

J. W. Corbett Wildlife Management Area (Corbett WMA) - Consideration of a utility easement granted to Gulfstream Natural Gas System, L.L.C. (Gulfstream) under the State's Linear Facilities Policy, over 0.39 acres of Florida Fish and Wildlife Conservation Commission (Commission) owned land, along with three temporary construction easements of 0.71 acres, 0.71 acres and 0.10 acres, within the J.W. Corbett Wildlife Management Area (Corbett WMA) to facilitate the installation of a 30" natural gas transmission line.

COUNTY: Palm Beach

APPLICANT: Gulfstream Natural Gas System, L.L.C.

CONSIDERATION: 1.) Appraised Market Value of the Commission's land and 2.) conveyance of replacement land to the Commission and the Board of Trustees of the Internal Improvement Trust Fund (Trustees) that is an inholding to the Corbett WMA on FWC's Florida Forever Inholdings and Additions acquisition list and is equal or greater in fiduciary and habitat value at an acreage replacement ratio of at least 1 to 1.

ACREAGE: 0.39 acres owned in fee simple by the Commission and two parcels of 0.49 acres and 2.78 acres owned by the Trustees, totaling 3.66 acres (subject to final survey) as shown on the accompanying map.

STAFF REMARKS: Gulfstream is attempting to install a 30" natural gas pipeline along a 34.2 mile route that includes the parcels described above. Gulfstream has submitted the accompanying application requesting easements to use three parcels of the Corbett WMA for the installation of the aforesaid pipeline. The proposed pipeline will run from northwest of Indiantown to supply natural gas to the FPL West County Energy Center (power plant) that is presently under construction near Twenty Mile Bend in western Palm Beach County.

Additionally, Gulfstream will be seeking approval from the Acquisition and Restoration Council (ARC) and the Trustees for this easement and a similar easement from the Trustees over the other two parcels that are a part of the Gulfstream easement request of land titled to the Trustees and leased to FWC as part of Corbett WMA. These parcels are included in the staff request for overall project symmetry as well since the proposed replacement land comprises the Net Positive Benefit compensation for the easement's impact on all three parcels.

The identified parcels are already subject to an easement granted to the South Florida Water Management District (SFWMD). SFWMD's easement, which contains its L-8 canal, allows it to grant the use of its easement to others so long as the proposed use is for a public purpose. The SFWMD easement was granted to SFWMD just prior to the Commission's acquisition of the affected land within Corbett WMA. The Trustees' land was acquired later. Therefore, the SFWMD's easement is a pre-existing easement condition to both the Commission's and Trustees land within the proposed Gulfstream easement footprint. Gulfstream has acquired an easement from the SFWMD to allow

Gulfstream to install the proposed transmission pipeline within SFWMD's easement. Still the SFWMD decided, and the Commission and DEP/DSL staff concurred, that Gulfstream needs to obtain the consent of the underlying fee owners, which includes FWC and the Trustees. Although it could technically not be required, Gulfstream has decided it is in its best interests to follow the State's Linear Facilities Policy and seek Commission and ARC concurrence and approval to the granting of the requested easements.

Staff has acknowledged to Gulfstream that we recognize its need for these parcels and that we will, subject to the Commission approval, assist in the pursuit of requesting approval for the proprietary use, under the terms and conditions outlined below, in order for Gulfstream to move forward as necessary in the installation of the pipeline. However, staff has also informed Gulfstream that recommending or granting approval for the proposed proprietary uses within the Corbett WMA will, in no way, constitute consent nor bind the Commission to recommend or grant consent for any required regulatory permits necessary to undertake the installation of the pipeline.

In order to provide contextual background for this request, a brief history and description of the Corbett WMA is provided. The Corbett WMA comprises 60,288 acres in north central Palm Beach County, south of State Road 710, 25 miles west of West Palm Beach. FWC purchased the original 56,440 acres of the Corbett WMA starting in 1947, with subsequent additions contributing to its present size. The lands within the Corbett WMA encompass a diverse mosaic of natural habitats important to the conservation of fish and wildlife as well as providing resource-based public outdoor recreation. Natural land coverage within the Corbett WMA includes pine flatwoods, cypress sloughs and domes, marshes and prairies, and hammocks. These areas provide habitat for a variety of listed species including the red-cockaded woodpecker, Florida sandhill crane, bald eagle, southeastern kestrel, and Audubon's caracara.

Other rare and listed species occurring rarely or occasionally on the Corbett WMA include the endangered Florida panther, Florida black bear, Everglades mink, peregrine falcon, snail kite, wood stork, and least tern. In addition, the Corbett WMA is habitat for a variety of more common native wildlife and provides a variety of nature-based recreation. Accordingly, it is because of their important purpose and the fact that they were acquired to conserve these resources in perpetuity that such requests for conversion require careful consideration.

