

ITEM 16:

Consider whether an approximately 0.28-acre parcel of state-owned land managed by the Florida Fish and Wildlife Conservation Commission (FWC) as part of the Florida Keys Wildlife and Environmental Area is no longer needed for conservation purposes in exchange for approximately 1.01 acres of private property.

LOCATION:

Monroe County

APPLICANT:

Phillip Frank

DSL STAFF REMARKS:

The Division of State Lands (DSL) received a land exchange request from the Applicant, who owns property adjacent to 3.1 acres of state-owned property on Sugarloaf Key. The Applicant is requesting the western 10 feet of the 3.1-acre state-owned parcel in exchange for a nearby privately-owned 1.01-acre parcel. The ten-foot wide strip is encumbered with an ingress/egress easement shared with the adjacent property owned by the Applicant. FWC is supportive of the proposed exchange.

The shared easement area is used as a lime rock driveway with a rock retaining wall. Hurricane Irma caused extensive damage to the driveway by eroding the filled section over wetlands and destabilizing the riprap retaining structure. The hurricane damage combined with gradual sea level rise has resulted in routine flooding of the driveway. Significant structural repairs, which would require FWC's participation, are now needed including elevating the driveway a minimum of 18 inches.

The Board of Trustees acquired the 3.1-acre parcel in the Florida Keys Ecosystem Florida Forever project in 2006 subject to the existing easement. The property is managed by FWC as the Florida Keys Wildlife and Environmental Area under Board of Trustees Lease No. 4153. The Applicant purchased the exchange parcel in 1996. If the exchange is approved, the remainder of the state-owned parcel will continue to have access via a road easement that abuts the southern boundary.

PROPOSED EXCHANGE:

Pursuant to Section 253.0341(6), F.S., and Chapter 18-2.021, F.A.C., prior to any decision by the Board of Trustees to surplus conservation land, the Acquisition and Restoration Council (ARC) shall recommend that the land is no longer needed for conservation purposes and that the request is compatible with the resource values and management objectives for such lands.

The state-owned land is no longer needed for conservation purposed because:

1. The parcel is disturbed with existing driveway in need of repair, and
2. currently, there is no developed use of the parcel.

Pursuant to Chapter 18-2.021, F.A.C., when ARC considers the surplus of conservation lands as part of a land exchange, ARC shall also evaluate the land being offered for exchange to determine if it contains equal or greater conservation benefit than the state lands and whether the exchange would result in a net positive conservation benefit, regardless of appraised value.

The proposed exchange will provide a net positive conservation benefit because:

1. It provides a net gain of 0.73 acres of undisturbed conservation lands within the current Florida Keys Ecosystem Florida Forever project boundary, and
2. acquisition of the 1.01 acres will preserve fresh/brackish wetlands, transitional wetlands and hardwood hammock.

