




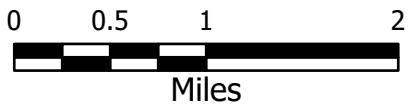


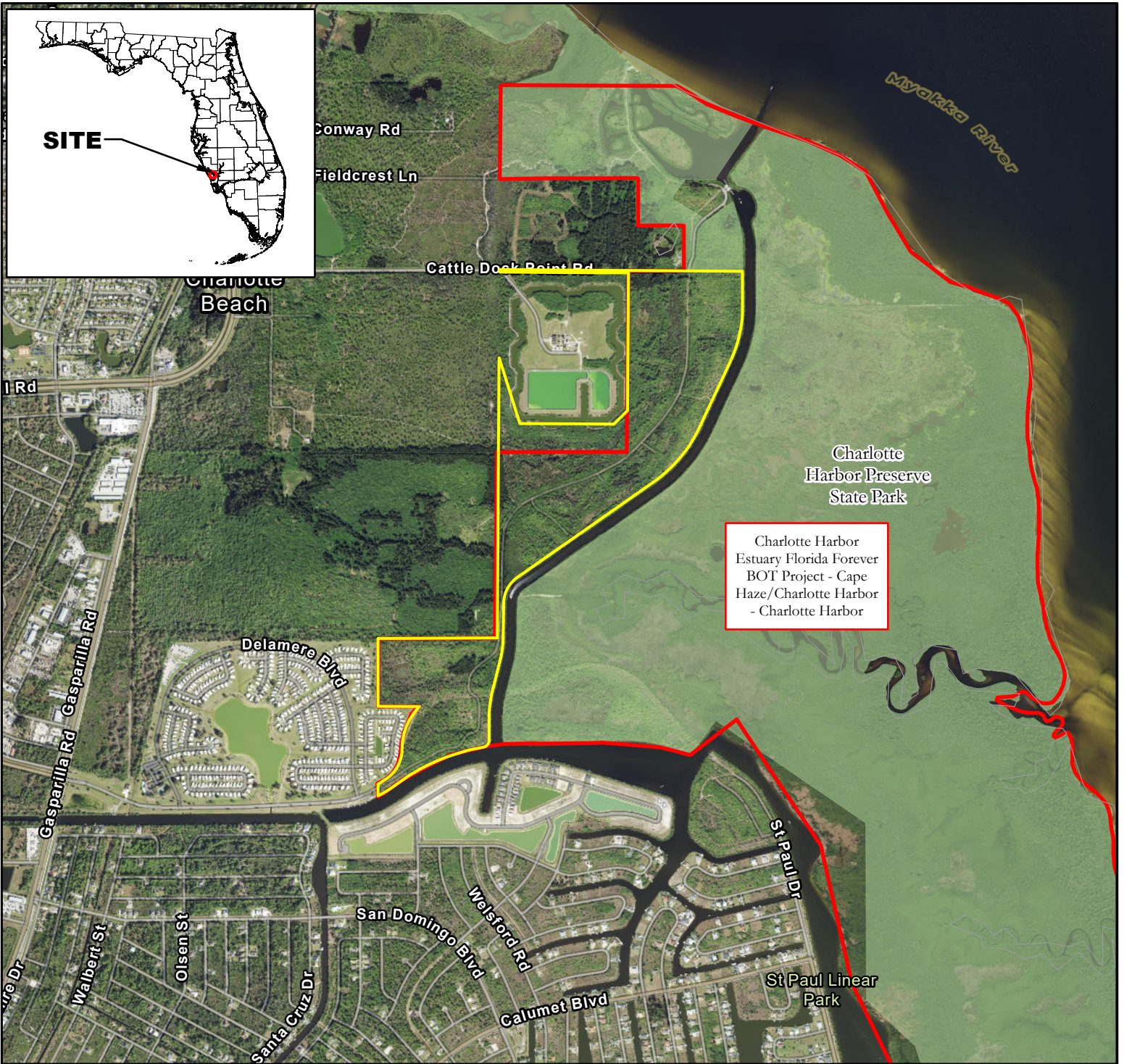
Charlotte Harbor Estuary Florida Forever BOT Project - Cape Haze/Charlotte Harbor - Charlotte Harbor

