

MEMORANDUM

TO: Governing Board Members

THROUGH: Kenneth G. Ammon, P.E., Deputy Executive Director,
Everglades Restoration & Capital Projects Resource Area

FROM: Ruth P. Clements, Department Director, Land Acquisition

DATE: September 9, 2010

SUBJECT: Authorize a revision to the South Florida Water Management District Beneficial Interest Affidavit in connection with land acquisitions, limiting the disclosure requirements under certain circumstances and authorize use of the District Beneficial Interest Affidavit in connection with applications for releases of reservations

Background/Considerations [Land Acquisitions]

Florida Statute Section 286.23 provides for disclosure of ownership beneficial interests of 5% or greater in any transaction where real property is being sold to a public agency. However, any seller which is a publicly traded entity registered with the Federal Securities Exchange Commission, is exempt from the statutory requirement. In 2007, in an effort to ensure that the District had complete disclosure of all persons and entities benefiting from its real property acquisitions, the beneficial interest affidavit was expanded to include all owners regardless of their ownership percentage and also disclosure of all individuals and entities that will receive any type of consideration in connection with the transaction. In Resolution 2008-911, the District clarified this expanded disclosure where real property is being sold to the District by approving, other than with respect to a publicly traded entity, a revised affidavit requiring the disclosure of all ownership beneficial interests regardless of percentage and the disclosure of all individuals and/or entities receiving any type of consideration in connection with the subject transaction.

The District will likely conduct land acquisition transactions with a variety of private entities some which have a number of individuals holding beneficial interests of less than 5%. In many instances, the transactions involve a minor dollar value resulting in an unnecessary burden on the land owner to disclose potentially numerous individuals with inconsequential ownership beneficial interests. It is Staff's opinion that, with respect to transactions involving a minor dollar value, it is a reasonable expectation and requirement that only those with at least a 5%

ownership interest be disclosed. Therefore, Staff now recommends that, in connection with land acquisitions with respect to which the seller receives equal to or less than \$250,000 consideration, the seller should be required to continue to comply with disclosure of all individuals and entities that will receive any type of consideration in connection with the transaction, but only be required to disclose those persons or entities with at least a 5% ownership interest as required by Florida Statute §286.23.

Background/Considerations [Releases of Reservations]

Applications are submitted to the District requesting release of canal, road right of way or oil, gas and mineral exploration reservations that encumber the applicant's real property. These reservations were established in deeds from the State or State agencies (Everglades Drainage District, Central & Southern Flood Control District/South Florida Water Management District). Depending on the specific circumstances, the ownership of the reservations resides either with the State or the South Florida Water Management District ("District"). Upon comprehensive review of such an application, if District staff determines that the applicant's property can be released from the encumbrance of the particular reservations, a recommendation is made by staff to the Governing Board for release of the reservation. Upon Governing Board approval with respect to reservations held by the District, an instrument releasing the reservations is executed by the District and delivered to the applicant for recording in the appropriate public records. Upon Governing Board approval with respect to reservations held by the State, the District signs off on the State application and delivers that to the applicant for the applicant to then proceed with securing the State's final approval.

In 2007, in a further effort to ensure that the District had complete disclosure of all persons and entities benefiting from the above described releases of reservations, the use of the beneficial interest affidavit (other than with respect to publicly traded entities) was expanded to include owners who submitted applications for releases of reservations. The disclosure requirement included all owners regardless of their ownership percentage. As is the situation with private entities with which the District will likely conduct land acquisition transactions, release of reservation applications are received from a variety of private entities some which have a number of individuals holding beneficial interests of less than 5%. In many instances, the transactions involve a minor acreage amount resulting in an unnecessary burden on the applicant to disclose potentially numerous individuals with inconsequential ownership beneficial interests. It is Staff's opinion that, with respect to transactions involving a minor acreage

amount, it is a reasonable expectation and requirement that only those with at least a 5% ownership interest be disclosed. Therefore, Staff now recommends that, in connection with releases of reservations encumbering 100 acres or less, the applicant should only be required to disclose those persons or entities with at least a 5% ownership interest and in connection with releases of reservations encumbering greater than 100 acres, the applicant should be required to disclose all owners regardless of their ownership percentage, and in connection with both situations the applicant should be required to disclose all individuals and/or entities receiving any type of consideration in connection with the subject transaction. Applicants will only be required to disclose persons holding an interest in an Employee Stock Ownership Plan (ESOP) if they hold greater than 1% interest in the Plan.

Recommendation

Approve a Resolution that, in connection with land acquisitions in which land interests are being sold or exchanged to the District, whereby the seller receives consideration equal to or less than \$250,000 consideration, the disclosure affidavit shall require disclosure of ownership beneficial interests of 5% or greater as required by Florida Statute §286.23 and shall continue to require disclosure of all individuals or entities that would receive any type of consideration in connection with the transaction; and that, in connection with releases of reservations, the applicants shall be required to execute a disclosure affidavit that discloses those persons or entities with at least a 5% ownership interest for releases of reservations encumbering 100 acres or less and discloses all owners regardless of their ownership percentage for releases of reservations encumbering greater than 100 acres, and in connection with both situations discloses all individuals and/or entities receiving any type of consideration in connection with the subject transaction.

Prepared by: _____
Ruth P. Clements, Director
Land Acquisition Department
Date _____

Approved by: _____
Kenneth G. Ammon, P.E.
Deputy Executive Director
Everglades Restoration & Capital Projects
Resource Area
Date _____