

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
DECEMBER 18, 2007
Substitute Page

Substitute Item 1 Dedications to DOT/Public Utilities Affirmation/Authorization

REQUEST: (1) Affirmation that existing public utilities are not in conflict with existing dedications to the Florida Department of Transportation; and (2) approval to authorize public utility crossings within dedications to the Florida Department of Transportation pursuant to the forms of authorization criteria of section 18-21.005, F.A.C., subject to providing notice to the Board of Trustees.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP)

STAFF REMARKS: There are several Board of Trustees' dedications to the Florida Department of Transportation (FDOT) statewide in which DEP has knowledge of or anticipates the presence of existing public utilities such as electricity, water, cable television, telephone and sanitary sewer that may have been installed without the Board of Trustees modifying the respective dedications. DEP anticipates future requests for similar installations within those dedications.

An example of this situation is Dedication No. 24868, granted the Board of Trustees to the former State Road Department on July 25, 1968, for construction of the Judge S.S. Jolley Bridge in Collier County that is part of State Road S-951-B. The structure is currently a two-lane vehicular bridge maintained by FDOT. The dedication specifically states in part:

"...dedicated for public highway purposes as and for right of way for a public State Road under supervision of the State Road Department of Florida to control, manage, use, develop, police, protect and maintain the same for State Highway purposes only".

A 1968 FDOT right-of-way map shows that existing utilities at that time included electricity, water, cable television, telephone and sanitary sewer. Only one Board of Trustees' authorization has been located for those utilities: dredge permit no. 253.123-256 issued by the Board of Trustees on May 22, 1969, to Marco Island Development Corporation for installation of a water main. The City of Marco Island (City) now operates that water main and states that existing utilities at the site include reclaimed water, raw water, cable television, telephone and sanitary sewer. Television and telephone service providers are not City entities but are public utilities as defined by rule.

The City's existing water main is in poor condition with several leaks and is bleeding water, affecting water pressure in the line. Therefore, the City recently submitted an Environmental Resource Permit (ERP) application (no. 11-0255209-003) to replace that water main to maintain an appropriate service level to City residents. FDOT has indicated it has no objection to the proposed water main. To protect public health, safety and welfare, on October 29, 2007, DEP granted the City a temporary authorization to repair the water main. If DEP issues the City an ERP for the proposed water main replacement, the ERP will include authorization for a public easement for that water main and other existing public utilities operated by the City within the

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dedication. Separate public easements for television and telephone service providers will also be issued to those public utility providers within the dedication. Pursuant to rule, DEP has delegated authority to issue those public easements.

DEP proposes to authorize similar existing and proposed public utility crossings within dedications to FDOT statewide pursuant to the forms of authorization criteria of section 18-21.005, F.A.C. DEP will provide notice to the Board of Trustees for each of those crossings unless otherwise directed by the Board of Trustees.

(See Attachment 1, Pages 1-7)

RECOMMEND WITHDRAWAL

Substitute Item 2 ECAA, LLC Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for (1) a modification of a 25-year sovereignty submerged lands lease to (a) decrease the term from 25 years to 5 years; (b) modify lease condition 1. Use of Property; and (c) increase the preempted area from 94,874 square feet to 148,267 square feet for a proposed 84-slip commercial marina; (2) authorize the severance of 12,200 cubic yards of sovereignty material; and (3) authorize existing rubble breakwaters.

COUNTY: Clay
DEP File No. 10-228799-003-EM
BOT Lease No. 100038142

APPLICANT: ECAA, LLC, a North Carolina limited liability company

LOCATION: Section 41, Township 04 South, Range 26 East, in the St. Johns River, Class III Waters, within the local jurisdiction of Clay County
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$22,829.77, representing (1) \$20,944.20 as the initial lease fee computed at the base rate of \$0.14126 per square foot; and (2) \$1,885.57 as the initial 25 percent surcharge payment. The project qualifies for a waiver of the severance fee pursuant to section 18-21.011(3)(c)1, F.A.C. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C.

Substitute Item 2, cont.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activities, which require authorization to use sovereignty submerged lands.

Project Synopsis

The applicant proposes to construct a new 84-slip commercial marina which will be available to the public and which will be controlled and operated by the applicant. The marina will provide mooring of up to 84 recreational powerboats and sailing craft up to 40 feet in length with drafts up to 4 feet.

Background

The marina site is located approximately 1/3 mile east of U.S. Highway 17 on the west bank of the St. Johns River, immediately east of the Villas Continental and Yacht Club property. Johnson Slough which empties into the St. Johns River is located to the south of the marina site. The marina site is within the riparian rights of ECAA, LLC., the applicant, who holds sufficient upland interest over a 0.35-acre parcel of land which includes a 730-foot-long by 7-foot-wide corridor along the shoreline riparian to the marina site. No other marinas or other multi-slip facilities exist within the immediate project area. The marina site is surrounded on three sides by a rubble breakwater.

The existing lease was approved by the Board of Trustees, on April 7, 1977, to operate docking facilities and authorized the preemption of 72,288 square feet. Subsequent renewals and expansions of the preempted area increased the total preemption to the current amount of 94,874 square feet, and the most recent lease modification was to reflect a change in upland ownership to the current applicant. Throughout the tenure of the existing lease, the 87-slip docking facility was for the exclusive use of residents of the upland apartment complex, most recently known as Villas Continental Apartments.