-  Board of Trustees' Deed No. 31305
-  Florida Forever Project Boundaries
-  State Managed Conservation Lands
-  City/County Managed Conservation Lands
-  Private Managed Conservation Lands



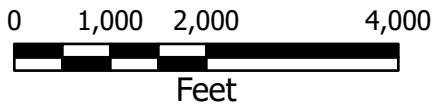
## Modification of Restrictive Covenant

Charlotte and Sarasota Counties, Florida



Charlotte Harbor  
Estuary Florida Forever  
BOT Project - Cape  
Haze/Charlotte Harbor  
- Charlotte Harbor

- Board of Trustees' Deed No. 31305
- Florida Forever Project Boundaries
- State Managed Conservation Lands



## Modification of Restrictive Covenant

Charlotte and Sarasota Counties, Florida

NOTICE OF BOARD ACTION

TO: Office of the Secretary \_\_\_\_\_  
Office of Coastal and Aquatic Managed Areas \_\_\_\_\_  
Office of General Counsel X  
Office of Greenways and Trails \_\_\_\_\_  
District Office - \_\_\_\_\_  
Division of Recreation and Parks \_\_\_\_\_  
Division of Water Resource Management \_\_\_\_\_  
Division of State Lands \_\_\_\_\_

FROM: Office of Cabinet Affairs

ITEM # **Substitute Item 7**

TITLE: **South Florida Land Holdings, LLC & Charlotte Sarasota Holdings, LLP v. BOT Settlement Agreement**

CABINET MEETING DATE December 16, 2003

ACTION: Approved without objection.  
\_\_\_\_\_  
\_\_\_\_\_

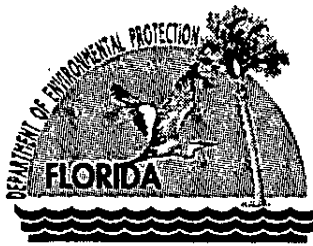
MEMBERS:

	Present	Absent
GOVERNOR	X	
ATTORNEY GENERAL	X	
CHIEF FINANCIAL OFFICER	X	
COMMISSIONER OF AGRICULTURE	X	

The above action was taken on the subject division agenda item at today's meeting. Will you please see that the information is provided to appropriate staff for further processing/handling of the matter and that the formal action as noted is made a part of the division's master file.

Please contact me immediately if you have any questions relating to the item's action as noted (245-2024). Thank you for your cooperation.

/rg



Jeb Bush  
Governor

# Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

David B. Struhs  
Secretary

STATE OF FLORIDA

COUNTY OF LEON

## CERTIFICATE

I, Connie Byrd, do hereby certify that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, met on December 16, 2003, and approved the following Substitute Item 7 on the agenda for that date.

**Substitute Item 7 South Florida Land Holdings, LLC & Charlotte Sarasota Holdings, LLP v. BOT Settlement Agreement**

**REQUEST:** Consideration of a land exchange for Florida Forever "A" List lands existing within the Cape Haze/Charlotte Harbor Florida Forever Acquisition, granting of an easement (ingress, egress, drainage and utility), and proposed settlement in the case of South Florida Land Holdings LLC SFLH & Charlotte Sarasota Holdings, CSH LLP v. Board of Trustees of the Internal Improvement Trust Fund, Twentieth Judicial Circuit (Charlotte County) Court Case No. 01-1262 CA, and a finding that certain lands are no longer needed for conservation purposes.

**COUNTY:** Charlotte

**APPLICANTS:** Department of Environmental Protection, Division of State Lands, South Florida Land Holdings, LLC and Charlotte Sarasota Holdings, LLP.

**LOCATION:** The Board of Trustees receives lands located in sections 14, 23, 24, 25 and 36, Township 41 South, Range 21 East. Jointly held Board of Trustees/Southwest Florida Water Management District lands located in Sections 3, 9 and 10, Township 41 South, Range 21 East, are exchanged.