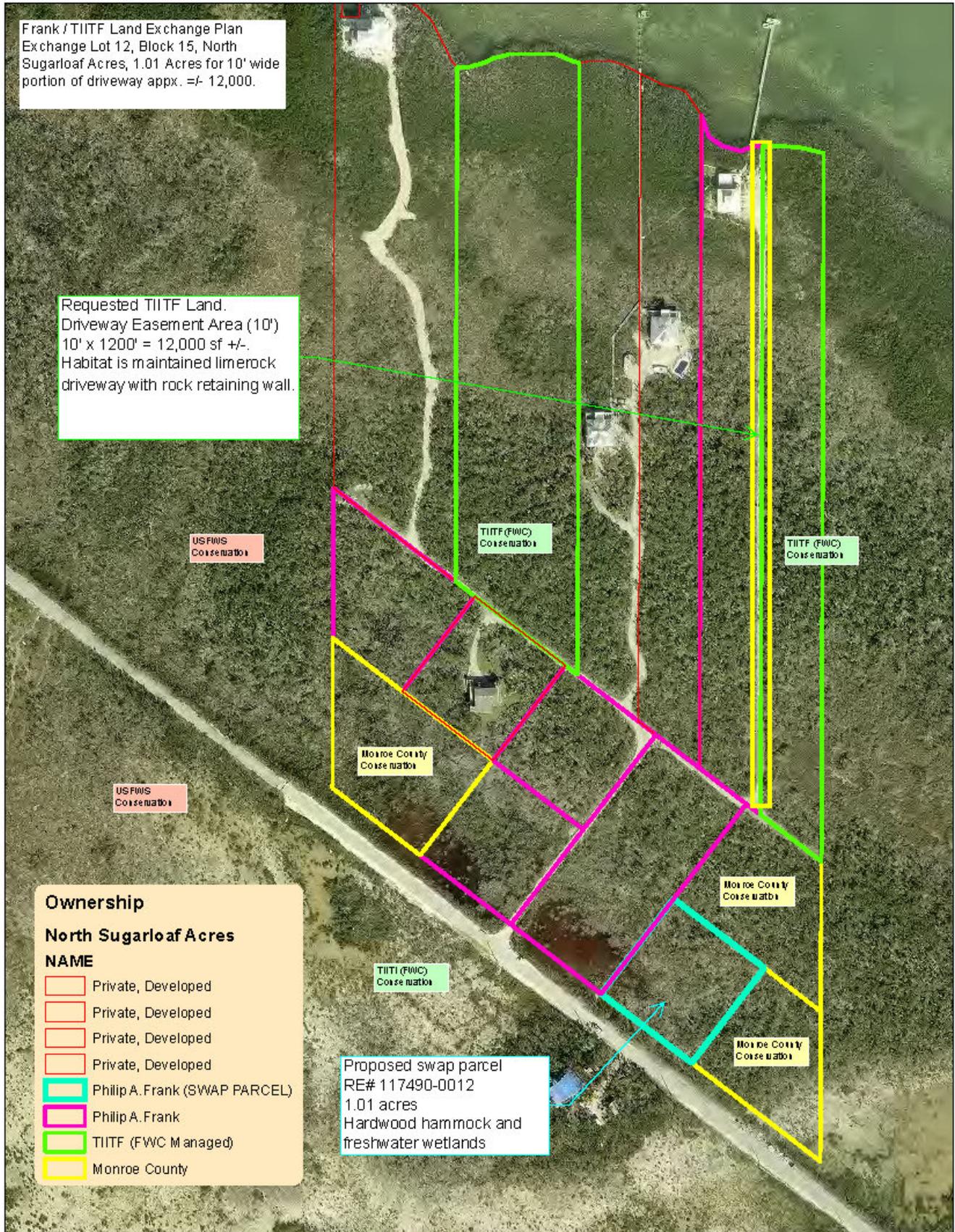
This request is subject to Board of Trustees approval.

DSL STAFF RECOMMENDATION:

Approve exchange request.

ARC RECOMMENDATION:

- APPROVE**
- APPROVED WITH MODIFICATIONS:** _____
- DEFER**
- WITHDRAW**
- NOT APPROVE**
- OTHER:** _____





Phil and Rowena Frank
1241 Crane Boulevard
Sugarloaf Key, Florida 33042
(305) 393-4200 terramar.env@gmail.com

MEMORANDUM

Date: September 8, 2020

To: Scott Woolam & Vicky Thomson, Florida Department of Environmental Protection, Division of State Lands

From: Philip Frank, 1241 Crane Boulevard, Sugarloaf Key, Monroe County

RE: Proposed Land Exchange, Florida Forever - Florida Keys Ecosystem, Upper Sugarloaf Key, Monroe County.

Scott, Vicky:

This is a follow-up summary to our August 6, 2020 teleconference regarding the proposed land exchange. On the call were: Scott Woolam and Vicky Thomson, FDEP State lands, Richard Mospens, Florida Fish and Wildlife Conservation Commission and myself.

The following is a summary of the proposed land exchange as discussed on August 6, 2020. Please also refer to the various attachments that describe the property configuration and current conditions.

