineering Department (July 1996); *Green River Parkway Ecological Site Assessment*, Prepared by Biological Research Associates, (June 19, 2001). The Scrub-Jay report studied the habitat in and around four "corridor alternatives" for the parkway. The report found two scrub-jay groups in the area. The first group was located adjacent to the Pinecrest Lakes Residential development and consisted of five adults and three juveniles. The consultants found two nests in the area, which suggested that a "healthy population" was present. The area is "high quality type I scrub." The consultants observed a second group in and around the "Ewing Parcel," as well as a nest. A state listed species, the gopher tortoise, was also present throughout the area. The Ecological Site Assessment conducted by Biological Research Associates in 2001 also documented an active scrub-jay nest, as well as gopher tortoises and their burrow sites within the proposed roadway corridor.

¹¹ See August 24, 2001 Letter from U.S. Fish & Wildlife Service to Martin County.

¹² *Id.*

early planning phases of this project.” It is unclear whether the County has addressed these concerns since its initial correspondence five years ago. There is no mention of the Service’s position on this issue in the City’s March 21, 2007 letter to FCT.

In addition to wetlands and protected species, the site and surrounding area contains several contiguous acres of hydric pine flatwoods. The Environmental Protection Agency (EPA) considers these flatwoods to be “aquatic resources of national importance (ARNI) because they are threatened habitats that provide nesting, resting and feeding sites for a wide variety of wildlife species.”¹³ Despite their importance, EPA notes they are among the least protected lands in Florida, with only nine percent in public ownership.¹⁴ The fact that the hydric pine flatwoods occurring on the Haney Creek site are held in public ownership makes the case for ensuring their protection from the damaging effects of a multi-lane road construction project, even more compelling.

In addition to these direct impacts to wetlands, scrub-jays and hydric pine flatwoods, several indirect and secondary impacts may result from this project. The City fails to mention the numerous indirect impacts a 2.5-mile four-lane road would have on the site and surrounding area. Impacts may include increased stormwater runoff, impacts to local water quality, the alteration of the local hydrology due to the loss of wetlands, increased pollution (emissions, gasoline and oil, litter, etc.), increased noise and light pollution from vehicles, road kills, and potential user conflicts between automobiles and pedestrians, hikers, bicyclists and other recreational users.

We are particularly concerned about the stormwater impacts that would result from the conversion of nearly 8 acres of pristine flatwoods and wetlands to a four-lane road. This large, impervious surface would produce stormwater runoff that would have to be managed through drains and culverts. These drains and culverts would likely transport water off-site and eventually into the St. Lucie River. Such a system would defeat the very purpose of the Haney Creek Watershed Improvement project, which is to reduce stormwater impacts and improve the local water quality. The City makes no mention of this fact.

With respect to impacts to recreational and wildlife interests, the City merely states that the road “does not materially alter walking trails and other public amenities.” The City then concludes that the road “will have minimum impact to the current park/conservation area use, and the City/FCT site will continue to function as a passive park with hiking trails, fishing areas and wildlife habitat.” The City’s statements overlook the fact that the proposed road project

¹³ 2002 Letter from Richard Harvey, Environmental Protection Agency to Colonel James G. May, U.S. Army Corps of Engineers, Regarding Gables at Stuart Permit Application (explaining EPA’s review of hydric pine flatwoods adjacent to the Haney Creek Project site and describing their ecological significance and rarity).

¹⁴ *Id.*

would fall within the only possible route for a greenway linking the Savannas State Preserve with the Haney Creek Project Site. As the Haney Creek Management Plan notes, this greenway would establish a wildlife corridor linking the Savannas Preserve to the St. Lucie River. This important, final component of the management plan would no longer be a viable conservation strategy if the property is used for a road project.