On March 10, 2004, the applicant applied for an environmental resource permit and for an expansion of the lease area from 94,874 square feet to 102,819 square feet. The applicant proposed to (1) demolish the existing marina facility, which had fallen into disrepair; (2) construct a new 84-slip marina; and (3) dredge the marina basin to a uniform depth of 6 feet below mean low water (MLW) as the basin had silted in over time and portions of the basin were no longer of sufficient depth for the draft of vessels intended to use the marina. On September 6, 2005, the Department of Environmental Protection (DEP) issued a permit and approved, under delegation of authority, the expansion to the lease area. However, the applicant now desires to alter the configuration of the proposed marina, the associated dredge area, and further expand the lease area from what was authorized in 2005. This request can not be approved under delegation due to the size of the proposed expansion to the lease area.

Throughout DEP's processing of the requested authorizations approved in 2005, DEP had been advised by the applicant that the upland use would remain unchanged, as a rental apartment

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community. However, immediately subsequent to the issuance of the authorizations in 2005, DEP discovered that the upland use was in the process of being converted from rental apartments to a 100-unit condominium. Consequently, the lease modification was not made effective and the 1996 lease renewal remains the active instrument for the facility. The lease term of 25 years was to have been limited to a 5-year term per the 2005 authorizations as no demonstration of need for an extended term lease was made by the applicant.

The marina was not used during the time of the upland conversion. In December 2006, in preparation for the new marina, the applicant removed the 87-slip private marina. Although the applicant has maintained a lease, the applicant has not conducted any activities on sovereignty submerged lands. Therefore, while the applicant has been in violation of lease condition no.: 1. "USE OF PROPERTY", DEP has not taken action on this violation absent the applicant's actual use of sovereignty submerged lands while in violation of the lease.

A rubble breakwater was placed around the marina during the mid or late 1970s. The breakwater was constructed without a permit or Board of Trustees' authorization. At the time the original marina facility and breakwater were constructed, the upland property was considerably larger and had a more expansive riparian area than the applicant's current upland property. It is not known at what time the upland property was subdivided, however, the result of the subdivision is that the breakwater is located within three riparian rights areas, the applicant's and the adjacent property owners to the north and south. While the breakwater ultimately serves the marina, providing protection during inclement weather, the applicant is only seeking authorization at DEP's request for those portions of the breakwater within the applicant's riparian rights. The neighboring condominium complex to the north does not wish to provide the riparian rights to the applicant in order for the applicant to have sufficient upland interest to lease that portion of the breakwater currently outside of the applicant's riparian rights. However, as the breakwater does not provide the property owners to the north or south with any protection from inclement weather or any other benefit, DEP has not pursued the property owners to obtain authorization for that portion of the breakwater located within their riparian rights.

Project Detail

The proposed marina, including a manatee observation platform and access walkway, will preempt a total of 136,452 square feet, and the associated breakwater within the riparian rights of the applicant will preempt 11,818 square feet, for a total preemption of 148,267 square feet. The 84 slips will be available to the public for lease for a term possibly exceeding one year. A special lease condition shall prohibit mooring on the north and west sides of the proposed marina as such areas would be located outside of the proposed lease area. The condition shall further require the installation of signage which can be viewed by boaters from the water advising that mooring along the north and west sides of the marina is prohibited and require the installation of handrails to prevent ingress and egress to vessels that may inadvertently moor in these areas.

Existing depths within the marina site vary from 3 to 5 feet below MLW. The applicant proposes to dredge approximately 12,200 cubic yards of material within the marina footprint to achieve a uniform depth of -6 feet MLW. The spoil material will be disposed of on Bartram

Substitute Item 2, cont.

Island. Severance fees are not required pursuant to section 18-21.011(3)(c), F.A.C., as staff has determined that the material has no economic value due to small grain size and as it will be disposed of at Jacksonville Port Authority's Bartram Island disposal site. No submerged aquatic vegetation or other wetland resources will be impacted by the proposed project.

Through a Declaration of Easements, Covenants and Restrictions, the applicant has dedicated two uses for the upland property as: (1) a condominium; and (2) the proposed marina parcel. The applicant has provided a survey and legal description of the 0.35-acre marina parcel which includes a 7-foot-wide corridor of upland following the shoreline riparian to the proposed marina site. The marina parcel also includes an upland cut boat ramp located on the south end of the property adjacent to Johnson Slough. The applicant has further established and granted to the marina perpetual easements for: (1) ingress and egress over the condominium property for pedestrian and vehicular access to the marina; (2) a utility easement to the marina across the condominium property; and (3) the use of an existing sign identifying the marina at the entrance to the condominium property.

The applicant shall provide 24 parking spaces adjacent to the marina parcel. These parking spaces will be dedicated for marina patrons. The number of parking spaces provided is consistent with the code regulations of Clay County, which require 1 parking space for every 4 boat slips. The applicant retains ownership of a number of upland condominium units and the community includes a total of 100 condominium units. However, upon sale of these units, the applicant will no longer have interest in the condominium property and will maintain interest in the marina parcel.

