

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MAY 27, 2009
Substitute Page

Substitute Item 1 Scott and Patricia Tibbetts, Trustees, (Tarpon Pointe Marina)
Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for a modification of a ten-year term sovereignty submerged lands lease to increase the preempted area from 18,637 square feet to 603,638 square feet, more or less, for a 220-slip commercial docking facility.

APPLICANTS: Scott and Patricia Tibbetts, Trustees, Tibbetts Family Revocable Trust
(d/b/a Tarpon Pointe Marina; a/k/a Manatee Landings Marina)
Lease No. 410340783
Application No. 41-0169753-005

LOCATION: 215 8th Street East
Bradenton, Manatee County
Section 25, Township 34 South, Range 17 East
Aquatic Preserve: No
Waterbody/Classification: Manatee River, Class III, not approved for shellfish harvesting
Outstanding Florida Water: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Slow speed outside channel, 25 mph in channel

CONSIDERATION: \$85,009.53, representing: (1) \$63,151.70 as the initial annual lease fee computed at the base rate of \$0.149455 per square foot, discounted 30 percent because a minimum of 90 percent of the slips are open to the public for rent on a first-come, first-served basis; and (2) \$21,857.83 as the 25 percent surcharge payment for the additional area. 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.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this "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 which require authorization to use sovereignty submerged lands.

Project Synopsis

The applicants are proposing to construct a 220-slip commercial docking facility to be used in conjunction with an existing upland 200-unit dry boat storage facility.

Background

On October 13, 2006, the applicants submitted their initial proposal to the Department of Environmental Protection (DEP) for: (1) removal of an 18-slip temporary docking facility and construction of a 205-slip docking facility, preempting a total of 23.3 acres of sovereignty

Substitute Item 1, cont.

submerged lands, to be used in conjunction with the existing 200-unit dry boat storage facility; and (2) relocation of an existing boat load-out platform to an area directly adjacent to the boat storage buildings. In a separate application, the applicants applied for a maintenance dredge exemption that involved substantial impacts to seagrasses to create ingress and egress to the proposed relocation of the load-out platform. Other impacts included the removal of mangroves to clear the area for the new load-out platform. After DEP denied the maintenance dredge exemption, the proposed relocation of the load-out platform was removed from the application, and the dock design was reconfigured to allow the continued use of the existing load-out platform. These modifications eliminated all of the dredging, seagrass impacts, and the majority of the mangrove impacts (leaving minimal lateral trimming only), in addition to reducing the preempted area from 23.3 acres to 13.9 acres.

On October 18, 2006, DEP conducted a site inspection and discovered that the 18-slip temporary wet slip docking facility, used for staging vessels in conjunction with the upland dry boat storage facility, had been constructed without a permit and lease from DEP.

DEP pursued formal enforcement, at that time, and a Consent Order and Temporary Use Agreement (TUA) were executed between DEP and the applicants on October 12, 2007. The Consent Order required payment of \$12,500 in administrative fines and \$1,000 in costs and expenses for the unauthorized construction of the facility and the unauthorized use of sovereignty submerged lands. The TUA required payment of \$18,708.00 in lease fees in arrears, which were assessed from December 17, 2001 through February 28, 2008. All of the fines, fees, and costs have been paid as required by the Consent Order and TUA. The Consent Order also required the applicants to apply for and obtain an operation and maintenance permit and a sovereignty submerged lands lease for the existing facility. The operation and maintenance permit was issued on September 11, 2008 and the sovereignty submerged lands lease was executed on April 3, 2009.

The existing sovereignty submerged lands lease, approved by DEP under delegation, authorizes the preemption of 18,637 square feet. A March 31, 2009 site inspection confirmed that the existing facility is in compliance with the sovereignty submerged lands lease.

The upland consists of two dry storage buildings that house 200 vessels, an open area where boat trailers are stored, and a small house that was converted to a marina office/ship's store. There is an existing 3,000 gallon gasoline fuel tank, on the uplands adjacent to the load-out platform, for fueling vessels by using a long hose that can be transported out onto the temporary staging dock.

The applicants have indicated that the proposed future use of the uplands will include a combination commercial/residential development, although no applications have been submitted to any regulatory agency for upland development at this time. The applicants have further stated that the marina will continue to operate independently of the upland residential/commercial complex, and will remain open to the public on a first-come, first-served basis, should such development be approved and constructed.

Substitute Item 1, cont.

Project Details

The applicants are proposing to remove the existing 18-slip docking facility and construct a 220-slip (212 permanent and 8 temporary) docking facility and increase the preempted area by 585,001 square feet for a new total preemption of 603,638 square feet. Of the 220 wet slips, 8 will be used for temporary staging of vessels 18 to 35 feet in length associated with the dry storage facility. The remaining 212 wet slips will accommodate power and sailing vessels up to 90 feet in length with drafts up to 7 feet.

A minimum of 90 percent of all the wet slips will be maintained on an open to the public, first-come, first-served basis, pursuant to section 18-21.003(25), F.A.C. This requirement has been included as a special lease condition.