The City's failure to provide any discussion and analysis of the project's direct and indirect impacts is particularly puzzling in view of the City's concerns that development has already adversely affected the Haney Creek project area. This development includes the construction of the Green River Parkway! In an August 12, 2002 letter to the Executive Director of the South Florida Water Management District, the City Manager stated:

"The City of Stuart is aware of a number of pending developments in the Haney Creek Basin which are or will propose to destroy wetlands and for which mitigation will be required. We are concerned with cumulative impacts of these losses with respect to the City's efforts to implement the Haney Creek Watershed Preservation and Greenways Project. These projects include Gables, Pineapple commons, Kremser Parcel, Jensen High School, Green River Parkway, and perhaps several others."¹⁵

Despite having concerns as far back as 2002 that the Green River Parkway and other development projects might have significant cumulative impacts to the Haney Creek project, the City fails to address these concerns in its communication to FCT.

Equally troubling is that the City and County have no plans of mitigating the direct loss of these lands. Instead, they offer simply to return the grant funds that were used to buy the subject parcels to FCT based on the land's current value. The City has made no attempt at acquiring additional lands in the area that would offset the environmental impacts of this project and the City has not taken any action that would avoid a net loss of conservation lands for this project. Simply returning the grant funds back to FCT does not advance the goals of the Preservation 2000 program or the Haney Creek project and treats the conservation program as nothing more than a land bank, accessible whenever a local government needs land to implement a capital improvements project.

FCT Has Not Approved A Project of This Nature and Intensity Under Its Linear Policy and the Board's Approval of This Project Would Set a Dangerous Precedent under the Preservation 2000/Florida Forever Program.

¹⁵ See August 12, 2002 Letter from City of Stuart to SFWMD (emphasis added). A copy of this letter is contained in "Exhibit Q" to October 21, 2007 Comments From Haney Creek Greenway Group to FCT.

The proposal submitted by the City is, as FCT community program manager Ken Reecy recently remarked, “probably the largest one the board will have yet considered.”¹⁶ We completely agree with Mr. Reecy’s assessment that this is “a whole new ball game”¹⁷ because based on our own review of FCT’s past application of the linear policy the Board has never approved a project even close to what the City proposes here. We believe that in consideration of the following analysis of past cases where FCT has applied the linear policy and granted modifications to a management plan, the City’s proposal is easily distinguishable from these cases and the City’s proposal is entirely inconsistent with the type of modifications contemplated by the linear use policy.

City of Jacksonville: Julington Creek Headwaters Park and Preserve

In early 2001, the City of Jacksonville requested permission from FCT to construct a stormwater retention pond on the Julington Creek Headwaters Park and Preserve property, which was purchased with FCT funds. The City stated that construction of the stormwater detention pond was necessary to treat stormwater run-off from a proposed road extension adjacent to the FCT area. FCT responded to the City’s request and clarified that the request would require review and approval of the FCT Governing Board in accordance with the Grant Award Agreement.¹⁸

FCT staff recommended that the City modify the stormwater pond project to ensure that the pond provides recreational open space or wildlife habitat, that it is designed with natural contours and that native aquatic wetland plants are incorporated as appropriate.¹⁹ The City then provided FCT staff with a requested Statement of Compatibility with the proposed use of parkland for a stormwater facility.²⁰

Ultimately, FCT staff granted approval of the City’s request to use 2.245 of the total 428 acres of land at Julington Creek Headwaters Park for the construction of a stormwater holding

¹⁶ “Green River Parkway Extension May Go Through Preserved Land,” *The Stuart News*, December 17, 2006.

¹⁷ *Id.*

¹⁸ April 30, 2001 Letter from Florida Communities Trust to Jacksonville Department of Parks, Recreation and Entertainment re: Proposed Storm Water Facility at Julington Creek Headwaters Park & Preserve, FCT Project No. 98-094-P8A.

¹⁹ February 25, 2003 Letter from Florida Communities Trust to Jacksonville Roadway Improvements re: Proposed Stormwater Facility at Julington Headwaters Park & Preserve, FCT Project No. 98-094-P8A.