The marina parcel will include an existing boat ramp located on the southwest corner of the parcel. The boat ramp will be for the use of condominium unit owners and marina patrons. The marina parcel will also include a pedestrian boardwalk along the entire length of the shoreline which will be accessible to condominium unit owners and marina patrons. Therefore, lease condition no.: 1 "USE OF PROPERTY" which currently states that, "The Lessee is authorized to operate a commercial 87-slip docking facility exclusively to be used for mooring of recreational vessels used in conjunction with an upland apartment complex..." will be modified as follows:

"The Lessee is authorized to operate a commercial 84-slip docking facility exclusively to be used for mooring of recreational vessels used in conjunction with an upland parcel of land riparian to the docking facility, which is separate in proprietary interest from an adjacent condominium, without fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the Department of Environmental Protection or local authority, whichever entity applies the more stringent criteria, and without liveaboards as defined in paragraph 29, as shown and conditioned in Attachment A. All of the foregoing are subject to the remaining conditions of this Lease."

Staff recommends that the lease term be decreased to a 5-year term as the applicant has not requested that the current term be maintained nor demonstrated a need for the continuation of a

Substitute Item 2, cont.

25-year term lease. Furthermore, staff believes that a reduction in the term of the lease from 25 years to a 5-year term will provide for a lease term which is consistent with other facilities of this nature and which are not otherwise open to the public on a first-come, first-served basis.

Additionally, because this docking facility is adjacent to uplands having a residential component, and initially the same corporation holds title to the marina parcel and the condominiums, the requirements of section 18-21.004(4)(a), F.A.C., (40:1 rule) should be carefully applied. As stated in the Declaration of Easements, Covenants and Restrictions, the condominium parcel and the marina parcel will be ultimately separated and run independently. However to ensure the proximity does not result in a de facto multi-family docking facility exceeding the 40:1 rule, the number of slips to be used by condo owners shall be limited to that ratio. Based on the project site's 721 linear feet of shoreline adjacent to sovereignty submerged lands, the rule would limit the docking facility's preempted area to 28,840 square feet. This equates to six 30-foot boat slips and seventeen 40-foot boat slips. Since the project will preempt 148,267 square feet, a special lease condition will require no more than 28,840 square feet (approximately 23 boat slips, depending on slip size) be leased, rented or otherwise used by entities having an ownership interest in any residential condominium units of Villas Continental. Compliance activities shall ensure this restriction is met through routine inspections.

Noticing

Forty-nine property owners were specifically noticed. One letter of objection was received concerned that the riparian rights lines were incorrectly drawn, that they should have begun at the point of easement instead of property line, which is inconsistent with Florida law, and that they should be oriented differently. DEP staff spoke with the objector indicating that property boundary was the correct origination point based on law and that DEP may not adjudicate riparian rights lines, only a Court of Competent Jurisdiction could.

Permit Summary

DEP's environmental resource permit prohibits liveaboards and authorizes sewage pumpout facilities. Fueling facilities are not proposed at this time.

Commenting Agencies

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the environmental resource permit and as special lease conditions. Clay County has an approved Manatee Protection Plan (MPP). FWC stated that the proposed project appears to be consistent with the MPP in a letter dated January 31, 2007, and which has been further confirmed in an email to staff dated October 22, 2007.

The Division of Historical Resources in a letter dated January 12, 2007 stated that the proposed project will not adversely affect historic or cultural resources.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however the Department of Community Affairs (DCA) determined that the plan

Substitute Item 2, cont.

was not in compliance. In accordance with the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. The Clay County Local Comprehensive Plan does not specifically address dock construction and therefore the proposed activity is not inconsistent with the plan according to a letter received from Clay County dated July 11, 2005.

(See Attachment 2, Pages 1-32)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$22,829.77**

**Substitute Item 3 Harborwalk, Inc. Recommended Consolidated Intent/Lease
Modification**

**WITHDRAWN FROM THE JULY 31, 2007 AGENDA
DEFERRED FROM THE JUNE 12, 2007 AGENDA**

REQUEST: Consideration of an application for (1) a modification of an existing ten-year sovereignty submerged lands lease to (a) combine two existing leases into one new lease; (b) reflect a change in upland ownership; (c) change the use from commercial to a mixed use docking facility; (d) reduce the term of the lease to five years; and (e) increase the preempted area from 71,104 square feet to 143,866 square feet for a 100-slip mixed use docking facility; and (2) authorization for the severance of 5,350 cubic yards of sovereignty material.

COUNTY: Okaloosa
Lease No. 460002031
Application Nos. 46-0195322-002-DF & 46-0182742-003-DE

APPLICANT: Harborwalk, Inc. (d/b/a Harborwalk, East Pass Investors, Inc., Pelican Point Harbor, Inc., and Kelly Boat Services, LLC)

LOCATION: Section 00, Township 02 South, Range 22 West, in Choctawhatchee Bay (Old Pass Lagoon), Class III Waters, within the local jurisdiction of the City of Destin
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speeding Zone: No

CONSIDERATION: \$22,646.42 representing: (1) \$20,322.51 as the initial annual lease fee computed at the base rate of \$0.141260 per square foot; (2) \$1,240.76 as the initial 25 percent surcharge payment for Harborwalk; (3) \$6,687.50 for the severance of sovereignty material

Substitute Item 3, cont.

computed at a rate of \$1.25 per cubic yard pursuant to section 18-21.011(3)(a)3, F.A.C.; and (4) \$5,604.35 credit for billing errors for East Pass Investors. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)l, F.A.C.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity that require authorization to use sovereignty submerged lands.

