

**AGENDA  
BOARD OF TRUSTEES  
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES  
JUNE 13, 2006  
Substitute Page**

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**Item 1        Minutes**

Submittal of the Minutes from the March 1, 2005 and March 17, 2005 Cabinet Meetings.

(See Attachment 1, Pages 1-9)

**RECOMMEND    APPROVAL**

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**Substitute Item 2    Rory Cantwell Aquaculture Lease**

**REQUEST:** Consideration (1) to use approximately 2.31 acres of sovereignty submerged lands to establish an aquaculture lease in St. Johns County for shellfish aquaculture; and (2) of authorization to issue a ten-year sovereignty submerged land aquaculture lease for the above parcel.

**COUNTY:** St. Johns

**APPLICANT:** Rory Cantwell (55-AQ-1049)

**LOCATION:** A tract of sovereignty submerged lands in Sections 2 and 35, Township 8 South, Range 30 East, in the Matanzas River near Crescent Beach, St. Johns County, Florida.

**CONSIDERATION:** An annual fee of \$78.99, representing a base annual rental fee of \$16.33 per acre or fraction thereof; and an annual surcharge of \$10.00 per acre or fraction thereof, for deposit in the General Inspection Trust Fund pursuant to section 597.010, F.S. On January 1, 2005, the annual rental fee was adjusted, based upon the five-year average change in the Consumer Price Index and will be adjusted accordingly every five years of the lease term.

**STAFF REMARKS:** The applicant requests consideration by the Board of Trustees to authorize an aquaculture lease which includes approximately 2.31 acres of sovereignty submerged lands. The new aquaculture lease number 55-AQ-1049 was assigned to the requested lease parcel, which was formerly designated as aquaculture lease number 55-AQ-338. The requested parcel was previously approved by the Board of Trustees for farming hard clams, but was subsequently terminated by the Department due to unpaid lease fees by the previous leaseholder. The requested acreage will also be used for the purpose of farming hard clams. The applicant completed the application process as required in section 253.69, F.S., and section 18-21.008(3), F.A.C. The aquaculture lease will be subject to the terms and conditions applied to other aquaculture leases issued throughout the state for the same purposes, except the transfer or sale of the lease will not be approved during the first three years of the lease term. Upon approval from the Board of Trustees, the applicant will have the lease parcel surveyed, and submit the survey to the Department of Environmental Protection's (DEP) Bureau of Surveying

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**Substitute Item 2, cont.**

and Mapping for approval. After the Department of Agriculture and Consumer Services (DACS) receives the approved survey and legal description of the lease parcel, the lease instrument will be executed. The lessee will then record the lease with St. Johns County and with DEP's Division of State Lands, mark the lease according to the lease agreement, and begin production.

DACS' staff assessed the marine resources within and adjacent to the proposed area, determined that the area was suitable for commercial shellfish aquaculture activities, and determined that the activities would not result in adverse impacts to seagrasses, existing shellfish beds, or other sensitive habitats. DACS' staff has reviewed the application for completeness, evaluated the business plan, and completed background checks to ensure the applicant has had no public health or marine resource violations or felonies. The application was noticed pursuant to section 253.70, F.S., and no objections were filed.

A consideration of the status of any local government comprehensive plans was not made for this item. DACS has determined that the proposed action is not subject to the local government planning process.

(See Attachment 2, Pages 1-24)

**RECOMMEND APPROVAL**

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**Substitute Item 3     Dave Herbott Aquaculture Lease**

**REQUEST:** Consideration (1) to use approximately two acres of sovereignty submerged lands to establish an aquaculture lease in Lee County for shellfish aquaculture; and (2) of authorization to issue a ten-year sovereignty submerged land aquaculture lease for the above parcel.

**COUNTY:** Lee

**APPLICANT:** Dave Herbott (36-AQ-1051)

**LOCATION:** A tract of sovereignty submerged lands in Section 4, Township 45 South, Range 22 East, in the North Pine Island Sound High-density Lease Area, Pine Island Sound, near the town of St. James City, Lee County, Florida.

**CONSIDERATION:** An annual fee of \$52.66, representing a base annual rental fee of \$16.33 per acre or fraction thereof; and an annual surcharge of \$10.00 per acre or fraction

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Substitute Item 3, cont.

thereof, for deposit in the General Inspection Trust Fund pursuant to section 597.010, F.S. On January 1, 2005, the annual rental fee was adjusted, based upon the five-year average change in the Consumer Price Index and will be adjusted accordingly every five years of the lease term.

**STAFF REMARKS:** The applicant requests consideration by the Board of Trustees to authorize an aquaculture lease which includes approximately two acres of sovereignty submerged lands. The new aquaculture lease number 36-AQ-1051 was assigned to the requested lease parcel, which was formerly designated as aquaculture lease number 36-AQ-783. The requested parcel was previously approved by the Board of Trustees for farming hard clams, but was subsequently terminated by the previous leaseholder, Pelican Inlet Aqua Farm, Inc., in order to obtain other leases. The requested acreage will also be used for the purpose of farming hard clams. The applicant completed the application process as required in section 253.69, F.S., and section 18-21.008(3), F.A.C. The aquaculture lease will be subject to the terms and conditions applied to other leases issued throughout the state for the same purposes, except the transfer or sale of the lease will not be approved during the first three years of the lease term. Upon approval from the Board of Trustees, the applicant will have the lease parcel surveyed, and submit the survey to the Department of Environmental Protection's (DEP) Bureau of Surveying and Mapping for approval. After the Department of Agriculture and Consumer Services (DACS) receives the approved survey and legal description of the lease parcel, the lease instrument will be executed. The lessees will record the lease with Lee County and with DEP's Division of State Lands, mark the lease according to the lease agreement, and begin production.