²⁰ June 9, 2004 Letter from Jacksonville Department of Parks, Recreation and Entertainment to Florida Communities Trust re: Proposed Stormwater Facility at Julington Headwaters Park & Preserve, FCT Project No. 98-094-P8A.

pond and sidewalk.²¹ Notably, this FCT project modification resulted in a net benefit to the park by mitigating previously unmitigated stormwater runoff impacts. The modification required only two (2) of the total 428 acres of Julington Park and did not negatively impact native wildlife or wetland areas.

Palm Beach County: Acreage Pines

In May 2005, FCT addressed a Palm Beach County request for a roadway easement along 140th Avenue North. The easement would affect .50 acres of the 115.6 acre FCT project site and would provide enhanced access to the Acreage Pines Natural Area and Community Park.²² As required by FCT Linear Policy, the County provided the legal description of the right of way and a description of the only affected natural community- wet prairie.²³ FCT in turn recommended additional native planting, exotic plant control and construction of additional stormwater treatment facilities or recreational facilities as some native vegetation, such as mesic flatwoods, would be impacted. FCT additionally noted that its policy provides that the proposal shall provide a net positive recreational or conservation benefit for the project site²⁴ and that it needed a commitment from the County regarding mitigation of the impacts.²⁵

By July 2005, FCT staff had approved the use of the proposed acreage for the right-of-way onto the park. No Governing Board meeting was held. Rather, the County provided FCT staff with information that described how the proposed roadway easement would be compatible with the planned recreational uses of the project site and that no significant changes would be made to the proposed structures, facilities and restoration areas in the Master Site Plan. The County established two threshold FCT Linear Policy criteria: 1) that there was no reasonable alternative to the proposed modification land use on the FCT project site; and 2) that the land use is designed to have a minimal impact to the site. Additionally, it was noted that the right-of-way provided a net positive recreational or conservational benefit by providing improved access to the park.

²¹ June 20, 2005 Letter from Florida Communities Trust to Jacksonville Department of Parks, Recreation and Entertainment re: Proposed Stormwater Facility at Julington Headwaters Park & Preserve, FCT Project No. 98-094-P8A.

²² May 3, 2005 Letter from Florida Communities Trust to Palm Beach County Department of Environmental Resources Management re: Management Plan, Acreage Pines, FCT Project #01-037-FF1.

²³ June 22, 2005 Letter from Palm Beach County Department of Environmental Resources Management to Florida Communities Trust re: Requested Information for Management Plan FCT Project #01-037-FF1, Acreage Pines.

²⁴ July 01, 2005 Email from Linda Demetropoulos, FCT to Alessandra Medri, Palm Beach County re: Acreage Pines, 01-037-FF1.

²⁵ July 18, 2005 Email from Linda Demetropoulos, FCT to Alessandra Medri, Palm Beach County re: Acreage Pines, 01-037-FF1.

Palm Beach County: Jog Road-Grassy Waters Preserve

In the Jog Road-Grassy Waters Preserve case, the Board approved the use of a small percentage of the Grassy Waters Preserve project for a road extension to serve certain western communities in Palm Beach County. There was no reasonable design alternative because relocating the road to the south would prevent the construction of a much-needed fire station for the western portion of the County and it was well documented that without the road extension, projected volume would exceed capacity. Moreover, there was no mention of listed species, wetlands, surface waters or other sensitive resources that would be impacted by the project. The location of the proposed extension also minimized adverse impacts to natural resource land because the extension would be located on the perimeter of the Grassy Waters Preserve and impacts would be mitigated through a 50-foot embankment easement and 25-foot buffer. Lastly, the total acreage that was impacted by the project represented less than 3% of the total FCT project lands (640 acres).

In all three of these cases, the applicant successfully demonstrated that no reasonable alternatives existed and that the modification would have minimum impacts to the project site. In all three cases, the proposed modification required the use of less than 3% of the total acreage of the project site. In addition, there were few if any, impacts to wetlands, listed species, and other sensitive resources. In fact, two of the three modifications provided a net benefit to the project site by either reducing stormwater impacts or providing greater recreational access to the site.