### **STAFF REMARKS:**

**Background:** On December 16, 1986, the Board of Trustees approved agenda item number 27 (BLA Review number 86-042-741), attached hereto as Exhibit "A," wherein the Board of Trustees accepted General Development Corporation's ("GDC") donation of approximately 414 acres of land located in Charlotte County, Florida. A copy of the deed was presented to the Board of Trustees as part of the backup to the agenda item.

*"More Protection, Less Process"*

*Printed on recycled paper.*

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**December 16, 2003 Trustees Agenda**  
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To effectuate this donation, on September 20, 1988, a special warranty deed was executed by and between GDC and the Board of Trustees; however, because Department staff determined the deed contained unacceptable conditions, the deed was not recorded. The conditions required the Board of Trustees to be responsible for all delinquent taxes and special assessments and also restricted certain Board of Trustees' activities. November 17, 1989, Department staff correspondence indicates that the land donation had "not closed due to problems with the language contained within the deed." Accordingly, Department staff continued to work with GDC on acceptable deed language. GDC filed bankruptcy in 1990 and reorganized into Atlantic Gulf Communities Corporation ("AGCC").

After the corporate reorganization, the Department staff again attempted to complete and finalize the donation. Final correspondence between Department staff and AGCC took place in late 1997 and early 1998. The Department staff asked AGCC if the subject property was "still available for donation." The brief chronology above characterizes the challenges Department staff confronted in its attempt to close the 1986 land donation. As a result of these challenges, Department staff never recorded the deed. In 1999, South Florida Land Holdings, LLC (SFLH) purchased the disputed property from AGCC. According to SFLH, its review of the chain of title did not reveal any prior recorded interests in favor of the Board of Trustees.

During the Fall of 2000, SFLH applied to the Charlotte County Board of Zoning Appeals ("BZA") and requested a special exception to build a marina on the subject property. DEP's Buffer Preserves staff received notice of the request and informed Charlotte County that the subject property was State owned. As a result, in July of 2001, SFLH filed a quiet title action against the Board of Trustees alleging that it owned the property donated to the Board of Trustees in December of 1986.

The Court ordered the parties to attempt to mediate the title dispute. Settlement discussions between the parties ensued during the late Fall of 2001, premised upon the notion of a potential land exchange. The Board of Trustees considered the land exchange, as part of a Settlement Agreement (Settlement Agreement attached hereto as Exhibit "B1"), at its September 10, 2002, Cabinet meeting. The Board of Trustees, however, denied the request and asked the Office of the Attorney General ("AG") to conduct additional discovery.

The AG's office complied with that request and the matter is currently scheduled for a January 2004 trial date. Moreover, the Court has ordered the parties back to mediation for a second time. In light of the discovery, and the Court order, the AG's office recommends reconsideration of the settlement proposal. The parties believe a slightly modified version of the proposed land exchange presents a reasonable settlement option.

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**Proposed Settlement Agreement:** See modified Settlement Agreement, attached hereto as Exhibit "B". This agreement resolves all pending and future litigation, costs, attorneys' fees, and interest.

**Exchange:** In the exchange, the Board of Trustees will receive approximately 468 acres of Florida Forever "A" List lands in exchange for approximately 210 acres of jointly-owned Board of Trustees/Southwest Florida Water Management District (Board of Trustees/SWFWMD) lands and an easement to lands held by CSH.

**Lands to be received by CSH:** The jointly held Board of Trustees/SWFWMD lands present Department staff with consistent and long-term management problems. Specifically, the 210 acres are lands created by upland spoil, which left little natural habitat and a large, invasive plant infestation. The land is not currently managed. Accordingly, Department staff recommends exchanging the 210 acres. The SWFWMD's Governing Board approved the original settlement agreement, attached hereto as Exhibit "B1," at its June 25, 2002, meeting. Subsequent to the Board of Trustees approval, the SWFWMD will reconsider the modified settlement agreement, attached hereto as Exhibit "B," during the SWFWMD's Governing Board's Winter/Spring 2004 meeting. Accordingly, staff request a finding by the Board of Trustees that the lands are no longer needed for conservation purposes.