The water depths in the wet slips and areas of ingress/egress at the site range from 4.5 feet to 25 feet mean low water. Specific restrictions on vessel drafts have been incorporated into the permit to ensure a one-foot clearance between the bottom of the boat propeller and the river bottom to avoid prop dredging. The only seagrasses in the project area are on a shallow shoal adjacent to the access channel for the existing load-out platform. These resources will be protected from impacts by the installation of two shallow-water buoys that will mark the channel and direct boaters away from the area.

A proposed 1,010-foot-long by 14-foot-wide floating wave attenuator system will run parallel to the thread of the channel and is attached to the bottom through a combination of large screw anchors, cables, and elastic rubber hawsers that allow the attenuator to effectively protect the marina from wave action in variable weather conditions. The wave attenuator will be attached to the main docking structure and will be accessible by pedestrians for passive recreation activities such as fishing or wildlife viewing. Mooring of vessels will be prohibited along the structure.

Noticing

The project was noticed as required pursuant to section 253.115, F.S., and section 18-21.005(3), F.A.C. Approximately 15 property owners were specifically noticed and one objection was received. The objector's concerns are as follows:

- (1) size of the marina and its encroachment into the river;
- (2) questionable need for another large marina in the area;
- (3) potential impacts to water quality caused during construction and by vessels moored at the facility;
- (4) impacts to manatees; and
- (5) encroachments on the objector's riparian rights.

DEP is of the opinion that the objector's concerns are addressed as follows:

- (1) the size, location and configuration of the marina were addressed through avoidance and minimization of impacts to resources and consideration of secondary and cumulative impacts required by DEP regulations during DEP's application review;

Substitute Item 1, cont.

- (2) as to whether there is a need for another large marina in the area, it was determined that the facility will help increase public access to sovereignty submerged lands for recreation. The marina is also a key component in the City of Bradenton's Riverwalk Development Plan, which will enhance public enjoyment of the downtown area;
- (3) the potential impacts to water quality are being addressed by specific conditions in the permit that require sewage pumpout facilities, slip rental agreements requiring regular pumpouts of vessels, and draft restrictions placed on vessels to preclude prop dredging;
- (4) impacts to manatees have been addressed through specific conditions in the permit that are the recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) upon its review of the project; and
- (5) regarding any encroachment on the objector's riparian rights, DEP staff, in consultation with the DEP Office of General Counsel, determined that the objector's property deed does not convey riparian rights.

Permit Summary

DEP's environmental resource permit requires sewage pumpout facilities, prohibits liveboards, and prohibits fueling facilities from being placed on over-the-water structures.

Commenting Agency

The recommendations of FWC regarding protection of manatees have been addressed in the permit.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan is in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City of Bradenton.

(See Attachment 1, Pages 1-33)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$85,009.53**

**Substitute Item 2 Punta Gorda Hotel, LLC (Best Western Hotel) Recommended
Consolidated Intent/Lease Modification**

REQUEST: Consideration of an application for modification of a five-year sovereignty submerged lands lease to (1) increase the term from five to ten years; and (2) increase the preempted area from 15,832 square feet to 162,106 square feet, more or less, for a proposed reconfigured 63-slip commercial docking facility.

Substitute Item 2, cont.

APPLICANT: Punta Gorda Hotel, LLC, a Florida limited liability company
(d/b/a Best Western Hotel)
Lease No. 080842525
Application No. 08-0201050-002

LOCATION: 300 Retta Esplanade
Punta Gorda, Charlotte County
Section 06, Township 41 South, Range 23 East
Aquatic Preserve: Gasparilla Sound-Charlotte Harbor, Resource Protection Area 3
Waterbody/Classification: Peace River, Class II, not approved for shellfish
harvesting
Outstanding Florida Waters: Yes
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$22,424.63, representing: (1) \$16,959.28 as the initial lease fee computed at the base rate of \$0.149455 per square foot, discounted 30 percent because a minimum of 90 percent of the slips are open to the public for rent on a first-come, first-served basis; and (2) \$5,465.35 as the initial 25 percent surcharge payment for the additional area. 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. Fees may be revised upon receipt of an acceptable survey.

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 which require authorization to use sovereignty submerged lands.

Project Synopsis

The lessee proposes to construct a 63-slip docking facility to be used in conjunction with an existing upland 188-room hotel and restaurant.

Background

The Board of Trustees approved the original lease (No. 08-3029) containing 5,000 square feet on February 2, 1983. In 1986 the Board of Trustees approved a lease modification authorizing the expansion of the docking facility to the current 15,832 square feet in conjunction with wetland resource permit no. 080842525 issued by the former Department of Environmental Regulation. The lease was renewed in 1991, 1996 and 2001. The lease was renewed and modified to reflect an upland ownership change to the current lessee in 2006 pursuant to a delegation of authority.

Substitute Item 2, cont.