In contrast, the Green River Parkway would require impacts to numerous natural resources and would run through the Haney Creek project site rather than around the perimeter of the project site. In addition, the road would require the destruction and/or impairment of nearly 25% of the FCT lands used for the Haney Creek restoration project (in comparison to less than 3% in the Jog Road case). The City has also not offered any traffic studies supporting its claim that the road is “urgently needed” and that no other alternatives exist. To the contrary, the road may just re-route traffic to areas that cannot handle it. As former City Manager Dave Collier explained in 2000:

“If it’s lucky it will direct the traffic to US1 through a series of roads that aren’t adequate right now to handle that traffic; we need to start thinking about how we’re going to handle that traffic if it ever gets built...”²⁶

As Mr. Collier explained, building this particular strip of highway will not produce even temporary reduction of congestion on surrounding roads, and we agree with his assessment that this would be a “road to nowhere.”²⁷ By creating additional traffic problems in the area and

²⁶ See Martin County Board of County Commission Meeting Minutes, January 25, 2000 at p. 35.

²⁷ *Id.*

destroying more than eight acres of valuable conservation lands in the process, we submit the project would result in a net loss rather than a net benefit to the environment and the community.

In sum, the Board's past application of the Linear Policy and approval of project modifications under this policy reveals that the Linear Policy is not intended to permit the type and intensity of use proposed by the City and the City's plans are not similar to those cases where the Board has permitted modifications under this policy. Therefore, we ask the Board to reject the proposed sale and change to the Haney Creek management plan.

The Proposal Violates the Goals, Objectives and Intent behind the Florida Communities Trust and the Preservation 2000 Program.

In 1990, the Florida Legislature enacted the Florida Community Trust Act.²⁸ The Legislature found that the conservation of natural areas is vital to the State's economy and ecology and that rapid increases in population and development throughout Florida threaten the integrity of the environment and limit opportunities for citizens and visitors to enjoy the State's natural areas. The Legislature further found that inappropriate and poorly planned land uses overburden natural resources and disrupt the State's ecology. The Legislature found that the quality of life, environmental quality, as well as the viability and vitality of the urban areas of this State are linked directly to urban open space and greenways.

Thus, the Legislature sought to create a program that would create greenways; expand green spaces; enhance recreation areas; and protect and restore urban lakes, rivers, and watersheds in the urban areas of this State. These greenways would help link populated areas with natural areas, preserve unique cultural and heritage sites, provide land for recreational opportunities to enhance the health and well being of the urban residents of this State, and improve water quality.²⁹

To accomplish this, the Legislature created the Florida Communities Trust, a non-regulatory agency charged with assisting local governments in conserving natural resources.³⁰ The FCT provides both financial and technical assistance to local governments, state agencies, and nonprofit organizations to carry out projects and activities and to develop programs authorized by Statute.³¹

One of these programs is the Preservation 2000 program.³² The purpose of the program is to protect environmentally sensitive lands threatened by development in order to protect the

²⁸ Ch. 380, Fla. Stat.

²⁹ See § 380.502, Fla. Stat.

³⁰ § 380.502, Fla. Stat.

³¹ *Id.*

³² § 259.101, Fla. Stat.

integrity of ecological systems and to provide multiple benefits, including preservation of fish and wildlife habitat, recreation space, and water recharge areas.³³ Particular focus is placed on the protection of ecosystems in urban areas.³⁴ Lands are acquired through a grant program, which is funded by the sale of revenue bonds.³⁵ The program has assisted state and local agencies in preserving more than 1.7 million acres of ecological corridors, greenways and other environmentally significant lands and urban green space.³⁶

Section 253, Fla. Stat. provides a strict conservation mandate for lands acquired under the Preservation 2000 program:

“All lands acquired pursuant to chapter 259 shall be managed to serve the public interest by protecting and conserving land, air, water, and the State's natural resources, which contribute to the public health, welfare, and economy of the State. These lands shall be managed to provide for areas of natural resource based recreation, and to ensure the survival of plant and animal species and the conservation of finite and renewable natural resources. The State's lands and natural resources shall be managed using a stewardship ethic that assures these resources will be available for the benefit and enjoyment of all people of the state, both present and future.”³⁷

