

RESOLUTION NO. 2002- 70

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING A CERTAIN PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF PROPERTY FOR MITIGATION TO OFFSET WETLAND IMPACTS AS A RESULT OF THE CONSTRUCTION OF CAPITAL IMPROVEMENT TRANSPORTATION PROJECTS.

RECITALS

WHEREAS, the owners of certain property have executed and presented to the County the Purchase and Sale Agreement in substantially the form attached hereto as Exhibit "A", incorporated by reference and made a part hereof, agreeing to sell the property described therein; and

WHEREAS, the 121.3 acre parcel will be necessary for mitigation to offset the wetland impacts as a result of St. Johns County Capital Improvement transportation projects; and

WHEREAS, this parcel has been identified by Environmental Consulting and Technology, Inc. and the St. Johns River Water Management District as a desirable parcel within the Six-mile and Julington Creek Nested Basin as it joins and adds to an existing 235 acre parcel that is protected by regulatory conservation easements; and

WHEREAS, the purchase price of \$339,640.00 (\$2,800 per acre) is at the appraised value as reported by Robert D. Crenshaw, MAI in his appraisal dated April 5, 2002, and;

WHEREAS, money for the purchase of this property will be from budgeted sources for mitigation land within the Transportation Trust Fund budget.

WHEREAS, it is in the best interest of the citizens of St. Johns County to acquire this property to place under conservation easements as required by the St. Johns River Water Management District to offset wetland impacts as a result of constructing capital improvement transportation projects within the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are hereby-determined findings of fact.

Section 2. The County Administrator is hereby authorized to execute the Purchase and Sale Agreement, attached hereto.

Section 3. The County Administrator is to take action to close this Agreement and complete the purchase upon compliance with all terms of the Agreement with monies for such purchase coming from appropriate budgeted source. The County Administrator is authorized to order a Phase I Environmental review of the property and closing shall not occur unless said review indicates no substantial contamination liability for the County.

PASSED and ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 23rd day of April, 2002.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: James E. Bryant
Chairman

ATTEST: Cheryl Strickland, Clerk

By: Patricia Alex Grande
Deputy Clerk

RENDITION DATE 04-23-02



EHXIBIT "A"

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and effective as of _____, 2002, by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095 ("Buyer") and FEEHAN TIMBER INVESTMENTS, INC., a Florida corporation, whose address is P. O. Box 1011, St. Augustine, Florida 32085 ("Seller").

WITNESSETH:

WHEREAS, the County is desirous of purchasing a portion of the properties owned by the Seller and Seller is desirous of selling upon the terms and conditions hereinafter expressed; and

WHEREAS, it is in the public interest for the Buyer to acquire fee simple ownership of the property, described in Exhibit "A", attached hereto, incorporated by reference and made a part hereof, (hereinafter "Property") for the acquisition of 121.30 acres for mitigation to offset wetland impacts on transportation projects; and

NOW THEREFORE, it is mutually agreed as follows:

1. Purchase Price and Deposit.

(a) The purchase price ("Purchase Price") is \$339,640.00 (\$2,800 per acre) subject to the prorations hereinafter provided. The Purchase Price shall be paid as follows:

<u>Payment</u>	<u>Due Date</u>	<u>Amount</u>
(I) Deposit to be held in Escrow by Escrow Agent (hereinafter defined)	Due within fifteen (15) days of Commission Approval (hereinafter defined)	\$40,000.00
(ii) Cash to Close	Closing Day	\$299,640.00
TOTAL PURCHASE PRICE		<u>\$339,640.00</u>

Payment of the Purchase Price shall be in cash or other immediately available funds.

2. Title Evidence.

(a) Seller agrees, at its sole option and expense, to take all reasonable action to obtain within 45 days from the effective date, a title guarantee commitment ("Commitment") issued by a title company authorized to do business in the State of Florida ("Title Company") agreeing to issue to Buyer, upon recording the Deed an owner's policy of title insurance in the amount of the Purchase Price, insuring Buyer's title to the property subject only to the following (the "Permitted Encumbrances"):

(i) zoning, restrictions, prohibitions, regulations, ordinances and other requirements of any applicable governmental authority;

(ii) the lien of taxes and assessments for the calendar year of the Closing and all subsequent years;

(iii) restrictions and matters appearing on the plat of the Property; and

(b) Buyer shall notify Seller in writing ("Title Notice") within 10 day after Buyer's receipt of the Commitment if the Commitment cannot be obtained or it discloses any defects in the title to the Property, other than the Permitted Encumbrances. Any such defects appearing in the Commitment not timely noted by Buyer in the Title Notice shall be deemed to have been waived by Buyer. In the event the Commitment discloses any defect and such defect is timely noted in a Title Notice, Seller, at Seller's sole option and expense, shall have 90 days from the date it receives the Title Notice within which to cure such defect (with a corresponding extension to the Closing Date as necessary). If after the expiration of such 90-day period, Seller has not cured title defects, then in such event, Buyer's remedies shall be limited solely to either (x) accepting such title to the Property as Seller shall be able to convey, without adjustment to or diminution of the Purchase Price or (y) terminating this Agreement and receiving a return of the Deposit.