Project Synopsis

The proposed lease modification would authorize a five-year sovereignty submerged lands lease for a 100-slip docking facility, preempting 143,866 square feet, to be used in conjunction with a mixed use upland development consisting of a 292-unit condominium complex and a 199,999-square-foot commercial shopping center.

Background

The site consists of four parcels of property, Lot Nos. 9, 10, 10A and 11, and currently has two sovereignty submerged lands leases.

Lease No. 460002031 is a 10-year lease, known as East Pass Investors, for a 13-slip commercial marina with 15,401 square feet of preempted area. This marina is currently closed due to the upland construction. The current lease allows a sewage pumpout facility, but prohibits fueling facilities and liveaboards. The marina was originally brought under lease in 1990. As the upland was considered to be commercial and now is mixed use, the change in upland usage was processed under file number 46-0182742-003-DE. East Pass Investors has been billed in error with the 30 percent discount and for a 920-square-foot non-water dependent structure which no longer exists. These two billing errors result in a credit of \$5,604.35.

Lease No. 460022481 is a 25-year lease, known as Kelly Boat Services, LLC, for a 43-slip commercial marina occupied by charter boats with 55,703 square feet of preempted area. This facility also has 38,203 square feet temporarily authorized under a Temporary Use Agreement (TUA), which includes a 4,086-square-foot non-water dependent structure. The current lease allows a sewage pumpout facility and fueling facilities but prohibits liveaboards. The dock was originally grandfathered under the name of Coleman L. Kelly Trust, under GSR No. 460038. The facility was then licensed under the name Kelly Boat Services in 1975 under No. 46-30-2248 and was brought under lease in 1987. Lease No. 460002031 will be used for the entire project and Lease No. 460022481 will be cancelled by the Department of Environmental Protection's (DEP) Division of State Lands prior to issuance of the proposed lease modification.

Substitute Item 3, cont.

DEP and Kelly Boat Services, LLC, entered into a Consent Order and TUA on May 30, 2007 for the following two areas:

- non-water dependent structure (4,086 square feet) which has been associated with the facility prior to 1970. Therefore, lease fees in arrears at 10 times the base rate are not required. However, Kelly Boat Services, LLC, had not been paying lease fees on the non-water dependent structure and has now been assessed lease fees in arrears, including interest, in the amount of \$3,286.41 from 2003 to 2008; and
- the current lease does not include an area in the center and an area on the western side of the docking facility, a total of 34,117 square feet, which are used as a fairway for boats to ingress and egress. The entrance to the facility was changed, from the western to the eastern end of the dock, via a hurricane emergency permit issued after Hurricane Opal in 1995. The majority of the slips face north/south. However, a DEP permit and a letter of consent were issued in 1997 for the addition of two slips located on the western end, which faces east/west. Lease fees in arrears in the amount of \$22,332.13, including interest, have been assessed for the 34,117-square-foot area from 2003 to 2008.

Kelly Boat Services, LLC, has paid all fees associated with the TUA and the Consent Order. The Consent Order fees totaled \$1,500, which includes \$1,000 for penalties, \$250 for violation of section 253.77, F.S., and \$250 for administrative costs.

Lot Nos. 10A and 11 contain the remnants of a “T” shaped dock, historically known as the “Boogies” dock, which had TUA number 46-0023991. Fees amounting to \$13,560.66 were paid in 2003 as lease fees in arrears. The dock was substantially damaged by Hurricanes Ivan in 2004 and Dennis in 2005 and is not considered to be functional. As such, the dock was not brought under lease and will be removed. In addition, the eastern end of the property contains the remnants of an over-water platform, which will also be removed.

The proposed upland development for Lot Nos. 9 through 11 includes a 292-unit condominium complex and a 199,999-square-foot commercial shopping center. The upland has a Unity of Development Agreement that transfers the development rights and riparian rights of all of the parcels to Harborwalk, Inc. In addition, the development order issued by the City of Destin on March 19, 2004 considers the parcels to be one plan of development.

Project Detail

The applicant proposes to: (1) construct a new 47-slip marina adjacent to Lot Nos. 10A and 11 preempting 35,134 square feet of sovereignty submerged lands; and (2) reconfigure the existing 13-slip marina to a 10-slip configuration and reduce the preempted area from 15,401 to 14,826 square feet. The proposed sovereignty submerged lands lease modification will contain the proposed new 47-slip marina, the existing 13-slip marina (to be reconfigured to 10 slips), and the existing 43-slip marina, for a total of 100 slips preempting 143,866 square feet. All activities are located within the riparian areas of Lot Nos. 9 through 11.

Substitute Item 3, cont.