DACS' staff assessed the marine resources within the proposed areas, determined that the area was suitable for commercial shellfish aquaculture activities, and determined that the activities would not result in adverse impacts to seagrasses, existing shellfish beds, or other sensitive habitats. The Board of Trustees previously authorized the use of this parcel for culturing hard clams as part of a high-density aquaculture use area. The new applicant's business plan and proposed use is consistent with the previously approved use. DACS' staff has reviewed the application for completeness; evaluated the business plan and the applicant's capacity to accomplish the proposed aquacultural activities; and completed background checks to ensure the applicant has had no public health or marine resource violations or felonies. The application was noticed pursuant to section 253.70, F.S., and no objections were filed for this application.

A consideration of the status of any local government comprehensive plans was not made for this item. DACS has determined that the proposed action is not subject to the local government planning process.

(See Attachment 3, Pages 1-21)

**RECOMMEND APPROVAL**

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**Item 4      DACS/Delegation of Authority to Re-Issue Aquaculture Leases**

**REQUEST:** Consideration of delegation of authority to the Commissioner of Agriculture, or his designee, to re-issue aquaculture leases, on behalf of the Board of Trustees, for aquacultural activities when (1) the requested lease is for the same or less acreage; (2) the same commodity will be farmed as was previously farmed on the leased parcel(s) of sovereignty submerged lands and water columns; and (3) such activities were previously approved by the Board of Trustees.

**APPLICANT:** The Florida Department of Agriculture and Consumer Services (DACS)

**STAFF REMARKS:** Section 253.68(2)(b), F.S., provides that "it shall be the policy of the state to foster aquaculture development when the aquaculture activity is consistent with state resource management goals, environmental protection, proprietary interests, and the state aquaculture plan." Additionally, section 253.68, F.S., provides that "the Board of Trustees may lease submerged lands to which it has title for the conduct of aquaculture activities and grant exclusive use of the bottom and the water column ... for either commercial or experimental purposes." The Aquaculture Policy Act and chapter 597, F.S., provide that DACS shall be the primary agency responsible for regulating aquaculture and it is their duty to assist the development of aquaculture.

The statutory authority to administer the aquaculture leasing program is provided in sections 253.67 through 253.75, F.S. Section 253.002(1), F.S., provides that DACS shall perform the staff duties and functions related to the review of applications and compliance with lease conditions for use of the Board of Trustees-owned submerged lands under leases issued pursuant to sections 253.67 through 253.75 and 597.010, F.S.. Additionally, section 253.002, F.S., provides "The board of trustees may also delegate to the Department of Agriculture and Consumer Services the authority to take final agency action on behalf of the board on applications to use board of trustees-owned submerged lands for any activity for which that department has responsibility pursuant to ss. 253.67-253.75 and s. 597.010. However, the board of trustees shall retain the authority to take final agency action on establishing any areas for leasing, new leases, expanding existing lease areas, or changing the type of lease activity in existing leases."

Pursuant to these statutory directives, DACS seeks clarification regarding delegation of authority from the Board of Trustees as it relates to re-issuing aquaculture leases that were previously approved by the Board of Trustees, when the specific use of the new lease will be the same as in the previous lease, and the terms and conditions of the new lease will not change. In this regard, there are questions about what constitutes a "new lease". One interpretation would identify any lease to a new leaseholder as a new lease while a second interpretation would limit the definition of a new lease to leases that included new parcels which had not been previously authorized by the Board of Trustees. In the latter situation, it can be interpreted that re-issuing a previously approved lease does not constitute a "new lease" as provided in section 253.002, F.S., ("....the board of trustees shall retain the authority to

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take final agency action on establishing any areas for leasing, new leases, expanding existing lease areas, or changing the type of lease activity in existing leases." ). When a terminated lease is re-issued, the Board of Trustees has already exercised its authority when it approved the original lease, and as such, the final agency action of re-issuing the lease is not inconsistent with the statutory intent.

The Board of Trustees' delegation to DACS is clear that the actions listed in Section 1 of Attachment 1 should be taken before the Board of Trustees for consideration, and the actions in Section 3 should be processed administratively by the Department's Division of Aquaculture. However, there is disagreement about the interpretation of "issuing a new aquaculture lease" when a new lease parcel (not previously authorized by the Board of Trustees) is compared to an existing lease parcel which was previously approved by the Board of Trustees.

DACS feels that the lease application and approval processes can be facilitated by re-issuing previously approved aquaculture leases administratively, and is seeking approval by the Board of Trustees to amend its current delegations to DACS. In order to implement this change, DACS recommends that Section 3 of the "Duties and Responsibilities of the Department of Agriculture and Consumer Services Concerning Aquaculture of Sovereignty Submerged Lands and Water Columns", as delegated by the Board of Trustees, be amended to include subsection 3 h. Subsection 3 would read as "The Department will take final agency action on:...h. Aquaculture lease agreements, for aquaculture leases which were previously approved by the Board of Trustees, provided the purpose, terms and conditions of the lease agreement are not substantially altered."

DACS will also seek rule amendments to chapter 18-21, F.A.C., to allow the Commissioner of Agriculture, or his designee, to take final agency action on behalf of the Board of Trustees, on certain actions related to administering leases for conducting aquacultural activities on sovereignty submerged lands.

(See Attachment 4, Pages 1-9)

**RECOMMEND APPROVAL TO DELEGATE AUTHORITY TO THE COMMISSIONER OF AGRICULTURE, OR HIS DESIGNEE, TO RE-ISSUE AQUACULTURE LEASES ON BEHALF OF THE BOARD OF TRUSTEES**