Section 253.034(10) further states that water resource development projects, water supply development projects, stormwater management projects, sustainable agriculture and forestry and “linear facilities” may be permitted on conservation lands only where such additional uses are:

- (a) Not inconsistent with the management plan for such lands;
- (b) Compatible with the natural ecosystem and resource values of such lands;
- (c) The proposed use is appropriately located on such lands and where due consideration is given to the use of other available lands;
- (d) The using entity reasonably compensates the titleholder for such use based upon an appropriate measure of value; and
- (e) The use is consistent with the public interest.³⁸

Rules 9K-4 and 9K-6 of the Florida Administrative Code (“F.A.C.”) guide the administration of the Preservation 2000 program. The express purpose of these rules is to

³³ § 259.101, Fla. Stat.

³⁴ *Id.*

³⁵ § 375.045, Fla. Stat.

³⁶ See Florida Department of Environmental Protection, Preservation 2000 Program Summary, at <http://www.dep.state.fl.us/lands/acquisition/p2000/>.

³⁷ § 253.034, Fla. Stat.

³⁸ *Id.* (emphasis added).

“recognize the legislative intent” expressed in Section 259, Fla. Stat., (the Preservation 2000 Act), Section 253, Fla. Stat, and Section 380 Fla. Stat (The FCT Act). The rules provide strict guidelines on the management of Preservation 2000 lands. Rule 9K-4.011 requires FCT grant recipients (here the City) to prepare a management plan which sets forth how the site will be managed to further the purpose of the project and describes all planned improvements to the project site. Rule 9K-6.004(6)(b) requires any subsequent transfers of conservation land to contain “such covenants, reverter clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.”

The City’s proposal is entirely inconsistent with goals, objectives and intent behind the Preservation 2000 program and FCT must not allow the City to use a non-promulgated rule (the Linear Policy) to take action that would otherwise violate agency rules.

Section 253, Florida Statutes, which is explicitly referenced in the grant agreement for the Haney Creek project promises that these lands, as well as all FCT lands and their natural resources “shall be managed using a stewardship ethic that assures these resources will be available for the benefit and enjoyment of all people of the state, both present and future.”³⁹ The requirement that these properties be managed for the benefit of the citizens of the state is similar to the Public Trust doctrine that applies to sovereign lands.⁴⁰

It is difficult to imagine how the use of state lands and natural resources for the construction of a road is consistent with this stewardship ethic and the Public Trust. The destruction of these lands will result in the loss of these resources forever and neither the present or future generation will be able to benefit from or enjoy these lands.

The road proposal also thwarts the purpose of the Preservation 2000 program, which is to protect environmentally sensitive lands in urban areas that are threatened by development.⁴¹ The 40 acres acquired for the Haney Creek project were identified for acquisition because they occurred in an urban area, provided multiple conservation benefits and would otherwise be developed if they were not acquired for preservation. Fortunately, these lands were saved through the Preservation 2000 program but now they face the very same threat that lead to their initial acquisition. The City cannot be permitted to undo all the benefits this project has provided over the past six years by relying on FCT’s linear policy to elude its obligations under the program.

Further, FCT cannot permit the proposed modification because the intended use comes nowhere close to satisfying the limited exceptions for “linear facilities” provided for in Section

³⁹ § 253.034, Fla. Stat. (emphasis added).

⁴⁰ Clay Henderson, *The Conservation Amendment*, 52 Fla. L. Rev. 285, 293 (2000) (citing Fla. Const. art. X, § 11).

⁴¹ *Id.*

253, Fla. Stat. The proposed road is wholly inconsistent with the management plan for these lands, is entirely incompatible with the natural ecosystem, and is contrary to the public interest. We further find nothing in Sections 253, 259, 375 380, Fla. Stats., and Rules 9K-4 and 9K-6 for that matter, which would provide sufficient support for the City's proposal.