The new 47-slip marina will consist of 19 boat slips, 8 slips for daily pontoon boat rental, and 20 slips for daily jet ski rental. Of the 19 boat slips, the applicant is proposing to use one slip for a commercial “glass bottom boat”, one slip for the Destin Harbor Water Taxi (IAW the City of Destin Comprehensive Plan), one slip for an Emerald Grande beach shuttle (available to condominium owners and guests only), four slips for charter fishing boats, and 12 slips as transient slips that will be for use by the condominium residents as well as the public. The rest of the slips on all four parcels will be rented as commercial slips or will offer daily jet ski or pontoon boat rentals.

The 12 transient slips and the beach shuttle will encompass a total of 432 linear feet of shoreline and approximately 16,247 square feet. Using the 590 feet of shoreline for Lot Nos. 10A and 11 to calculate the preempted area, these 13 slips will be over 10 to 1, but not over 40 to 1. As such, a proprietary conservation easement encompassing 432 linear feet of shoreline is required for Lot Nos. 10A and 11, pursuant to section 18-21.004(4)(g), F.A.C. This requirement has been added as a special approval condition.

The applicant proposes to transport hotel guests, via the beach shuttle, and the general public, via the Destin Harbor Water Taxi, (both moored at Harborwalk) to the state-managed beach area at Norriego Point. The applicant was originally setting out beach chairs and umbrellas each day in a specific area at Norriego Point for use by hotel guests. The applicant now proposes to transport guests and chairs/umbrellas by shuttle and the guests can set up chairs and umbrellas where they please, along with the general public, and remove them when no longer in use. The beach chairs and umbrellas would only be allowed on the beach each day between sunrise and sunset. The applicant also proposes to place and maintain two signs on the property stating that the area is a “State of Florida Public Beach”, similar in size and design to those placed by the City of Destin at the beach access road (approximately four feet high by eight feet wide, mounted on a metal pole). One sign will be placed at each end of Norriego Point.

Dredging

The applicant is proposing to dredge 5,000 cubic yards of spoil material from the marina basin at Harborwalk to -10 feet mean low water adjacent to the bulkhead and in the nearshore area. The applicant is also proposing to dredge 350 cubic yards of material from the marina basin at East Pass Investors to -6 feet mean low water adjacent to the bulkhead and in the nearshore area. The spoil material came from Norreigo Point, located across from the site, during numerous hurricanes from 1995 to 2005. This depth is the minimum depth needed for boats ranging upward from 35 to 60 feet in length. As the material was the result of hurricane deposition, additional maintenance dredging should not be required on a frequent basis.

Net Positive Environmental Benefit (NPEB)

The proposed project is located on the north side of Old Pass Lagoon at the mouth of the harbor in Class III, Shellfish Harvesting Prohibited Waters. Old Pass Lagoon has experienced a decline in water quality dating back to the early 1980’s. As a result, the Board of Trustees imposed on

Substitute Item 3, cont.

March 6, 1984, a condition that future developments on sovereignty submerged lands in Old Pass Lagoon must not only meet water quality standards, but must also have a NPEB to the water quality. The Northwest Florida Water Management District installed a pumping mechanism in the lagoon in 1995, turning the operation and maintenance over to the City of Destin. The pump provides flow through circulation in the lagoon, as the lagoon only has one opening. The mechanism pumps water from the Gulf of Mexico into the lagoon during an outgoing tide, forcing the water in the lagoon out into the Gulf. DEP's hydrographic engineering section stated no objection to the project on November 12, 2004, as long as the pump operates on a regular basis. Quarterly water quality monitoring is conducted by the City of Destin, and according to the City Engineer, water quality has improved with the operation of the harbor pump.

The applicant has agreed to donate \$13,440 to the City of Destin Stormwater Fund for the NPEB, based on a contribution of \$420 per slip for the boats and pontoon boats, and \$105 per slip for the jet skis. This is consistent with previous Board of Trustees' actions. Payment of the NPEB has been added as a special approval condition.

All of the water quality data sampling met state standards and the applicant has provided reasonable assurance that the standards for Class III waters will not be violated.

Noticing

The project was noticed and no objections were received during the noticing period.

Permit Summary

DEP's wetland resource permit allows a sewage pumpout facility, but prohibits fueling facilities and prohibits liveaboards.

Commenting Agencies

The Department of Agriculture and Consumer Services, Shellfish Environmental Assessment Section, will not require a reclassification of the area based on a letter dated January 25, 2007. The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. FWC's Law Enforcement Section commented that the proposed project will not interfere with navigation in a memo dated October 30, 2003. The Division of Historical Resources stated no objection to the project on October 6, 2003.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. In accordance with the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. DCA determined that the proposed project would not require a Development of Regional Impact review based on the information submitted to DEP in a letter dated March 1, 2004.

Substitute Item 3, cont.

(See Attachment 3, Pages 1-51)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$23,420.07**

**Item 4 Trust for Public Land Option Agreement/CSX Transportation, Inc./OGT/
Alachua Rail Trail Project**

REQUEST: Consideration of an option agreement to acquire 12.22 acres within the Alachua Rail Trail project from Trust for Public Land, which has an option agreement with CSX Transportation, Inc.