- The State owns the East ½ of Lot 2, Block 16, North Sugarloaf Acres, RE# 00117490-001600. The State purchased the approximately three-acre parcel on 2/15/2006. The subject driveway including the rock retaining wall improvements were in place at the time of State purchase.
- Philip Frank and Rowena Garcia own the West ½ of Lot 2, Block 16, North Sugarloaf Acres, purchased in 1995. They constructed their residence on the property and have lived there since 1996.
- A land survey from 1998 indicated the improved driveway in place as “fill line” and a later survey from 2012 indicated the “rock retaining wall”. The rock retaining wall has minor encroachments indicated outside the easement limits onto State property. The rock wall and driveway have undergone various maintenance activities over the past 24 years including fill replacement and grading, installation of utilities including power, water and sewer, and vegetation management.
- Concurrent with the subdivision of Lot 2 into the East ½ and West ½ Lot 2 parcels, a 20’ wide driveway easement was established on December 28, 1976. The driveway easement includes a 10’ strip from each parcel and extending approximately 1200 feet down the shared property line, terminating at the Frank residence. The gravel driveway and access gate were developed some time after 1976, and the Frank Residence developed area including the filled / improved driveway is visible in aerial photos as early as 1986.
- The Frank’s constructed a new home in 2006 and have maintained and improved the shared driveway since that time. Utilities including sewer lines and underground electric service are established in the driveway easement. Major improvements including re-gravel and grading were completed following Hurricane Georges in 1998, Hurricane Wilma in 2005 and Hurricane Irma in 2017. Routine maintenance including pothole repair and vegetation management occur on a regular basis.
- The eyewall of Hurricane Irma struck the property in 2017 and damaged the roadway, eroding the filled section that traverse wetlands and destabilized the riprap retaining structure that provides lateral support for the driveway. That damage combined with gradual sea level rise has resulted in the routine flooding of the driveway, and

significant structural repairs to the driveway are now required in order to access the Frank Residence. The driveway needs to be elevated a minimum of 18" and the rock retaining wall maintained to prevent future storm damage.

- Ongoing maintenance and repairs to the driveway are needed to prevent flooding and protect from future storms and require significant expense. FWC staff have indicated they prefer not to be involved in long-term driveway maintenance on this property since the State property is lawfully accessed over existing platted roads in the North Sugarloaf Acres subdivision.
- FWC is supportive of releasing the States interest in the driveway subject to applicable regulations, per their Letter of Support dated June 6, 2020. Also, during the August 6, 2020 teleconference, FWC indicated that the proposed Frank exchange parcel, Lot 12, Block 15, North Sugarloaf Acres (identified as Parcel #2) would be acceptable to them for the exchange.
- Based on input from FWC, the Franks are requesting the State transfer fee simple their interest in the driveway to address minor encroachments of the rock retaining wall and to allow for future maintenance. Therefore, the total area proposed for exchange from the State is a 10' strip of land including the driveway easement that extends approximately 1200 feet long x 10' wide = 12,000 sf in area.
- To compensate the State for the requested area and place the project squarely in the public interest, the Franks are proposing to exchange Lot 12, Block 15, North Sugarloaf Acres. This platted lot is 1.01 acres in area and located proximal to the State property. The Frank Exchange Parcel is an intact natural property and lies adjacent to conservation lands owned and managed by Monroe County. The Frank Exchange Parcel is within the approved Florida Forever Florida Keys Ecosystem project area and was ranked # 1 under Climate Change Lands Projects for 2020 by the Acquisition and Restoration Council.
- The Frank Exchange Parcel supports pristine natural habitats including hardwood hammock, transitional wetlands and brackish / freshwater wetlands. There is no sign of prior development or disturbance. The parcel supports a diversity of plants and animals, including the State Endangered Key Deer and Lower Keys Marsh Rabbit. Additionally, several State-listed plants are present, including Endangered Butterfly orchids and other State-listed plants.
- Exchanging the State's +/- 12,000 sf driveway area for the 1.01 acre Frank Exchange Parcel results in significant benefit to the State. The State would be giving up 12,000 sf of an improved gravel driveway encumbered under an easement for an acre of prime conservation land located in an area already partially under State and County management. The proposal includes a favorable exchange ratio of 3.63:1 ($43,560 / 12,000 = 3.63$), a ratio in excess of the generally accepted 2:1 ratio for land exchanges.
We appreciate the guidance from FDEP and FWC staff on this matter appreciate your support and assistance. Please let us know if this proposal is acceptable and what additional information you require.

