



## Department of Environmental Protection Office of Inspector General

March 5, 2025

Report A-2425DEP-001

### ***Audit of Land Acquisition of Devils Garden - Alico, Inc. (Phase 2)***

#### **INTRODUCTION**

The Florida Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of the land acquisition of Devil's Garden - Alico, Inc. (Phase 2). This audit was initiated as a result of the OIG Annual Audit Plan for Fiscal Year 2024-2025.

#### **AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY**

The scope of the audit included activities related to the acquisition of Devil's Garden (Phase 2) from March 2023, to present. This includes the Option Agreement for Sale and Purchase (Option Agreement) between Alico, Inc. (Seller) and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Buyer) with the Division of State Lands (Division) as the Buyer's agent.

The objective of this audit was to determine if the Division adhered to requirements for land acquisition in accordance with applicable statutes, rules, and funding criteria. To achieve our audit objective, our methodology included:

- Reviewing applicable statutes, rules, and guidance.
- Conducting an analysis of documentation pertaining to the acquisition.
- Obtaining and evaluating supporting documentation.
- Interviewing Department management and employees.

#### **BACKGROUND**

Florida Forever is the state's conservation and recreation lands acquisition program, administered by the Division. To be considered for acquisition, a project must have a willing seller and be on the Florida Forever Priority List. The Florida Forever Priority List is developed by the Acquisition and Restoration Council and is approved by The Board of Trustees. Projects placed on the Florida Forever Priority List are suitable for conservation and meet the Florida Forever Goals, Measures and Performance Criteria.

On March 13, 2023, Devil's Garden was ranked 24<sup>th</sup> for critical natural lands on the approved 2023 Florida Forever Priority List. On September 18, 2023, the Buyer approved without objection the execution of the Option Agreement to acquire 17,229 acres within Devil's Garden for \$77,630,500. On December 21, 2023, the Division acquired 17,159.49 acres from the Seller for the purchase price of \$77,630,500. This purchase was part of a phased, landscape-scale acquisition totaling over 82,000 acres.

## **RESULTS OF AUDIT**

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We reviewed the requirements the Division must meet when acquiring land; including, obtaining Board approval to purchase land, evidence of marketable title, appraisals, conducting negotiations, land surveys, environmental site assessments, obtaining proper purchasing instruments, conveyance of land, and additional closing requirements. Due to the Option Agreement including a donation contingency, we also reviewed statutory requirements for receipt of donated lands. Based on our review, we determined the Division acquired approximately 17,159.49 acres for the purchase price of \$77,630,500 in December 2023.

Based on our review, the Division appears to have generally completed the acquisition in accordance with statute, rule, and the Option Agreement requirements; however, we found some statutory procedures were not followed and some Option Agreement requirements were not met. Specifically, we noted the Division did not maintain some required negotiation documentation, did not follow some processes for donated lands as required by statute and rule, and did not maintain some documentation required by the Option Agreement. See a summary of our review below.

### **Negotiation Documentation**

According to Section 253.025 (6)(d) F.S., *All offers or counteroffers shall be documented in writing and... The agency shall maintain complete and accurate records of all offers and counteroffers for all projects.* We reviewed negotiation documentation which included an offer letter for a cash purchase price for the property of \$77,530,500, set to expire on May 30, 2023. This offer was accepted by the Seller the same date. However, the purchase price of the land was \$77,630,500. The Division stated the increase was discussed during a subsequent phone conversation with the Seller. The reason for this discussion was the result of a follow up question by the Seller after the original offer was accepted. According to the Division, the Seller communicated there was additional value in owned roadways and originally wanted to sell them separately for a higher price. Although, the appraisal addendums by both appraisers which added a review of the roadways reflected the inclusion of the roadways did not affect the original appraised value of the lands. Therefore, the Division allowed the Seller to donate the roadways for the benefit of tax purposes but also increased the offer price by \$100,000. According to Rule 18-1.008(1), F.A.C., *All owner contact shall be documented in the appropriate acquisition file of the Division or acquiring agency.* However, the Division stated no offer letter was created for the price increase, and no documentation was maintained regarding the phone conversation.