An April 9, 2008 Department of Environmental Protection (DEP) site inspection determined the lessee to be out of compliance. The non-compliance consisted of: (1) unauthorized batterboards were installed between slip Nos. 1, 2, and 3; (2) framing for decking was installed in Slip No. 4; and (3) a wooden platform was installed over the boat lift at Slip No. 2. The non-compliance did not result in adverse resource impacts and the lessee brought the docking facility into compliance by removing the unauthorized structures and no administrative fine was assessed. A May 8, 2009 DEP site inspection determined the lessee to be in compliance.

Project Detail

The lessee is proposing to expand the existing 8-slip docking facility by constructing 55 additional slips, thereby creating a 63-slip facility. The proposed addition is 146,274 square feet, for a new total of 162,106 square feet. The docking facility will accommodate private recreational vessels, commercial tour boats, commercial fishing boats, and rental boats up to 60 feet in length with a maximum draft of 3.5 feet. This draft restriction is included as a specific permit condition in DEP's environmental resource permit.

A minimum of 90 percent of all of the slips will be maintained on an open to the public, first-come, first-served basis, pursuant to section 18-21.003(25), F.A.C. This requirement has been included as a special lease condition.

Public Interest

The docking facility is located in an aquatic preserve; therefore, the proposed lease modification must be shown to be in the public interest, pursuant to section 18-20.004(1)(b), F.A.C. DEP is of the opinion that the project is in the public interest in light of the following proposal by the applicant:

- (1) a one-time \$100,000 donation to the Charlotte Harbor National Estuary Program to continue an existing program for water quality data collection, quality control, analysis and distribution to public agencies and the general public for five aquatic preserves (Lemon Bay, Gasparilla Sound/Charlotte Harbor, Cape Haze, Pine Island Sound, and Matlacha Pass). The Florida Aquatic Preserves rule (18-20, F.A.C.) directs DEP to coordinate with federal, state, and local agencies to aid in carrying out the intent of the Legislature in creating the preserves, and to use applicable federal, state, and local management programs, which are compatible with the intent and provisions of the Florida Aquatic Preserves Act and the rule, and to assist in managing the preserves. Through DEP's coordination with CHNEP, the citizens of the State of Florida will benefit from this public interest proposal through enhanced water quality and submerged resource data collection, analysis and distribution that contributes to improved public land management (section 18-20.004(2)(b)(4), F.A.C.) of the aquatic preserve so that the public may continue to enjoy the traditional recreational uses (such as swimming, boating, and fishing) in the aquatic preserve;
- (2) installation and maintenance of an educational display, including distribution of aquatic preserve and natural resource educational materials, at the site regarding the aquatic preserve and marine ecosystems;

Substitute Item 2, cont.

- (3) increased boating access for the general public; and
- (4) providing sewage pumpout to the general public at no charge.

Item (1) is addressed as a special approval condition and items (2) through (4) are addressed as specific conditions in DEP's permit.

Noticing

The lease modification request was noticed pursuant to section 18-21.004(1)(m), F.A.C. Approximately 25 property owners were specifically noticed and no objections were received by the end of the comment period. Additionally, Save the Manatee Club, Inc., provided written comments but did not object to the proposed project.

Permit Summary

DEP's permit requires sewage pumpout facilities, prohibits liveboards, and prohibits fueling facilities.

Commenting Agency

The recommendations of FWC regarding protection of manatees have been addressed in the permit. In addition to FWC's recommendations, a special lease condition will require the lessee to ensure that the user of any slip at the docking facility enters into a signed agreement, between the lessee and the user, stating that the slip user agrees to comply with all manatee related requirements such as speed zones adopted by Charlotte County and approved by FWC.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan is in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City of Punta Gorda.

(See Attachment 2, Pages 1-40)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$22,424.63**

**Substitute Item 3 Miami Jewish Home and Hospital for the Aged, Inc. Lease Agreement/
Determinations**

REQUEST: Consideration of (1) a request for a lease agreement on 3.98-acres, more or less, to the Miami Jewish Home and Hospital for the Aged, Inc., a Florida nonprofit corporation, for 80 years, with no option for renewal; (2) a determination that, pursuant to section 18-2.018(1)(a), F.A.C., the decision to authorize the use of Board of Trustees-owned uplands is not contrary to the public interest; and (3) a determination that, pursuant to section 18-2.018(3)(a)1., F.A.C., the extended lease term is in the public interest.

Substitute Item 3, cont.

COUNTY: Broward

APPLICANT: Miami Jewish Home and Hospital for the Aged, Inc. (MJHHA), a Florida nonprofit corporation

LOCATION: Section 16, Township 51 South, Range 41 East

STAFF REMARKS: MJHHA is proposing to construct a 95-unit affordable housing facility for low income seniors on a 3.98-acre parcel of state-owned property using a U.S. Department of Housing and Urban Development (HUD) affordable housing grant. This parcel is currently contained within Lease No. 2628 to the Department of Children and Families (DCF) and subleased to Florida Pathway, Inc., (FPI). DCF and FPI have both agreed to release the unimproved 3.98-acre parcel from their respective lease and sublease so that MJHHA may obtain an 80-year lease from the Board of Trustees.