Lastly, the City's proposal is the functional equivalent to a situation where state owned conservation lands are deemed no longer necessary for conservation and are subsequently disposed of. However, there are strict, constitutionally imposed requirements for these types of instances. Under Article X, Section 18 of the Florida Constitution:

"The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board."

Had the State held title to the 8.34 acres at issue here, the State could only dispose of these lands upon a determination that the property is no longer needed for conservation and only upon a two-thirds vote. In this instance, the City's plans are functionally equivalent to the disposal of conservation property because the road will require the total destruction of these lands. The only thing that distinguishes this situation from those situations governed by the aforementioned Constitutional provision is that the City retains title to the land and there has been no determination that these lands are no longer needed for the Haney Creek project. The end result is the same though, the lands would no longer be used for conservation purposes and there would be no need for their continued management. FCT should not allow the City to use its linear policy to subvert the intent behind Article X, Section 18 and essentially dispose of its conservation lands to serve a non-conservation purpose.

The express constitutional and statutory intent that FCT lands remain in conservation, the lack of statutory support for the City's proposal, and the tremendous conservation benefits provided by the Haney Creek project, necessitate a finding that the City's plans are inconsistent with Sections 253, 259, 375 and 380 of the Florida Statutes and Rules 9K-4 and 9K-6.

The Proposal Is Inconsistent with the Terms of the Grant Agreement.

The proposed land sale and destruction of eight acres of conservation lands also violates the terms of the Grant Agreement between the City and FCT and the Linear Policy should not be used to allow the City to breach the terms of its contract with the State.

On June 28, 2000, the City executed a Grant Agreement with FCT. The agreement imposes certain terms, conditions and restrictions on the use of the lands at issue in this case and the bonds that were used to purchase these lands. These terms, conditions and restrictions are also provided for in the deed to the property. The Agreement imposes a number of

conditions pursuant to FCT's authority under Rule 9K-4.010(2)(f), F.A.C.. Most notably the agreement provides:

“The project site shall be managed only for the conservation, protection, and enhancement of natural and historical resources, and for passive natural-resource based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Project site, along with other related uses necessary for the accomplishment of this purpose. The proposed uses are specifically designated in the Project Plan as approved by FCT.” (Agreement at p. 5) (emphasis added).

Management activities include the continued preservation of slash pine, sand pine scrub, hardwood swamp, and wetlands, wetlands restoration activities, endangered species enhancement activities, stormwater management activities, and prescribed burning. (Agreement at 8-9). The agreement further requires the City to monitor “adjacent development activities ... to ensure that such activities do not negatively affect the resources on the Project Site.” (Agreement, at 8).

These restrictions and covenants run with the property and shall bind respective successors and assigns. (Agreement at 3). In the event that the property is transferred, “the transfer shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.” (Agreement at 4).

The Agreement's commitment to conservation is so strong that even in the event that an entity attempts to exercise eminent domain over a project site and a project site is damaged or destroyed, the FCT grant recipient is still obligated to replace, restore and or rebuild the project consistent with the purpose of the grant agreement. In the event the FCT grant recipient fails to do this, FCT reserves the right under the grant agreement to replace and restore the use on its own. (Agreement at 4).

All of these conditions and restrictions are entirely consistent with the constitutional and statutory laws governing the use of government bonds to fund conservation land purchases (Article XII, Fla. Const.; Section 375.051, Fla. Stat.) and the Preservation 2000 mandates contained in Sections 253, 259, 375, and 380, Fla. Stat. and Rules 9K-4 and 9K-6.

The City's intent to sell FCT conservation lands to another government entity to construct a road violates the express terms of the grant agreement. Nowhere in the grant agreement does it contemplate, let alone permit, the use of this property for something as substantial as a road. The closest the grant agreement comes to allowing for such an instance is the requirement that the City must receive written approval from FCT for “major land

alterations.” However, this provision contemplates activities conducted in furtherance of land management and not public works, capital improvement or road building activities. (Agreement at 5). Nowhere in the agreement does it contemplate that the title-holder can simply sell the property to another entity for non-conservation purposes. The City should not be able to invoke FCT’s “linear policy” to breach this contract and allow for this situation.