3. Identity and Obligation of Escrow Agent.

(a) Charles E. Pellicer, Esq., 28 Cordova Street, St. Augustine, Florida 32084, shall be Escrow Agent, at no additional charge to Seller or Buyer but with the right to serve as underwriter for the title insurance policy.

(b) If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or any other monies or documents which it holds or as to whom such Deposit, monies or documents are to be delivered, Escrow Agent shall not be obligated to make any delivery, but, in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by all the parties having an interest in such dispute directing the disposition of same, or in the absence of such authorization, Escrow Agent may hold such Deposit, monies or documents until the final determination of the rights of the parties in an appropriate proceeding.

If such written authorization is not given or proceeding for such determination is not begun and diligently continued, Escrow Agent may, but not required to, bring an appropriate interpleader action or proceeding for leave to deposit such Deposit, monies or documents in court, pending such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same constitutes gross negligence or willful misconduct and upon making delivery of the Deposit, monies or documents which Escrow Agent holds, in accordance with the terms of this Agreement, Escrow Agent shall have absolutely no further liability hereunder.

In the event Escrow Agent places the Deposit, monies or documents that have actually been delivered to Escrow Agent in the Registry of the Circuit Court in and for the County in which the Property is located and files an action of interpleader, naming the parties hereto, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith.

4. Closing. Unless extended by the terms of Section 2, or other provisions hereof, the closing of the sale of the Property ("Closing") shall take place at the offices of the Escrow Agent, Charles E. Pellicer, Esq., 28 Cordova Street, St. Augustine, Florida 32084, on or before July 15, 2002, ("Closing Date"), TIME BEING OF THE ESSENCE.

5. Prorations. Any real property taxes shall be prorated on the basis of the 2001 taxes at the highest allowable discount.

6. Seller's Representations. Seller represents to Buyer that he owns fee simple title to the Property and has full right and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the terms, provisions and conditions hereof.

7. Closing Procedure and Documents.

(a) At the Closing, simultaneously with the payment of the Purchase Price by Buyer, Seller shall deliver or cause to be delivered to Buyer the following:

(i) a general warranty deed ("Deed") conveying the fee simple title to the Property, subject only to the Permitted Encumbrances and the matters referred to on the Commitment;

(ii) a Non-Foreign Certificate and Request for Taxpayer Identification Number "FIRPTA" affidavit to be signed by seller.

(iii) an affidavit in the form required by the Title Company to delete the standard printed exception relating to the "gap" and to remove the standard printed exceptions for mechanics' lien and parties in possession other than Occupancy Tenants (except to the extent the same constitute Permitted Encumbrances).

(b) At the Closing, Escrow Agent shall deliver the Deposit and Buyer shall deliver the cash to close, to Seller, in accordance with Section 1. Buyer shall execute and deliver to Seller such consents and authorizations as Seller may reasonably deem necessary to evidence the authority of Buyer to purchase the Property and to consummate all other actions required to be taken by Buyer under this Agreement.

(c) At the Closing, Seller and Buyer shall mutually execute and deliver to each other a closing statement in customary form.

(d) At the Closing, Seller and Buyer shall execute such further documents and agreements as are reasonably appropriate or reasonably necessary to consummate the transaction as herein contemplated.

8. Closing Expenses. Seller shall pay the cost of the owner's title policy issued pursuant to the Commitment, the cost of documentary stamps on the deed, all of the expenses in connection with this transaction. Each party shall be responsible for their own attorney's fees if applicable. Seller shall be responsible for any real estate commissions owed as a result of this transaction.

9. Survey and Legal Description. Between this date and Closing, Buyer shall have the Property surveyed. Buyer shall provide written notice ("Survey Notice") to Seller within 10 days after Buyer's receipt of any such new survey ("Survey") if the Survey discloses any encroachments or any other title defects affecting the Property (other than Permitted Encumbrances). All such encroachments or defects so noted in the Survey Notice are to be regarded for all purposes under this Agreement as title defects and, as such, are to be treated in the manner provided in Section 2. Any such title defects shown on the Survey and not timely noted in the Survey Notice to Seller shall be deemed to have been waived by Buyer.