In order to receive a HUD affordable housing grant, and to meet HUD requirements, MJHHA is required to have a minimum 75-year term on their lease. Staff has verified this policy of HUD's Section 202 Supportive Housing program office and confirmed an application would be rejected if the lease term did not meet the minimum term of 75 years.

MJHHA is requesting a lease for 80 years, which would allow MJHHA five years to apply for and receive the HUD grant. The HUD 202 Affordable Housing Grant not only provides the capital to construct the building, but also has a subsidy providing resources to support housing needs of low-income seniors.

Property Lease History

On January 4, 1973, Lease No. 2628 containing 300 acres, more or less, was granted for a 99-year term by the Board of Trustees to the Department of Health and Rehabilitative Services (DHRS), for the purposes of operating and maintaining the South Florida State Hospital. The property was subleased to FPI under Lease No. 2628-01 on January 12, 1990.

On May 21, 2002, a 4.01-acre parcel was released by DCF, successor of DHRS, from Lease No. 2628, and by FPI from Sublease No. 2628-01. The Board of Trustees then granted the parcel to MJHHA under Lease No. 4329 for affordable housing facilities for low income seniors to be funded by a HUD affordable housing grant. The lease has a 75-year term, with no option for renewal, in order to meet HUD requirements. The lease also contains special lease conditions requiring the leaseholder to (1) apply annually to HUD until such time that a grant is awarded to the lessee; and (2) provide written confirmation of receiving HUD 202 funding within five years of the effective date of the lease or the lease will be terminated. These special lease conditions were complied with and HUD 202 funding was received within the allowed timeframe thus satisfying the special lease conditions.

Substitute Item 3, cont.

Under HUD rules, in order for MJHHA to receive grant funding to construct a second affordable housing facility, each grant application must be submitted by a separate nonprofit corporation. DGN, Inc., a Florida nonprofit corporation, was established by MJHHA and was the applicant for the second grant. On April 5, 2005, MJHHA agreed to release 1.36 acres from Lease No. 4329, and the Board of Trustees entered into a lease with DGN, Inc., under Lease No. 4495. The lease has an 80-year term, with no option for renewal, and also contains special lease conditions requiring the leaseholder to (1) apply annually to HUD until such time that a grant is awarded to the lessee; and (2) provide written confirmation of receiving HUD 202 funding within five years of the effective date of the lease or the lease will be terminated. These special lease conditions were complied with and HUD 202 funding was received within the allowed timeframe thus satisfying the special lease conditions. Currently, 2.65 acres remain under Lease No. 4329.

Current Requests

The proposed 80-year lease to MJHHA for the 3.98-acre parcel will allow MJHHA five years to apply for and receive the HUD grant. The lease will also include the same special conditions mentioned above as well as those conditions set forth by HUD. If MJHHA does not obtain HUD funding within this five-year period, the lease will terminate and DCF and FPI have agreed to amend Lease No. 2628 and Sublease No. 2628-01 to include the 3.98-acre parcel.

Currently, Lease No. 4495 and Lease No. 4329 abut the subject 3.98-acre parcel and are improved with affordable housing units which are at 100 percent occupancy with a five-year waiting list. Lease No. 4495 contains 52 units, and Lease No. 4329 contains 95 units, totaling 147 units.

Pursuant to section 18-2.018(1)(a), F.A.C., the decision to authorize the use of Board of Trustees-owned uplands requires a determination that such use is not contrary to the public interest. Staff is recommending that the Board of Trustees make this determination because the senior citizens of the community will benefit from the services provided by MJHHA. These include community support programs offering housekeeping, arranging for meals and case management for the low-income elderly living in their homes. In addition, MJHHA offers healthcare support services on-site which helps reduce the risk of Medicaid placement in an institution, and offers accessibility to quality health care services, including wellness and educational programs.

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 the extended lease term is in the public interest. Prior to 1978, leases were granted for a term of 99 years. At that time, lease terms were reduced to 50 years to reflect the amortized life of most improvements. Since that time, there have been a limited number of instances where the Board of Trustees has approved a lease term longer than the standard 50 years; however, two of those were approved in order to meet HUD requirements for affordable housing grants. Staff is recommending that the Board of Trustees determine that providing affordable housing for low income seniors is in the public interest.

Substitute Item 3, cont.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan according to a letter received from the City of Pembroke Pines.

(See Attachment 3, Pages 1-34)

RECOMMEND APPROVAL

Item 4 Donald F. Padgett, Trustee, Conveyance/Determination/Lease Fees in Arrears Waiver

REQUEST: Consideration of (1) a determination that, pursuant to Article X, section 11, of the Florida Constitution, and section 18-21.004(1)(a), F.A.C., it is in the public interest to convey 2.84 acres, more or less, of state-owned reclaimed sovereignty land in the Pelican River in Palm Beach County; (2) conveyance of the parcel to Donald F. Padgett, as Trustee of the Lillian N. Padgett Revocable Trust Agreement dated May 21, 2003, the riparian owner, for \$85,000; and (3) waiver of lease fees in arrears pursuant to section 18-21.011(1)(b)12., F.A.C.

