

## LAND ACQUISITION EXECUTIVE SUMMARY

**PROJECT:** Biscayne Bay Coastal Wetlands

**COUNTY:** Miami-Dade

**SIZE:** 153.64 acres

**PURPOSE:** Acquisition in fee simple of lands in the Biscayne Bay Coastal Wetlands Comprehensive Everglades Restoration Plan (CERP) Project, Cutler Flow Way Component

**OWNER:** Lennar Homes, LLC and Lakes By The Bay South Community Development District

**TRACT:** TA500-062

**APPRAISED VALUE:** N/A – No Cost

**PURCHASE PRICE:** N/A – No Cost

**CONFLICT CHECK:** Lennar Homes, LLC; Lennar; U.S. Home Corporation; Lennar Corporation; Lennar Homes, Inc. Lakes By The Bay South Community Development District

**REQUEST:** Reapproval of the acquisition of land interests, originally approved pursuant to Resolution No. 2007-1010, containing 153.64 acres, more or less, in Miami-Dade County for the Biscayne Bay Coastal Wetlands Comprehensive Everglades Restoration Plan (CERP) Project, Cutler Flow Way Component, in accordance with updated circumstances and for purposes of superseding and replacing the approval contained in Resolution No. 2007-1010, to be conveyed at no cost to the District subject to certain environmental conditions.

**HIGHLIGHTS/CONSIDERATIONS:** This fee acquisition is located in Miami-Dade County and required for the Biscayne Bay Coastal Wetlands Comprehensive Everglades Restoration Plan (CERP) Project. The land is part of the Cutler Flow Way component which will provide for redistribution of freshwater runoff from the watershed into Biscayne Bay, away from the canal discharges that exist today, and provide a more natural and historic overland flow through existing and or improved coastal wetlands. By rehydrating these coastal wetlands with freshwater runoff from the watershed, the project goals and objectives are met while providing for additional flood protection in the C-1 Basin.

The Tract TA500-062 lands are being conveyed at no cost to the District in connection with conditions contained in the May 15, 2003 Environmental Resource Permit issued by the District to Lennar Land Partners, Inc. for the Lakes By The Bay South Commons residential development (the "District Permit"). Lennar Homes, Inc. was the original owner of the property that became the Lakes By The Bay South Commons residential development (the "Residential Development"). In 1997, Lennar Land Partners, Inc. was formed and became the entity that owned and developed the Residential Development. As part of that, all of the lands within the Residential Development, including the Tract

TA500-062 lands, were conveyed by Lennar Homes, Inc. to Lennar Land Partners, Inc. At a certain point in time after the issuance of the District Permit, all of the common areas within the Residential Development, including the Tract TA500-062 lands, were conveyed to and continue to be owned by the Lakes By The Bay South Community Development District (the "CDD"). However, in connection with the record title work that was done for this proposed conveyance to the District of the Tract TA500-062 lands, it was discovered that a 1.80 acre portion of Tract TA500-062 had never been conveyed from Lennar Homes, Inc. Additionally, in 2006, the corporate entity of Lennar Homes, Inc. was converted to a limited liability company that is now Lennar Homes, LLC. Therefore, in addition to the conveyance from the CDD to the District of most of Tract TA500-062, Lennar Homes, LLC must also convey to the District the aforementioned 1.80 acres to which it still holds record title.

In 2007, Lennar Land Partners, Inc. merged into Landsource Holding Company, LLC. As the successor to Lennar Land Partners, Inc., the Landsource Holding Company, LLC entity ("Landsource") became both the owner of the assets of Lennar Land Partners, Inc. within the Residential Development and the party liable for the obligations of Lennar Land Partners, Inc. within the Residential Development, including with respect to the District Permit and the USACE Permit and DERM Plan identified below. In June of 2008, Landsource filed Chapter 11 bankruptcy, the proceedings relating to which are ongoing.