FCT should also preclude the City from relying on this policy because it would undermine the public’s interest in preserving this property. The grant agreement reflects the strong public interest in conserving this land. The grant agreement states that in the event that the property is transferred, “the transfer shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.” (Agreement at 4) (emphasis added). This condition is pursuant to Rule 9K-6.004, which requires FCT to establish conditions and restrictions on transfers of FCT lands to protect the public interest. However, in the event FCT were to approve this change in land use, no covenant, clause or other restriction could protect the interest of the people of Florida at that point because the land would be permitted to be destroyed to accommodate this road. Thus, FCT’s approval of this proposal under the “linear policy” in this instance would frustrate the purpose of Rule 9K-6.004 and be contrary to the interest of the people of Florida.

The Community Has Voiced Strong Opposition to the Proposed Road Project

Finally, the community has voiced strong opposition to the proposed road project over the past several years. The project has been the subject of several newspaper articles,⁴² received harsh criticism from local officials,⁴³ and leading conservation organizations such as 1000 Friends of Florida, the Sierra Club, the Martin County Conservation Alliance and the Haney Creek Greenway Group, have expressed their concern about the project.⁴⁴ These groups

⁴² See, e.g., “Green River Parkway Extension May Go Through Preserved Land,” *The Stuart News*, December 12, 2006; “State Blocks Parkway Plans,” *The Palm Beach Post*, October 12, 2006; “Parkway Swap Riles Environmentalists,” *The Palm Beach Post*, July 2, 2006; “Green River Parkway Plan May Destroy Martin County Wetlands,” *The Stuart News*, June 27, 2006; “Activists Say Land Wrong for Road,” *The Stuart News*, April 13, 2003.

⁴³ See “Activists Say Land Wrong for Road,” *The Stuart News*, April 13, 2003. Martin County Board of County Commission member Sara Heard stated, “Just for starters we have the Army Corps of Engineers, the EPA and the South Florida Water Management District opposed to impacts in the watershed and at least 2,700 residents...This is a bad project...I think it should be scrapped, and it should be scrapped now.”

⁴⁴ See, e.g., October 23, 2007 Letter from 1000 Friends of Florida to FCT; October 21, 2007 Letter from Haney Creek Greenway Group to FCT; July 28, 2006 Letter from Haney Creek Greenway Group to FCT; May 19, 1996 Letter from Martin County Audubon to Martin County Metropolitan Planning Organization; Petition of 3,487 signatures, submitted to Martin County

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applauded FCT last fall when it rejected the City's attempt to swap FCT lands to build this road.⁴⁵ We write you again in opposition to this latest proposal.

A number of local residents have also voiced concern over the project. Some residents appear to be losing faith in the County's commitment to land preservation and have questioned the effectiveness of local programs, such as the "Lands for You" program, if local leaders are not committed to protecting local conservation lands in perpetuity.⁴⁶

Conclusion

We believe that guarding the conservation status of Florida Forever and FCT land is critical to ensuring the effectiveness of the program. Once conservation lands are allowed to be used to accommodate major capital improvements projects such as roads, the purpose and the future of this program, and others like it, are put in serious jeopardy. We urge the Board to exercise its oversight of the Haney Creek Greenway by rejecting the proposed sale. Thank you for considering these comments in your deliberations.

Sincerely,

s/Jason Totoiu

Jason Totoiu
Amy Miller

cc: Ken Reecy (Florida Communities Trust)

Board of County Commissioners and provided to FCT in July 28, 2006 letter. *See also, infra* note 6.

⁴⁵ October 16, 2006 Letter from Haney Creek Greenway Group, Martin County Conservation Alliance, 1000 Friends of Florida, Audubon of Martin County, and Sierra Club Loxahatchee Group to FCT

⁴⁶ "Parkway Swap Riles Environmentalists," *The Palm Beach Post*, July 2, 2006.