COUNTY: Palm Beach

APPLICANT: Reverend Donald F. Padgett, as Trustee of the Lillian N. Padgett Revocable Trust Agreement (Trust) dated, May 21, 2003

LOCATION: Section 17, Township 42 South, Range 37 East

CONSIDERATION: \$85,000, to be deposited in the State School Fund, and \$315/month or 61 percent of 6 percent of gross revenue for the entire mobile home park, whichever is greater, from January 1, 2008 through closing, to be deposited in the Internal Improvement Trust Fund

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Banting (06/03/08)	APPROVED <u>VALUE</u>	BUYER'S PURCHASE <u>PRICE</u>	CLOSING <u>DATE</u>
BOT	2.84	\$80,000	\$80,000	\$85,000*	120 days after BOT approval

*Land value only

STAFF REMARKS:

Background

Duncan Padgett, purchased a 1.83-acre parcel of reclaimed river bottom from the Board of Trustees in 1944 for \$205/acre that had been exposed as a result of ditching and diking of the surrounding area for drainage purposes. Over the years, as drainage continued, water levels in the Pelican River dropped further and exposed additional river bottom. Initially Duncan Padgett

Item 4, cont.

used the river bottom for cattle grazing and farming, but in the early 1970's he began allowing use for mobile home lots. That use expanded to include 2.84 acres of state-owned former river bottom. The mobile home park, 61 percent of which is located on state-owned land, currently serves full time local residents that own their homes and rent sites on a yearly basis.

Duncan Padgett passed away in 1985, and his wife continued to manage the mobile home park until her death in 2007. During the course of preparing the property for sale in conjunction with settling the family estate, the title problem was recognized. Reverend Donald Padgett, who is Duncan Padgett's son, has submitted a request on behalf of the Trust to purchase the property to obtain clear title. The encroachment affects 30 of the mobile home park's 36 sites.

Pursuant to Article X, section 11, of the Florida Constitution, and section 18-21.004(1)(a), F.A.C., the Board of Trustees may convey sovereignty lands if an evaluation of the benefits and costs of the request shows that conveyance is in the public interest. DEP recommends that the Board of Trustees find that it is in the public interest to convey this parcel to the Trust for the following reasons:

- There is no significant resource value associated with the property because it is developed.
- Failure to sell to the applicant would require reconfiguration of the portion of the mobile home park on private land, which could accommodate only 21 sites as a stand-alone parcel versus the current 36 in the park, and would result in existing renters having to relocate their mobile homes.
- While the 2.84-acre state parcel could accommodate up to 34 mobile home sites as a stand-alone parcel, developing it as a mobile home park would require the expense associated with relocating water, sewer and power lines which currently cross the privately owned portion of the mobile home park, and redesigning the park layout.
- Residential property such as a mobile home park requires constant on-site management that is more appropriate for the private sector.
- Approval will resolve the mobile home park encroachment without the cost and uncertainty of litigation with the applicant, and will eliminate a substantial liability for the Board of Trustees.
- Sale will clear title to land developed by a previous owner many years prior to the Trust acquiring the land, and eliminate a cloud on the title for future owners.

Lease Fees in Arrears

DEP has calculated lease fees in arrears of \$51,991. Reverend Padgett has requested that the lease fees in arrears be waived pursuant to section 18-21.011(1)(b)12., F.A.C., which provides for a reduction of the assessment for prior unauthorized use of sovereignty land for after-the-fact lease applications based on the following:

- Aggravating and mitigating circumstances specific to the lease application, including the nature and extent of the violation, and the applicant's degree of cooperation in correcting the violation;

Item 4, cont.

- Whether payment of the amount of the assessment or payment by the time due would create a substantial hardship that affects the applicant significantly different than other similarly situated applicants; and
- The inability of the applicant to pay the fees assessed.

Reverend Padgett only recently became aware of the title problem during the course of settling his mother's estate and initiated efforts to resolve the issue. The heirs of Duncan Padgett did not receive any of the annual revenue generated by the mobile home park over the years, and they do not have the funds available to pay the lease fees in arrears. For these reasons, DSL staff recommends that the Board of Trustees waive the lease fees in arrears through 2007. However, staff recommends that the Trust be required to pay for use of the property from January 1, 2008, until such time as the property is sold at a rate of 61 percent (Board of Trustees' percent of ownership of the mobile home park) of six percent of the gross revenue earned for the mobile home park, or \$315 per month, whichever is greater, with \$315 paid for the partial month in which closing occurs. The \$315 represents six percent of gross revenue for the 30 mobile home sites that involve state land.