COUNTY: Alachua

LOCATION: Section 32, Township 09 South, Range 20 East; Section 05, Township 10 South, Range 20 East; Section 08, Township 10 South, Range 20 East; and Section 09, Township 10 South, Range 20 East

CONSIDERATION: \$1,745,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>CLOSING DATE</u>
		<u>Wingo (8/2/2006)</u>	<u>Allen (8/2/2006)</u>				
Alachua Rail Trail	12.22	\$1,695,000	\$1,745,000	\$1,745,000	unknown*	\$1,745,000 (100%)	1/31/08

* This is an abandoned rail corridor. The property was purchased and assembled by the railroad more than 50 years ago.

Noted Features of the Subject Property:

This abandoned railroad corridor passes through the "downtown" portion of the City of Gainesville. It connects two very different parts of the city and passes through a total of five different neighborhoods, even though it is only about 2.33 miles long.

Two different neighborhoods are similar in use, being characterized as Light Industrial and Secondary Commercial neighborhoods; another neighborhood is characterized by High Intensity Commercial/Office uses; the fourth neighborhood is best described as an older medium density residential neighborhood; the other neighborhood is a General Industrial neighborhood with heavier industrial uses.

The only appropriate methodology for this property is referred to as an Across-the-Fence (ATF) method. This method looks for predominant values for property adjacent to (across-the-fence from) the subject corridor. The portion of the subject corridor that runs through each neighborhood described above is considered a valuation segment. In this case, the segment values range from \$2.00 per square foot to \$8.50 per square foot. However, none of the ATF values are associated with any form of corridor uses, such as power transmission lines, transportation routes, pipelines for a variety of utility or product transmissions.

The unique group of corridor uses is recognized by an adjustment to the ATF values, which is referred to as a corridor factor adjustment. The corridor factor can represent the high cost of having to assemble a comparable corridor by purchasing small portions of all the adjacent (ATF) properties. This is somewhat like a "jigsaw puzzle" challenge, and usually involves expensive attorney fees to complete. In this case, the approved value appraisal used a 1.30, or 30%, corridor factor adjustment, before deducting the long fiber-optic easement that the purchase is subject to. The divergence range of only \$50,000 for this is very minor, within the context of this high value property.

Item 4, cont.

STAFF REMARKS: The Alachua Rail Trail project has been identified on the Department of Environmental Protection's (DEP) Office of Greenways and Trails' (OGT) Florida Forever approved acquisition list. DEP, Division of State Lands, on behalf of OGT, negotiated this acquisition under the Florida Forever Greenways and Trails program. This acquisition will be for the entire project area. After this purchase, the project will be complete.

Federal Acquisition Procedures

This property is being acquired using federal acquisition procedures in accordance with the Federal Intermodal Surface Transportation Efficiency Act and the Code of Federal Regulations Title 49. On June 22, 1999, the Board of Trustees approved a recommendation to substitute the land acquisition procedures of the Federal Highway Administration for the State of Florida's procedures outlined in section 259.041, F.S., for the projects that qualify for federal enhancement funding, as administered by the Department of Transportation. Under the federal guidelines, DEP is required to disclose the full appraised value of the parcel at the beginning of negotiations.

Property Description

The Alachua Rail Trail project consists of an approximately two-mile long abandoned rail corridor which extends through downtown Gainesville. It has long been a priority acquisition for both the City of Gainesville and OGT due to its tremendous potential for development as a recreational trail as well as its connectivity to existing trails.

The entire corridor is owned by CSX Transportation, Inc (CSX). In order to facilitate negotiations, the Trust for Public Land (TPL) has entered into an option agreement with CSX to purchase the corridor. The Board of Trustees, on behalf of OGT, is purchasing the property from TPL.

Proposed Exchange

A portion of the corridor runs directly behind the headquarters of the Gainesville Police Department. In order to improve the safety of the trail, and to facilitate the expansion of the Police Department building, the Gainesville Police are working closely with OGT on a proposal to exchange a small portion of the corridor with adjacent land also owned by the City of Gainesville. The acreage will be equal, and will preserve a complete corridor, while also providing increased visibility for trail users who may need to cross the nearby road. The proposed exchange will also allow the Police Department the room it needs for its expansion. If this acquisition is approved, this proposed exchange will be brought back for consideration by the Board of Trustees at a later date. If the Board of Trustees approves this proposed exchange, it will not require review by the Acquisition and Restoration Council (ARC) pursuant to chapter 253.034(2)(c), Florida Statutes.

The Department of Transportation (DOT) is in support of rerouting the trail in this area. The trail currently empties out onto NW 8th Avenue at a blind location, a large building obstructs the view for pedestrians and motorists and DOT felt the current crossing was unsafe. With the moving of the trail to the intersection of NW 8th Avenue and NW 4th Street, the crossing can be done in safety at a controlled intersection. The trail being moved will still allow continuity of the route. The latest Crime Prevention Through Environmental Designs will be incorporated into the rerouting of the trail to ensure the safety of all who use the trail.

Item 4, cont.