Phil and Rowena Frank
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June 6, 2020



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Mr. Brad Richardson
Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration
3800 Commonwealth Boulevard
Tallahassee, FL 32399-3000

Re: Land Exchange Request of Board of Trustees of the Internal Improvement Trust Fund (BOT) One-half of Shared Driveway for Parcel(s) Owned by Mr. Phil Frank, Sugarloaf Key, Florida Keys Wildlife and Environmental Area (Florida Keys WEA)

Dear Mr. Richardson:

Mr. Phil Frank, of 1241 Crane Boulevard, Sugarloaf Key, Summerland, Florida 33042, shares a property boundary in fee simple with the adjoining parcel to the east being owned by the BOT. The boundary line runs roughly down the middle of the 20 ft. wide driveway that serves Mr. Frank's residence and the BOT parcel with each owning a 10 ft. wide strip of land (approx. 1,200 ft. x 10 ft. or 12,000 sq. ft., equaling 0.2755 acres) comprising one-half of the driveway. Utility lines run under the driveway with the sanitary sewer line running under the BOT-owned side of the driveway. The 20 ft. wide driveway strip is governed by a reciprocal easement agreement between the predecessor owners dated January 3, 2008.

Mr. Frank has advised the Florida Fish and Wildlife Conservation Commission (FWC) that the shared driveway, which FWC manages under BOT Lease #4153, tends to flood during excessive rain/storm events, thereby making the driveway impassible for extended times while the water dissipates. Mr. Frank has offered two options: 1) for FWC, pursuant to the aforesaid easement, to share in the cost of improving the driveway which cost is expected to be expensive or 2) for FWC to request a land exchange, thereby relinquishing any responsibility for the driveway's condition. The BOT would offer its portion of the 10 ft. wide easement with Mr. Frank providing a replacement parcel of greater value. In so doing, the reciprocal easement would be extinguished by merger of interests.

On reviewing the situation, FWC would be in support of a land exchange under the following terms and conditions, subject to possible additional terms and conditions as set forth by the Acquisition and Restoration Council and the BOT. FWC can justify the support due to it then no longer being responsible to contribute to the driveway's maintenance. Further, FWC has access to its managed parcel by another access point – at the end of the unnamed road at the southern end of the FWC-managed parcel to the east of the concerned driveway's commencement point.

- A. The land exchange be governed by the state's requirements for such actions with Mr. Frank being obligated for all related costs.
- B. Mr. Frank be required to provide replacement land as his part of the exchange that is of greater value and size than that released. Mr. Frank owns 5 nearby parcels that he has indicated could be available as part of the exchange. His preference is to convey Parcel #2 discussed below. FWC field staff has reviewed the parcels (see attached) and ranked them as follows:
 1. Parcel#1, 2.02 acres – A freshwater wetland with low salinity. Staff found mud turtles, key deer tracks and other mammal tracks
 2. Parcel #2, 1.01 acres – Freshwater wetland that contains a small portion of the wetland that lies primarily on Parcel #1. Low salinity.

3. Parcel #3, 1.18 acres – High quality hammock with sawgrass.
 4. Parcel #4, 1.01 acres – High quality hammock.
 5. Parcel #5, 1.01 acres – Mostly red mangroves with high salinity.
- C. The driveway is bounded by a rock retaining “wall” on each side. It appears a portion of the wall will be within the BOT-retained property upon BOT exchanging the requested 10 ft. wide area. Should that be the case, the amount of land BOT is being requested to exchange should be increased to ensure the entire wall on the BOT-owned side is included in the exchange.
- D. It is anticipated that Mr. Franks, in correcting the current flooding situation and/or in the future will need to maintain/improve the driveway, thereby possibly requiring him to obtain a construction easement on a portion of the BOT-retained property that borders the driveway area. It would be good if such situation(s) could be addressed as part of this transaction rather than having to address it each time the need arises.
- E. Mr. Frank intends to raise the driveway by approximately 18 inches to alleviate the flooding problem. Mr. Frank should be required to work with FWC on the design to ensure that any drainage implementation such as a culvert under the road does not adversely affect the FWC-managed parcel.
- F. Due diligence products are provided and acceptable to DSL and FWC.

Please contact Richard Mospens at the address and phone number located hereon should there be any questions regarding this matter. He may also be reached by his cell phone of (850) 443-2514 or by email at richard.mospens@MyFWC.com.

Thank you for your assistance on this matter.

Sincerely,

James C Conner III Digitally signed by James C Conner III
Date: 2020.06.06 11:39:35 -04'00'

James C. Conner III, Acting Leader
Wildlife and Habitat Management Section

JCC/rm