Noticing

Pursuant to section 253.111(5), F.S., the Trust is the upland riparian landowner; therefore, noticing was not required. Both the U.S. Army Corps of Engineers and South Florida Water Management District were notified of the proposed sale and no objections were received.

Comprehensive Plan

A consideration of the status of the local government comprehensive plan was not made for this item. DEP has determined that land conveyances are not subject to the local government planning process.

(See Attachment 4, Pages 1-20)

RECOMMEND (1) APPROVAL TO SELL FOR \$85,000, WITH THE APPLICANT PAYING FOR USE OF THE PROPERTY FROM JANUARY 1, 2008, UNTIL CLOSING, AT A RATE OF 61 PERCENT OF 6 PERCENT OF GROSS REVENUE FOR THE ENTIRE PARK, OR \$315 PER MONTH, WHICHEVER IS GREATER; AND (2) WAIVER OF LEASE FEES IN ARREARS FROM 1977 THROUGH 2007

2nd Substitute Item 5 Board of Trustees/City of Palm Coast Exchange Agreement/Lehigh Greenway Rail-Trail/Determinations/Delegation

REQUEST: Consideration of (1) a determination that a .161-acre parcel, more or less, of state-owned land in Flagler County (a) is no longer needed for conservation purposes and that the exchange will result in a net positive conservation benefit pursuant to Article X, section 18 of the

2nd Substitute Item 5, cont.

Florida Constitution and section 253.034(6), F.S.; (b) no longer needs to be preserved in furtherance of the Preservation 2000 Act pursuant to section 259.101(6)(b), F.S.; and (c) is surplus; (2) an exchange agreement to convey the .161-acre parcel, more or less, of state-owned land in exchange for a parcel of similar size and value owned by the City of Palm Coast; and (3) delegation of authority to the Secretary of the Department of Environmental Protection, or designee, to approve final acreage, location and values of the parcels to be exchanged.

COUNTY: Flagler
Deed/Contract No. 32023

APPLICANT: City of Palm Coast (City)

LOCATION: Sections 04 and 05, Township 12 South, Range 31 East

CONSIDERATION: Parcel for parcel with potential cash boot to be deposited into the Internal Improvement Trust Fund if the parcel conveyed by the Board of Trustees is of greater value.

STAFF REMARKS:

Acquisition and Restoration Council

Pursuant to section 18-2.021, F.A.C., this exchange was approved by the Acquisition and Restoration Council (ARC) on April 3, 2009. ARC recommended approval with the following modifications and special conditions:

1. The City must install an off-grade non-motorized crossing at the intersection of OKR, TCB and the TCB extension;
2. Other Trail design features resulting from the proposed road realignment will be subject to the approval of DOT and OGT staff;
3. The actual acreage to be exchanged will be flexible and contingent on the final design of the road and Trail improvements; and
4. Construction of the Trail improvements must occur simultaneously with the road improvements.
5. Final approval must be given by the Board of Trustees, or designee, for the acreages, final design, appraisal figures and signed contract.

Background

The Lehigh Greenway Rail-Trail (Trail) was acquired in December of 2000 under the Department of Environmental Protection's (DEP) Office of Greenways and Trails' (OGT) Preservation 2000 (P-2000) acquisition program and is managed by Flagler County (County) through a sublease from OGT. The Department of Transportation (DOT) provided the seed money for design and development of a 12-foot-wide paved surface including some road crossing improvements. The County began construction on the Trail in 2007, beginning at Colbert Lane and moving west. The Trail is heavily traversed by pedestrians that use the facility for walking, leisure and exercise.

2nd Substitute Item 5, cont.

The Trail comprises of 6.8 miles of abandoned railroad corridor, of which 5.8 miles (194.95 acres) are owned by the Board of Trustees. The Trail is managed by the County with the majority of the Trail lying within the City limits. Future planned annexation by the City will encompass the entire Trail. The Trail parallels the Lehigh Canal for much of its length and extends from US Hwy 1 through Graham Swamp ending at Colbert Lane. It crosses Old Kings Road (OKR) just south of the junction of Town Center Boulevard (TCB) and OKR and just north of the proposed new intersection of OKR and the TCB extension from the east.

The City is widening OKR to four lanes, along with constructing the TCB extension. DOT states that the 2008 traffic count for OKR is approximately 5,600 vehicles per day and is projected to be 18,000 by the year 2015. During the initial design of the Trail crossings and alignment, City staff did not anticipate the need to realign TCB to the south. As development progressed, the City realized safety issues would arise for both vehicular traffic and Trail users due to the fact that the Trail crossing would be positioned between the two closely-spaced intersections of TCB, TCB extension and OKR. Realignment will substantially improve the safety of the proposed intersection. According to the City, the decision to realign TCB is not only crucial to ensure the safety of pedestrians using the Trail, but it also ensures a smooth uninterrupted flow of traffic, minimizing accidents.