10. Condition of Property and Buyer's Right of Inspection. Buyer shall have the right for ninety (90) days from the date of this Agreement ("Inspection Termination Date") to enter upon the Property for the purpose of physically inspecting the Property and conducting surveys, studies and tests or assessments including but not limited to Phase 1 Environmental Study, Real Estate Appraisal, and Engineering analysis to determine the Property's suitability for Buyer's intended purpose. St. Johns River Water Management District's review and written approval of site for mitigation. Seller hereby gives Buyer the right to enter upon, test and inspect the Property at Buyer's sole cost and risk. Buyer agrees to provide Seller with copies of all reports conducted on the Property. If Buyer determines that the Property is unsuitable, Buyer shall give written notice to Seller advising of such unsuitability and electing to terminate this Agreement on or prior to the Inspection Termination Date. Such notice of termination must be given on or before the Inspection Termination Date. If such notice is timely given, the Deposit shall be returned to Buyer, and upon such return, this Agreement shall terminate.

11. Default. (a) Default by Seller. If Seller defaults by performance of any of Seller's obligations in this Agreement or breaches any warranty or representation, Buyer may receive an immediate refund of the Deposit, and then at its option either may terminate this Agreement and sue for damages or sue for specific performance.

(b) Default by Buyer. If Buyer defaults in the performance of any of Buyer's obligations in this Agreement for any reason, other than the Seller's default or the termination of this Agreement pursuant to the specific provisions hereof, Seller will be entitled to receive the Deposit as Seller's sole and exclusive remedy for any such default, Seller hereby waiving any rights it might otherwise have to sue for damages or specific performance, and this Agreement and the rights of the parties hereunder shall immediately and automatically terminate.

12. Survival. All covenants, terms, provisions, representations and warranties set forth in this Agreement, except as specifically provided otherwise herein, shall at the Closing be merged into the Deed.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement.

14. Modification Must be in Writing. No modification or termination of this Agreement shall be valid unless executed in writing and signed by the applicable duly authorized representatives of Seller and Buyer.

15. No Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

16. Assignability. This Agreement may not be assigned by Seller or Buyer without the written consent of all parties.

17. Time. Time is of the essence of all provisions of this Agreement.

18. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms. It is agreed venue for determination of such disputes shall be in St. Johns County.

19. Notices. Any notice hereunder must be in writing and delivered personally or by United State Mail, Registered or Certified, Return Receipt Requested; United State Express Mail; or Federal Express or equivalent courier service, and shall not be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall be set forth below or as may be designated by notice to the other from time to time.

Seller: Feehan Timber Investments, Inc.
P. O. Box 1011
St. Augustine, Florida 32085

Buyer: St. Johns County
Ben W. Adams, Jr., County Administrator
4020 Lewis Speedway
St. Augustine, Florida 32095

Escrow Agent: Charles E. Pellicer, Esq.
28 Cordova Street
St. Augustine, Florida 32084

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no agreements, representations or warranties, oral or written which have not been incorporated herein.

21. Applicability. This Agreement shall be binding upon and shall inure to the benefits of the parties hereto and their respective successors and, to the extent that assignment is permitted hereunder, their assigns.

22. Commission Dues. Seller and Buyer acknowledge that there is no real estate commission owed as a result of this transaction.

23. Board of County Commission Approval. This Agreement is subject to the adoption of a resolution by the St. Johns County Commissioners authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement by Buyer.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first above written.

BUYER:
ST. JOHNS COUNTY, FLORIDA

Witness Name _____

Ben W. Adams, Jr.
County Administrator

Witness Name _____

Mary A. Blount
Witness Name Mary Ann Blount
Laurie C. Brodbeck
Witness Name Laurie C. Brodbeck

SELLER:
Feehan Timber Investments, Inc.
Feehan Timber Investments, Inc.
By: Craig A. Maguire
Craig A. Maguire, President

Deposit received by _____, (Escrow Agent), which the Escrow agent agrees to return in accordance with the terms and conditions of the within Agreement.

ESCROW AGENT

By:
Name: Charles E. Pellicer
28 Cordova Street
St. Augustine, Florida 32084

Exhibit "A"

A parcel of land consisting of 121.30 acres in Section 13, Township 6 South, Range 27 East, St. Johns County, Florida. SURVEY DESCRIPTION TO BE PROVIDED.



06150-001-01 wards_creek_aerial.mxd AMB 04/12/02



0 1,000 2,000 Feet
1:24,000

Wards Creek Mitigation Project Aerial Photograph St Johns County, FL

Figure 3

Source: 2000 USGS Pictolite Aerial



*Jones
Edmunds &
Associates, Inc.*
JEA

For informational purposes only.

1000 W. UNIVERSITY BLVD., SUITE 200, PALM BEACH, FL 33480
TEL: 561-832-1100 FAX: 561-832-1101