### **Donated Land Requirements**

According to the Option Agreement, the Seller is to convey, *as a donation with no compensation, an additional approximately 92 acres of privately-owned roadways.* In reviewing the warranty deed for the donated roadways, we noted some listed parcels were also included within the warranty deed for purchase as partial parcels. The acreage of the parcels which were not included in the purchased parcels deed is approximately 80.519 acres. Ultimately, it could not be determined if the donated roadways were 92

acres. Additionally, our review found some requirements for receipt of donated lands were not completed in accordance with the rule as seen below.

### **Survey of Donated Private Roadways**

According to Rule 18-1.013(1)(e) F.A.C., *An acceptable survey must be submitted to and approved by the Division in accordance with this chapter.* The survey only documented 17,159.49 acres as reflected in the closing documentation for the purchased lands and does not appear to support an additional 92 acres of roadways as reflected in the Option Agreement. Therefore, it remains unclear if the donated roadways were surveyed as required. However, according to the Division, the donated roadways were a part of the larger survey for the acquisition.

### **Management of Donated Private Roadways**

According to Rule 18-1.013(1) F.A.C., *the Board will consider accepting donations of land if the following conditions are met: ... (d) A determination as to who will manage the land must be made by the Division.* According to the Division, the Florida Fish and Wildlife Commission (FWC) is managing the lands. Though there is a management acceptance letter dated June 24, 2023, by FWC for 17,229 acres purchased, there was no documentation for the 92 acres of donated roadways. We requested documentation regarding the donated 92 acres from the Division. The Division stated the 17,229 acres includes the donated roadways. We were also provided communications with the FWC which included discussions for easements for the donated roadways. However, they did not include a clear determination that FWC is managing the donated roadways in addition to or separately from the purchased property.

### **Abandonment of Wells**

According to the Option Agreement, *all wells located on the Property shall be duly abandoned at the Seller's sole cost and expense prior to closing unless this requirement is waived by [the Division] in writing.* According to the Division, they rely on the managing entity (FWC) to determine if these conditions are met. We requested documentation to confirm the wells were abandoned or waived by the Division in writing in accordance with the Option Agreement. The response provided stated the *manager typically keeps wells in place. We do not usually get a separate acknowledgment of the well abandonment from the manager.* Based on this review, it appears the Division's internal processes do not match the Option Agreement requirements of the Division waiving the requirement in writing.

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## **CONCLUSION**

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Based on our review, the Division appears to have met most requirements for the acquisition of state lands; however, we found some statutory procedures were not followed and some Option Agreement requirements were not met. Specifically, we noted the Division did not maintain some required negotiation documentation, did not follow some processes for donated lands as required by statute and rule, and did not maintain

some documentation required by the Option Agreement. Our findings and recommendations are listed below.

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### **FINDINGS AND RECOMMENDATIONS**

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**Finding 1: Negotiation Documentation – The Division did not document or maintain required communication and negotiation documentation in accordance with Florida Statute and Florida Administrative Code.**

According to Section 253.025 (6)(d) F.S., *All offers or counteroffers shall be documented in writing and... The agency shall maintain complete and accurate records of all offers and counteroffers for all projects.* We reviewed negotiation documentation which included an offer letter for a cash purchase price for the property of \$77,530,500, set to expire on May 30, 2023. This offer was accepted by the Seller the same date. However, the purchase price of the land was \$77,630,500. The Division stated the increase in price was discussed during a subsequent phone conversation with the Seller. The reason for this discussion was the result of a follow up question by the Seller after the original offer was accepted. According to the Division, the Seller communicated there was additional value in owned roadways and originally wanted to sell them separately for a higher price. Although, the appraisal addendums by both appraisers which added a review of the roadways reflected the inclusion of the roadways did not affect the original appraised value of the lands. Therefore, the Division allowed the Seller to donate the roadways for the benefit of tax purposes but also increased the offer price by \$100,000. According to Rule 18-1.008(1), F.A.C., *All owner contact shall be documented in the appropriate acquisition file of the Division or acquiring agency.* However, the Division stated no offer letter was created for the price increase, and no documentation was maintained regarding the phone conversation.

**Recommendations:**

We recommend the Division ensure all offers or counteroffers are documented in writing, as required by Florida Statutes and all owner contact is documented and maintained in the appropriate acquisition file of the Division or acquiring agency, as required by the Florida Administrative Code.

