

APPENDIX "K"
LESS THAN FEE

BACKGROUND

At the August 9, 2005 Land Use Meeting of the Board of County Commissioners, the Board directed staff to evaluate the current Less Than Fee Policy for the ELAP Program, present a recommended policy to the ELAPP General Committee, and present the approved policy to the Board. Staff has presented the attached Less Than Fee Policy to the ELAPP General Committee and it was approved at their meeting on October 17, 2005. This policy was presented to the Board at their December 7, 2005 meeting where the Board (a) rescinded the BOCC Policy – Section Number 09.18.00.00 (the “ELAPP Less Than Fee Acquisition Policy”) and (b) adopted the attached Less Than Fee Policy for Life Estates and Conservation Easements.

POLICY AND CRITERIA FOR THE USE OF LESS THAN FEE ACQUISITIONS IN THE ELAPP PROGRAM

The following policy and criteria relates to the use of ELAPP funds for the permanent preservation of property through the use of Less Than Fee techniques (primarily Conservation Easements and Life Estates).

PROPERTY ELIGIBLE FOR LESS THAN FEE ACQUISITION THROUGH ELAPP:

Property that has been approved for preservation through ELAPP under the Qualifying Criteria as provided in the ELAPP Annual Report with the use of Conservation Easements requires acknowledgement by the Site Selection Team for a particular site. All Less Than Fee acquisitions must comply with the same acquisition procedures as other ELAPP acquisitions except for public access.

TYPES OF PRESERVATION:

Life Estates: The conveyances will specify that it will be for the life of the existing owner(s) at the time the agreement is established. Upon the death of the existing owner(s), full fee simple title will vest with the County or other government agency. If the area under a life estate is predominantly native lands, a Conservation Easement will also be required in the transaction at no additional cost.

Modifications can include a life estate term that runs for the life of the owner(s) or a specific number of years, whichever occurs first. Another condition could be if they sell their adjoining property (such as the house where they reside) that is not part of the life estate. It can be anticipated that there will be other similar variations.

Conservation Easements: Restrictive covenants that permanently limit the permitted uses of the property. Each one will be customized to the property and the owner's objectives. These restrictions will be recorded in the public record and run with the land to subsequent owners. Any mortgage or other encumbrance on the property restricted by a conservation easement must be subordinated to the easement.

Other Techniques: While Life Estates and Conservation Easements will comprise the vast majority of the potential Less Than Fee acquisitions, due to the nature of real estate there is the potential that there are other preservation methods. These would have to each be evaluated at that time.

CRITERIA:

LIFE ESTATES

Life Estates may be considered for any property identified for preservation under the ELAP Program provided that:

- 1) There is an equitable discount from the Fee Simple Value of the property to address the rights retained by the seller. It is acknowledged that there is no maximum percentage of the fee simple value for life estates. It is recognized that the primary benefit of this preservation method is being able to negotiate with a willing owner.
- 2) As part of the Life Estate, there are sufficient conditions incorporated into the agreement to assure the preservation of the natural resources of the property.

CONSERVATION EASEMENTS

Any property to be preserved through Conservation Easements must satisfy all of the following applicable criteria:

- 1) The applicable ELAPP Committees have determined that it is in the best interest of the citizens of Hillsborough County. This can be accomplished through the recommendations of the ELAPP Site Selection Team, through the ELAPP Annual Report presented to the Board of County Commissioners, or through other policies that are established under the ELAP Program.
- 2) The purchase facilitates the preservation of buffers adjacent to lands held in public ownership. (Sovereign lands [rivers and the bay] are deemed to be in public ownership.)
- 3) The purchase of a conservation easement interest in the property yields reasonable cost savings over the purchase of the Fee Simple Interest. As a general policy, the program will not pursue a conservation easement that exceeds seventy percent (70%) of the Fee Simple Value of the property, unless there are special circumstances associated with the acquisition including, but not limited to:
 - i. The Conservation Easement is included with the fee simple purchase of a parcel.
 - ii. Limited public access is provided through the Conservation Easement.
 - iii. The property for the proposed Conservation Easement represents one of the last and/or essential parcels of a project.

- iv. A negotiated agreement recommended by staff has been presented and approved by the ELAPP General Committee.
- 4) Permitted uses do not conflict with the preservation objectives of the ELAP Program. The use of the lands should complement the objectives of the preservation project.

OTHER LESS THAN FEE TECHNIQUES

Any other Less Than Fee technique may be used provided it satisfies the underlying caveat that the preservation is permanent (such as a sale/leaseback for a specified term). Prior to the presentation to the Board of County Commissioners, staff shall present it to the ELAPP General Committee for their review and support.

STAFF AUTHORIZATION:

Staff is authorized to pursue a Life Estate for any parcel of any ELAPP site that has been approved for preservation through the ELAPP Annual Report.

Staff may pursue a Conservation Easement for any parcel of any ELAPP Site that:

- (a) Has been approved for preservation through the ELAPP Annual Report; AND
- (b) The ELAPP Site Selection Team has included conservation easements as a preservation option for that site.

Staff may pursue other Less Than Fee preservation techniques. In the event this other technique has not been used through the ELAP Program as part of the approval process, staff will present it to the ELAPP General Committee for their approval prior to going to the BOCC with the agreement.

EXCLUSIONS:

It is acknowledged that these requirements shall not apply to real property held, all or in part, by another government agency or agencies for the purposes of preservation and joint funding. These acquisitions will be handled as regular fee simple purchases.

REVISIONS

Any revisions to this policy must be approved by the ELAPP General Committee and then by the BOCC as part of the approval of the ELAPP Annual Report, which involves approval by the ELAPP Site Selection Team and the Parks, Recreation and Conservation Advisory Board. Any such revision will be included in the ELAPP Annual Report and the nature of the modification referenced in the Executive Summary of the Annual Report.