Encumbrances

There is an underground, fiber optic cable line covering a portion of the corridor. CSX will be retaining an easement covering that portion of the corridor when they convey the property to TPL. The Board of Trustees will be taking title subject to this existing easement, which is a 15-foot-wide perpetual non-exclusive subterranean utility easement to accommodate the fiber optic cable. The area encumbered by the easement lies along the far eastern side of the corridor, and therefore falls outside the proposed paved area. Due to survey irregularities, portions of the line fall outside the corridor, meaning that in some places the encumbered area is narrower than 15 feet. In all, the easement encumbers 67,082 square feet (1.54 acres) of the 12.22-acre corridor. The easement allows the right to construct, maintain, replace, remove, relocate and assign the easement rights to third-party users provided the exercise of these rights does not unreasonably interfere with the safe and efficient use of the property or its improvements by the landowner. The easement was considered by the appraisers in their reports.

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. DEP staff will review, evaluate, and implement an appropriate resolution for these and any other title issues that arise prior to closing.

Closing Information

A title commitment and boundary survey have been received for this property. ESA's have also been conducted on the property.

Environmental Contamination

Environmental Site Assessments (ESA's) conducted on the property revealed the presence of some harmful contaminants, particularly toward the North end of the corridor. DEP's Office of Waste Management identified clean up methods by which this contamination can be remediated. CSX is paying the cost of this cure as identified in the ESA report (\$32,700) and some additional funding so that this cure can be effected. The City of Gainesville, in return, is providing CSX with a limited indemnification agreement against any future contamination costs. The City of Gainesville is also providing the Board of Trustees with an indemnification agreement against future contamination claims related to currently known contamination, within the limits of the City of Gainesville's sovereign immunity. In addition, the indemnification agreement requires the City to clean up the property to DEP specifications prior to its being used as a rail-trail corridor.

Florida's Statewide Greenways & Trails System

The major components of the Florida Statewide Greenways and Trails Program were established through a legislatively adopted plan. This plan was developed through the work and consensus of a broad range of groups and stakeholders, such as recreational users, conservation groups, and private landowners. The foundation for its development consisted of various legislative actions and efforts which occurred throughout the more than 20 years prior to its adoption in 1999. OGT is charged with overseeing the establishment of the statewide system of greenways and trails, in coordination with the Florida Greenways and Trails Council (Council).

Item 4, cont.

One important component of the Florida Greenways and Trails Program is the identification of ecological and recreational connections (opportunity areas) throughout the state. These areas have been identified, mapped, prioritized, and are the basis for developing and evaluating acquisition projects.

OGT Application Process

Applicants apply for OGT's 1.5 percent (\$4.5 million) annual allocation of Florida Forever funding through an application process. The applicants must meet criteria specified by chapter 260, F.S., and detailed by rule in chapter 62S-1, F.A.C. Applications are initially reviewed by OGT staff and biologists and then forwarded to the Council for review and approval. The Council consists of 21 members, as outlined in chapter 260, F.S. At a public meeting, the Council evaluates the projects before recommending a final acquisition list. The list is then forwarded to the Secretary of DEP for final approval.

In order to be eligible, applicants must apply for and receive a Certificate of Eligibility. A Certificate of Eligibility is approved by OGT staff if: (1) the proposed project meets the definition of a greenway or trail, as defined in chapter 260, F.S.; (2) the planned project corridor is located within or adjacent to at least one opportunity segment on one or more of the Recreational Prioritization Maps; (3) at least 80 percent of the planned project corridor has a landowner willing to negotiate; and (4) the project has a willing manager. Once the Certificate of Eligibility is approved, the project application may be submitted to OGT during an open cycle period. Proposed projects are evaluated based on the following criteria: (1) the rank (high, medium, or low) assigned to the project based on the Recreational Prioritization Maps; (2) percentage of any matching funds available or committed to the project; (3) the percentage of acreage that is proposed for less-than-fee acquisition; (4) ecological values; (5) recreational attributes; and (6) historical and cultural resources.

Management

OGT will be the interim manager of the property, and the City of Gainesville will be the long term manager.

Comprehensive Plan

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands' section of the State Comprehensive Plan.

(See Attachment 4, Pages 1-62)

RECOMMEND APPROVAL

Substitute Item 5 DMS Partial Release of Lease/Leon County School Board Lease

REQUEST: Consideration of a 50-year lease to the Leon County School Board for the Bloxham Building upon execution of a partial release of lease by the Department of Management Services.

COUNTY: Leon

APPLICANT: Leon County School Board (School Board)

LOCATION: Section 36, Township 01 North, Range 01 West

STAFF REMARKS: On December 19, 2006, the Board of Trustees discussed the status report for state-owned property in downtown Tallahassee as it relates to the Department of Management Services' (DMS) Workspace Management Initiative. The Workspace Management Initiative was designated to improve office space quality and efficiency as well as controlling costs associated with property management. As part of this discussion, it was recognized that the School Board was interested in leasing the Bloxham Building for educational purposes. DMS agreed to execute a partial release of lease enabling the Board of Trustees to lease the property directly to the School Board. The 2006 agenda item directed the Division of State Lands' (DSL) staff to continue to work towards this objective. The item also directed staff to bring the partial release of lease and direct lease to the School Board back before the Board of Trustees for final approval. DSL staff is requesting the Board of Trustees grant final approval of the partial release and direct lease.