Specifically, the concerned three parcels lie within the general SFWMD L-8 canal area, which land is ruderal, having been disturbed over the years with little vegetation except some cabbage palms that Gulfstream is to relocate, along with bahia and smut grass, wax myrtle and Caesar weed. Additionally, the parcels are bordered on the east by a series of FPL electric transmission lines that parallel the L-8 canal, providing more evidence of the concerned land being disturbed.

The proposed replacement land is a part of a desired inholding to the Corbett WMA. The ground cover is predominately cypress wetlands habitat with a small percentage of the

land being the last vestige of archeological mounds in that area that is in private ownership.

Moreover, the Corbett WMA is primarily composed of lands acquired with federal grant-in-aid monies (which includes the Commission parcel that is under consideration), administered by the U.S. Fish and Wildlife Service (USFWS) with title vested in the Commission. Therefore, use of the property is governed by grant and deed restrictions stipulating management for fish and wildlife conservation and compatible resource-based public outdoor recreation. For these reasons, both the Commission and the USFWS must approve any proposed use of the property, which is inconsistent with that purpose. Additionally, Section 372.023, Florida Statutes, requires that the Trustees must also approve any requested use of this type on the Corbett WMA.

FWC staff has attended meetings with Gulfstream on this project to resolve issues associated with the proposed use. As a result of our initial review, staff determined that the proposed use outlined in the Gulfstream's application is incompatible with the purpose for which the Corbett WMA lands were acquired (wildlife conservation).

Consequently, in order to consider and obtain approval for these incompatible uses of conservation land, at a minimum, the following would be required:

- (1) Agreement by Gulfstream to convey suitable replacement land that adjoins Corbett WMA to the Commission (and IITF) at equal or greater fiduciary and habitat value than the lands being taken, with replacement acreage provided at a ratio of at least 1 to 1;
- (2) Agreement by Gulfstream to pay at least the appraised market value for the Easement areas;
- (3) Agreement by Gulfstream to mitigate, to the greatest extent practicable, the residual impacts of the proposed uses;
- (4) Agreement by Gulfstream to pay all of the costs required to complete the transactions;
- (5) Review and approval of the necessary documents (easements, deeds, etc.,) and products (title work, surveys, appraisals, environmental site assessments, natural resource assessment, etc.) to verify compliance with all of the state and federal standards required to grant the easement(s) on Commission federal grant-in-aid and state-owned lands and for the Commission and DEP on behalf of the Trustees to accept title to the replacement land;
- (6) Conveyance of the replacement property to Commission and the Trustees free and clear of any encumbrances of any kind;
- (7) Approval of Gulfstream request by USFWS;
- (8) Recommendation for approval by the ARC; and
- (9) Approval of the Trustees.

In summary, due to the urgency of Gulfstream's request in meeting the timeline requirements for constructing the pipeline in order to serve the power plant currently

under construction, there are many issues and requirements remaining to be resolved. Final approval will be considered only upon documentation by Gulfstream that it has satisfied all of the policies and requirements associated with allowing linear facility uses upon state and federal aid conservation land (including federal and state policies) sufficient for Commission staff to recommend final approval.

Further, as a result of ongoing negotiations with Gulfstream, staff and Gulfstream have tentatively agreed to recommend the conceptual approval of replacement land that is an inholding of Corbett WMA. This property is included on FWC's Florida Forever Inholdings and Additions acquisition list. Consequently, Gulfstream has begun pursuing acquisition of the property. However, before final approval can be granted by the Commission, Gulfstream will be required to furnish all of the items noted above which must meet the standards and requirements necessary for approval by the respective agencies also listed above. As an additional point of clarification, acceptance of the replacement property Gulfstream is proposing to acquire will apply only to the proprietary consideration necessary to satisfy both the fiduciary and land replacement requirements associated with the proposed proprietary grants. Any mitigation that may be required for the issuance of regulatory permits will be considered separately.

In an effort to keep the Commission informed of pending action, staff would provide the Commission with an information package prior to the Executive Director's final approval which is in keeping with the practice used for the standing delegation to approve acquisition agreements. This will give each member of the Commission an opportunity to review the proposed final approval package and to express any concerns about it. If any member of the Commission objects to the proposed final approval package, final approval would be reserved for Commission action.

RECOMMEND: APPROVAL CONTINGENT UPON GULFSTREAM'S COMPLIANCE WITH ALL OF THE REQUIREMENTS SET FORTH IN THE CONDITIONS OUTLINED IN 1 THRU 9 ABOVE TO THE SATISFACTION OF FWC STAFF AND ANY OTHER CONDITIONS REQUIRED BY ARC, THE TRUSTEES AND USFWS.

HSC\Comm. agenda item April 2008. Gulfstream-Palm