As a result of the realignment of OKR, the Trail segments east and west of OKR will become misaligned - laying on the south side of the road on the realigned east side of OKR and laying on the north side of the TCB Extension on the west side of OKR. DEP's Division of State Lands (DSL) and OGT requested that DOT conduct a technical review of the City's proposed intersection design and Trail realignment, including consideration of a grade-separated crossing (either an overpass or an underpass) for Trail users. DOT recommended the installation of an overpass bridge so that Trail users may move back and forth between the southwest and northeast corners of the proposed four-way intersection in as safe a manner as possible. OGT has reviewed DOT's technical report and concurs with the recommendations. OGT recommends that the land exchange be granted contingent upon the City's agreement to construct a grade-separated crossing exclusively for non-motorized Trail users. It should be noted that a similar item was approved by the Board of Trustees on August 10, 2004, with the County agreeing to construct an overpass at the Trail's crossing of Town Center Blvd at the time when it is widened from two lanes to four lanes, or return to the Board of Trustees to request a waiver of that condition.

Exchange

The City is requesting to exchange approximately .171 acre, more or less, of City property for approximately .161 acre, more or less, of state-owned property. The exact size and location will be determined pending final design. DSL and OGT staff recognizes that the design could require a larger acreage exchange but this request is limited to .25 acre or less. The City proposes the land exchange to allow for shifting both TCB and the Trail slightly to the south on the west side of OKR where the Trail will continue to run parallel on the south side of the road. The County has provided DEP with a letter stating no objection to the City's proposal.

2nd Substitute Item 5, cont.

Initially, this was expedited to come before the Board of Trustees for approval in an effort to prevent delay to the ongoing construction of OKR, which is now only two miles from TCB intersection, and to prevent the City from spending unnecessary funds on design and construction if this request were to be denied. However, due to not receiving a signed contract from the City agreeing to implement ARC's recommendations, DEP is now recommending denial of the exchange. DEP's proposed exchange agreement required all design and construction of the grade-separated crossing and Trail reconstruction to be completed prior to closing. Until that time, a temporary easement was to be issued to the City under delegation of authority to allow the City to begin work. Special easement conditions were to be included to ensure that all criteria of DEP's proposed exchange agreement were met.

Constitution and Statutory Requirements

Pursuant to Article X, section 18 of the Florida Constitution, the fee interest in real property may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board. Pursuant to section 253.034(6), F.S., in order to surplus conservation lands, the Board of Trustees, by a vote of at least three members, must make a determination that the lands are no longer needed for conservation purposes and that the exchange will result in a net positive conservation benefit to the state. Further, pursuant to section 253.034(3), F.S., in recognition that recreational trails have a linear character that may extend many miles, it is the Legislature's intent that when the necessity arises to serve public needs *and after balancing the need to protect trail users from collisions with automobiles and the preference for a use of overpasses and underpasses should be used to the greatest extent feasible and practical*, transportation uses shall be allowed to cross recreational trails purchased pursuant to section 259.101(3)(g), F.S. or section 259.105(3)(h), F.S. Because the City has not agreed to install a grade-separated crossing for non-motorized use only, allowing Trail users to cross the intersection in the safest possible manner, the exchange does not meet the statutory requirements of sections 253.034(6) and 253.034(3), F.S.

Delegation of Authority

DEP is requesting delegation of authority to the Secretary of DEP, or designee, to approve the final acreage, location and values of the parcels to be exchanged pending final design and location of a grade-separated crossing of OKR in the vicinity of the intersection of OKR, TCB and the TCB extension once approved by DOT and OGT prior to construction.

Noticing

Property owners were not required to be noticed pursuant to section 253.115(b), F.S. Local governments were not noticed pursuant to section 253.111(6), F.S. and state agencies were not noticed pursuant to section 18-2.-019, F.A.C.

Comprehensive Plan

A consideration on the status of the local government comprehensive plan was not made for this item. DEP has determined that this exchange is not subject to the local government planning process.

2nd Substitute Item 5, cont.

Recommendation Details

DEP staff is recommending denial of the exchange between the Board of Trustees and the City based on the City's rejection of ARC's recommendation for the following reasons:

- 1) Safety Concerns: Inconsistence with DOT's recommendation for an installation of an overpass bridge so that Trail users may move back and forth between the southwest and northeast corners of the proposed four-way intersection in as safe a manner as possible;
- 2) Does not meet statutory requirement of section 253.034(6), F.S.: The exchange will not result in a net positive conservation benefit to the state;
- 3) Does not meet statutory requirement of section 253.034(3), F.S.: Does not serve public needs by balancing the need to protect trail users from collisions with automobiles; and
- 4) Inconsistence with ARC's recommendation of an off-grade non-motorized crossing.

(See Attachment 5, Pages 1-32)

RECOMMEND DENIAL

2nd Substitute Item 6 Harbor Branch Oceanographic Institution Foundation, Inc. Option Agreement/Indian River Lagoon Blueway Florida Forever Project

REQUEST: Consideration of an option agreement to acquire 134.74 acres within the Indian River Lagoon Blueway Florida Forever project from Harbor Branch Oceanographic Institution Foundation, Inc., a Direct Support Organization of Florida Atlantic University, in cooperation with Florida Communities Trust.