Project Detail

The Bloxham Building is currently leased to DMS, and subleased to the Department of Revenue (DOR). DOR staff is being relocated to new office facilities in the Capital Circle Office Complex, and it is anticipated that DOR will vacate by June 30, 2009. DMS will execute a partial release of lease at that time, and the Board of Trustees will immediately enter into a 50-year lease with the School Board. The partial release of lease and direct lease to the School Board will be handled administratively under current delegation of authority.

The Leon County School District intends to use the Bloxham Building as an educational facility, which was its original use. The location of the school lends itself to serving the rebounding population of downtown residents and children of state employees and as a potential magnet school. Although the School Board has not approved a specific plan at this time, the Superintendent intends to develop plans to use the building for pre-kindergarten through third grade, and/or other educational uses such as a virtual classroom to demonstrate new programs or equipment to legislators and other state education administrators.

Noticing

Pursuant to section 253.034(6)(f), F.S., and section 18-2.019, F.A.C., state agencies were noticed on November 15, 2006 that the state-owned land was being evaluated for lease to the School Board, and no objections were received.

Substitute Item 5, cont.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. A Compliance Agreement between DCA and the local government has been finalized. The proposed action is consistent with the adopted plan according to a letter received from the Leon County Planning and Zoning Department.

(See Attachment 5, Pages 1-21)

RECOMMEND WITHDRAWAL

Additional Item 6 **BOT/Miami-Dade County Lease Negotiation Authorization**

REQUEST: Consideration to authorize the Secretary of the Department of Environmental Protection, or designee, to negotiate a new lease with Miami-Dade County to supersede existing Board of Trustees' Lease No. 3545, to (1) include restrictive language similar to section 253.0341(4), F.S., (2) provide for a 30 year lease term with two 30-year renewal options; and (3) extend the lease term up to 99 years as requested by Miami-Dade County if the Florida Legislature enacts legislation within the next two regular legislative sessions removing or limiting the 30-year county lease limitation included in section 125.031, F.S.

COUNTY: Miami-Dade

APPLICANT: Miami-Dade County (County)

LOCATION: Section 35, Township 53 South, Range 41 East

STAFF REMARKS: On June 27, 1957, the County deeded a 4.5-acre parcel located at 1350 NW 12th Avenue in Miami, to the State of Florida for \$1.00. The Graham Building (Building) was subsequently built on the property in 1959 and was managed by the Department of General Services (predecessor to the Department of Management Services) as a state office building. In 1983, the Board of Trustees leased 25,000 square feet of the Building's 150,000 square feet of office space to the County for use as a State Attorney's Office for a 10-year term with a 10-year renewal option for nominal consideration. By October 1983, the Department of General Services was asked to prepare a timetable for removal of all other state personnel from the Building in order to transfer the Building to the County. The 1988 Legislature directed the Board of Trustees to lease the space in the Building vacated by state personnel to the County for at least 25 years for the establishment and operation of office space for the State Attorney. On August 9, 1988, the Board of Trustees approved a 30-year lease (Lease No. 3545) to the County for the entire Building superseding all other existing leases. The current lease expires on September 2, 2018, with no option for renewal.

Additional Item 6, cont.

Legislation

In 2007, the Legislature enacted Section 253.0341(4), F.S., entitled, “Surplus of state-owned lands to counties or local governments”, which states:

“(4) Notwithstanding the requirements of this section and the requirements of s. 253.034 which provides a surplus process for the disposal of state lands, the board shall convey to Miami-Dade County title to the property on which the Graham Building, which houses the offices of the Miami-Dade State Attorney, is located. By January 1, 2008, the board shall convey fee simple title to the property to Miami-Dade County for a consideration of one dollar. The deed conveying title to Miami-Dade County must contain restrictions that limit the use of the property for the purpose of providing workforce housing as defined in s. 420.5095, and to house the offices of the Miami-Dade State Attorney. Employees of the Miami-Dade State Attorney and the Miami-Dade Public Defender who apply for and meet the income qualifications for workforce housing shall receive preference over other qualified applicants.”

However, in lieu of receiving fee simple title to the property from the Board of Trustees, the County has informed DSL by letter dated December 7, 2007, that the County is willing to accept a lease of the property in lieu of a conveyance. The new lease will include language similar to the statute specifying the use of the property. Once the terms of the new lease are negotiated, it will be presented to the Board of Trustees for consideration.

Extended Term Leases

Pursuant to section 18-2.018(3)(a)1., F.A.C., a lease shall not exceed a maximum term of 50 years unless the Board of Trustees determines that any lease term for more than 50 years is in the public interest. Staff is of the opinion that the requested 30-year term with two 30-year renewal options, or the potential 99 year term if requested, is justified since the Board of Trustees will retain ownership of the property.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S., however the Department of Community Affairs (DCA) determined that the plan was not in compliance. A Compliance Agreement between DCA and the local government has been finalized. The proposed action is consistent with the adopted plan.

(See Attachment 6, Pages 1-3)

RECOMMEND APPROVAL