**Management's Response:**

We concur - The Division will ensure all offers or counteroffers are documented in writing, as required by Florida Statutes and all owner contact is documented and maintained in the appropriate acquisition file of the Division or acquiring agency, as required by the Florida Administrative Code.

**Finding 2: Donated Lands – The Division did not follow some requirements for donated land in accordance with Florida Administrative Code.**

Based on our review, the Division did not maintain required documentation in accordance with Florida Administrative Code regarding the receipt of donated land. Additionally, our

review found some requirements for receipt of donated lands were not completed as required.

#### Survey of Donated Private Roadways

According to the Option Agreement, the Seller is to convey, *as a donation with no compensation, an additional approximately 92 acres of privately-owned roadways*. In reviewing the warranty deed for the donated roadways, we noted some listed parcels were also included within the warranty deed for purchase as partial parcels. The acreage of the parcels which were not included in the purchased parcels deed is approximately 80.519 acres. According to Rule 18-1.013(1)(e) F.A.C., *An acceptable survey must be submitted to and approved by the Division in accordance with this chapter*. The survey only documented 17,159.49 acres as reflected in the closing documentation for the purchased lands and does not appear to support an additional 92 acres of roadways as reflected in the Option Agreement. Ultimately, it could not be determined if the donated roadways were 92 acres. It remains unclear if the donated roadways were surveyed as required. However, according to the Division, the donated roadways were a part of the larger survey for the acquisition.

#### Management of Donated Private Roadways

According to Rule 18-1.013(1) F.A.C., *the Board will consider accepting donations of land if the following conditions are met: ... (d) A determination as to who will manage the land must be made by the Division*. According to the Division, the FWC is managing the lands. Though there is a management acceptance letter dated June 24, 2023, by FWC for 17,229 acres purchased, there was no documentation for the 92 acres of donated roadways. We requested documentation regarding the donated 92 acres from the Division. The Division stated the 17,229 acres includes the donated roadways. We were also provided communications with the FWC which included discussions for easements for the donated roadways. However, they did not include a clear determination that FWC is managing the donated roadways in addition to or separately from the purchased property.

#### **Recommendations:**

We recommend the Division ensure all processes for donated land are followed as required by statutes and rule, and adequate documentation is maintained to demonstrate these processes have been followed.

#### **Management's Response:**

We concur – The Division will ensure all processes for donated land are followed as required by statutes and rule, and adequate documentation is maintained to demonstrate these processes have been followed.

<b>Finding 3: Abandonment of Wells – The Division did not document or maintain required documentation regarding the abandonment of wells as required by the Option Agreement.</b>
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Based on our review, the Division did not maintain some documentation required by the Option Agreement. According to the Option Agreement, *all wells located on the Property*

*shall be duly abandoned at the Seller's sole cost and expense prior to closing unless this requirement is waived by [the Division] in writing.* According to the Division, they rely on the managing entity (FWC) to determine if these conditions are met. We requested documentation to confirm the wells were abandoned or waived by the Division in writing in accordance with the Option Agreement. The response provided stated the *manager typically keeps wells in place. We do not usually get a separate acknowledgment of the well abandonment from the manager.* Based on this review, it appears the Division's internal processes do not match the Option Agreement requirements of the Division waiving the requirement in writing.

**Recommendations:**

We recommend the Division ensure all documents are maintained and consist of complete and accurate records for projects including requirements set within executed Option Agreements.

**Management's Response:**

We work with land managers throughout the closing process when reviewing our environmental and baseline documentation reports to address wells that might be present on the property and whether they desire to keep the wells for management purposes or have them closed and abandoned. Going forward we will work with the land manager to document the project file to coincide with the contract requirement as part of the closing process.

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**STATEMENT OF ACCORDANCE**

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**Statement of Accordance**

The Mission of the OIG is to promote accountability, integrity, and efficiency by providing quality audits, investigations, management reviews, and technical assistance.

This work product was prepared pursuant to § 20.055, Florida Statutes, in accordance with the *Principles and Standards for Offices of Inspectors General* as published by the Association of Inspectors General and the *International Standards for the Professional Practice of Internal Auditing*, as published by the Institute of Internal Auditors, Inc. The audit was conducted by Tessa Jordan and supervised by Susan Cureton.

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