Pursuant to Resolution No. 2007-1010 passed and adopted October 11, 2007, the Governing Board approved the fee acquisition of the Tract TA500-062 lands, subject to the environmental condition of the lands being acceptable to the District and consistent with Project purposes. There are certain remaining environmental issues involving mitigation requirements that must be complied with pursuant to: (1) the U.S. Army Corps of Engineers permit number SAJ-2001-3245 (the "USACE Permit") and (2) the Miami-Dade County Environmental Resource Management Department ("DERM") Corrective Action Plan Letter (File Number 22241/SW1514) dated August 5, 2005 (the "DERM Plan"). Once the lands are acquired, as owner of the subject lands, the District will be responsible for compliance with the USACE Permit and the DERM Plan.

District staff has estimated that compliance with the USACE Permit may require maintenance costs of approximately \$40,000 - \$50,000 per year. However, in connection with and to offset the environmental impacts that will be caused by the construction of the Cutler Flow Way component, the District will be required by the USACE to perform other mitigation work. As the latter will likely include enhancements to other areas of the subject lands, District staff expects that those enhancements will significantly reduce the aforementioned yearly maintenance costs. Additionally, a one time payment of \$150,000, that was established as part of the District Permit to offset the USACE Permit mitigation maintenance costs, will be paid to the District by Landsource simultaneously with the District's acquisition of the lands. This \$150,000 amount had, fortunately, been segregated in a manner such that it will be available to be paid regardless of the bankruptcy.

Certain groundwater monitoring and sampling activities in connection with the DERM Plan are currently being conducted by Landsource on behalf of the current owner. These activities must be continued until DERM grants a site closure upon which no further actions will be required under the DERM Plan. Under the aforementioned October 11, 2007 Resolution No. 2007-2010, the current owner was obligated to cause the completion of the activities to comply with the DERM Plan and secure the site closure, and was to cause a \$250,000 letter of credit to be provided to the District as security for that obligation. Unfortunately, the owner has not complied with the DERM Plan and, due to the bankruptcy; Landsource is no longer able to provide the security. District staff did consider entering into an access and remediation agreement with the current owner whereby after the closing the current owner would cause the compliance activities associated with the DERM Plan to continue. However, there appears to be little incentive for the current owner to continue to spend money for the monitoring and sampling activities. Additionally, because of the difficulty that would occur with mingling of the District's flow way construction project and the current owner's activities, and the associated high probability of conflict between the District and the current owner, District staff recommends that once the District acquires fee title, the District should take complete control of the site. Therefore, the District would thereafter be responsible for compliance with the DERM Plan and securing the site closure from DERM. District staff has estimated that compliance with the DERM Plan may require a maximum total expenditure of between \$50,000 and \$100,000.

**FISCAL IMPACT:** The land interests are being conveyed at no cost to the District in connection with conditions contained in the February 13, 2003 Environmental Resource Permit issued by the District to Lennar Homes, Inc. whereby a real estate interest in certain lands must be granted to the District. As described in the above Highlights/Considerations section, the District will likely incur certain expenses to comply with the USACE Permit and the DERM Plan, said expenses estimated to be a maximum of \$100,000 total in connection with the DERM Plan and approximately \$50,000 per year in connection with the USACE Permit.

**RECOMMENDATION:** That the Governing Board of the South Florida Water Management District reapprove the acquisition of land interests, originally approved pursuant to Resolution No. 2007-1010, containing 153.64 acres, more or less, in Miami-Dade County for the Biscayne Bay Coastal Wetlands Comprehensive Everglades Restoration Plan (CERP) Project, Cutler Flow Way Component, in accordance with updated circumstances and for purposes of superseding and replacing the approval contained in Resolution No. 2007-1010, to be conveyed at no cost to the District in connection with certain permit conditions.

<b>Owners</b>	<b>Tract No.</b>	<b>Interest</b>	<b>Acres</b>	<b>Appraised Value</b>	<b>Purchase Price</b>
Lennar Homes, LLC and Lakes By The Bay South Community Development District	TA500-062	Fee	153.64	N/A	N/A
<b>Totals</b>			<b>153.64</b>	<b>N/A</b>	<b>N/A</b>

**Prepared by:** \_\_\_\_\_  
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 Date

**Reviewed by:** \_\_\_\_\_  
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\_\_\_\_\_  
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**Approved by:** \_\_\_\_\_  
 Kenneth G. Ammon, P.E.  
 Deputy Executive Director  
 Everglades Restoration Resource Area

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 Date