**Easement:** A non-exclusive seventy foot (70') ingress, egress, drainage, and utility easement is to be granted by the SWFWMD and the Board of Trustees to CSH for access to land it owns. The easement is over an existing dirt access to the buffer preserve.

**Benefits of the Settlement Agreement to the State:** In addition to settling all pending and future litigation, costs, attorneys' fees, and interest, this settlement agreement benefits the Charlotte Harbor area and enhances the management objectives of the Cape-Haze/Charlotte Harbor "A" Listed Project.

The overview map, attached hereto as Exhibit "C," shows the exchanged lands in the modified settlement agreement. Note that the 468 acres received by the Board of Trustees have all been identified as Florida Forever "A" List lands. The acreage received includes title to most of the disputed land. CSH will retain roughly 30 acres. In addition the Board of Trustees will receive three additional/parcels including 12 acres on State Route 776 ("776 Property"). The SWFWMD will also receive 93 acres located in DeSoto County.

The lands received by the Board of Trustees, are all located in the Cape Haze/Charlotte Harbor Florida Forever "A" list project. The land included in the settlement agreement provide essential additions to lands previously acquired through the Environmentally Endangered Lands Program of the 1970s and the Save Our Rivers Program of the 1980s. Most of the "Board of

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Trustees Lands" are wetlands, including mangrove, salt marsh, and salt flats, with occasional uplands including pine flatwoods, and scrub habitats.

The "776 Property," is characterized by the parcel, which lies between two forks of Sam Knight Creek. The Creek provides drainage into the Gasparilla Sound/Charlotte Harbor Aquatic Preserve. Development of the "776 Property" for commercial activity would effect the use of surrounding waters by manatees, wading birds, osprey and bald eagles that nest on adjacent state lands. There is also a recreational fishery on the shallow creek, which would be better utilized by the public through use of non-motorized boats. The site is of great interest for public access to adjacent waters, and if acquired, the site is being considered for a canoe launch site through a cooperative agreement with Charlotte County. There is also a prehistoric site on this parcel that would be protected under state ownership.

Both the "Board of Trustees Lands" and the "776 Property" will aid in the protection or "buffering" of state waters, primarily the Cape Haze and the Gasparilla Sound/Charlotte Harbor Aquatic Preserves, as well as improve the protection and recreational value of the existing state owned-lands. These lands will also provide a land base for public access by improving connectivity between and among existing state-owned lands. This settlement agreement benefits the Charlotte Harbor area and enhances the management objectives of the Cape-Haze/Charlotte Harbor "A" Listed Project. Charlotte Harbor, one of the largest and most productive estuaries in Florida, supports an important recreational and commercial fishery, but is rapidly being surrounded by urban development. By conserving coastal wetlands, flatwoods and prairies behind mangrove swamps and salt marshes along Charlotte Harbor, the Cape-Haze/Charlotte Harbor project will help preserve the water quality of the estuary and protect habitat for the Florida manatee and other rare wildlife. In addition, citizens are provided opportunities for public access to enjoy passive, nature based recreational pursuits.

In sum, the land exchange contemplated in the settlement agreement will accomplish the multiple objectives of acquiring essential lands identified for acquisition under the Florida Forever program, increasing public access to Board of Trustees' lands, and settling the ongoing litigation. Additionally, the combined Board of Trustees and SWFWMD efforts embodied in this agreement demonstrates an interagency commitment that advances two interdependent objectives: 1) natural resource enhancement and protection; and (2) increased natural resource management efficiency.

The Department's Florida Park Service will manage the lands acquired in the settlement agreement as part of the DEP's Buffer Preserves.

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These lands acquired as part of this settlement agreement are consistent with Section 187.201 (10), F.S., the Natural Systems and Recreational Lands' section of the State Comprehensive Plan.

**RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT WHICH PROVIDES FOR THE EXCHANGE OF APPROXIMATELY 468 ACRES FOR APPROXIMATELY 210 ACRES OF JOINTLY-OWNED BOT/SWFWM D LANDS.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Board of Trustees of the Internal Improvement Trust Fund on this 17<sup>th</sup> day of December A.D., 2003.



*Connie Byrd*  
\_\_\_\_\_  
Connie Byrd  
Office of Cabinet Affairs