COUNTY: St. Lucie

LOCATION: Sections 05, 08, and 09, Township 34 South, Range 40 East

CONSIDERATION: \$18,000,000 (Board of Trustees' purchase price for 134.74 acres within a total appraised area of 403.18 acres. The remaining 268.44 acres are being purchased by Florida

(AGENDA CONTINUED ON NEXT PAGE)

Board of Trustees
Agenda - May 27, 2009
2nd Substitute Page Seventeen

2nd Substitute Item 6, cont.

Communities Trust at a purchase price of \$6,300,000, with the total purchase price for the appraised area equal to \$24,300,000).

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY		<u>APPROVED</u> <u>VALUE</u>	<u>PURCHASE</u> <u>PRICE</u>	<u>CLOSING</u> <u>DATE</u>
		Gray (01/14/09)	Benson (01/14/09)			
Harbor Branch - BOT	134.74	\$32,656,000	\$24,635,000	\$29,562,000	\$18,000,000*	120 days after
Harbor Branch - FCT	<u>268.44</u>	<u>\$6,425,000</u>	<u>\$6,480,000</u>	<u>\$7,776,000</u>	<u>\$6,300,000</u>	BOT approval
Totals	403.18	\$39,081,000	\$31,115,000	\$37,338,000	\$24,300,000	

* The Trustees' purchase price is 61% of the allocated value for the 134.74 acres, which is \$29,562,000. It is \$133,590.61 per acre. This figure includes improvement values.

STAFF REMARKS: The Indian River Lagoon Blueway project is a full fee "A" group project on the Florida Forever Priority List approved by the Board of Trustees on April 14, 2009. The project contains 26,380 acres, of which 4,021 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, approximately 22,224.26 acres, or 85 percent of the project, will remain to be acquired.

Project Description

The Harbor Branch Oceanographic Institution (Harbor Branch) was founded in 1971 by John Seward Johnson. The Institution contains many research facilities, including a library of 47,000 sponges and microorganisms, as well as a 204-foot research vessel and a pair of submarines used for research purposes. It was a Harbor Branch vessel that made the discovery of the Challenger space shuttle rocket booster on the ocean floor. Harbor Branch merged with Florida Atlantic University (FAU) in December of 2007, and continues to perform important undersea research in its capacity as a Direct Support Organization for FAU. It is one of only three organizations in America that run manned deep-sea submersible research vehicles along the ocean floor. Acquisition of the site by the Board of Trustees will help continue to fund the research efforts of Harbor Branch and FAU.

When Harbor Branch became a Direct Support Organization for FAU in 2007, it was as part of a broader program that continued funding of the Harbor Branch endowment benefiting both Harbor Branch and FAU. To further this goal, Harbor Branch intended to convey certain portions of its property to St. Lucie County (County) and certain portions of its property to the State of Florida. However, multiple factors delayed the implementation of this plan. In the meantime, Harbor Branch conveyed part of its property to FAU. To fulfill the original goal, the conveyances have been restructured to happen simultaneously. At closing, FAU will title back the previously donated 134.74 acres to Harbor Branch. The Board of Trustees will then purchase the 134.74 acres from Harbor Branch and lease to FAU for management.

2nd Substitute Item 6, cont.

The remaining portion of the Harbor Branch ownership, outside of the area to be acquired by the Board of Trustees, is being purchased by Florida Communities Trust (FCT) under a separate contract. The FCT purchase and the Board of Trustees acquisition were appraised together as one parcel. Value has subsequently been allocated to each separate purchase in accordance with the appraisals. The title for the lands acquired via the FCT portion will also be conveyed to the Board of Trustees, with the County to serve as manager. The proceeds from the sale will be used to continue funding the research and educational functions of Harbor Branch.

Mortgages and Liens

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 the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

The property is improved with just over 300,000 gross square feet of building improvements. These improvements include varying uses such as warehouse, office, residential, and lab/science spaces. The appraisers considered these improvements in the valuation of the property, and the future managing agency, FAU, has determined that the property can be adequately managed with the existing improvements.

There is currently a ground lease to the St. Lucie County School Board for five acres on the property. In addition, FAU currently has leases to various parties for a total of 16,966 square feet of office and laboratory space. If the Board of Trustees approves this acquisition, these leases will be allowed to continue until their termination dates. Pursuant to section 270.22(1) F.S., rents collected from these leases will go to the Internal Improvement Trust Fund.

A mean high water line study was performed on the subject property. No portion of the subject property lying below the mean high water line was included in the determination of DEP's Division of State Lands' approved value or in the negotiation of the purchase price.

Closing Information

A title insurance commitment and an environmental site assessment will be obtained by the Board of Trustees prior to closing. A survey will be obtained by Harbor Branch prior to closing.

Management

The property will be managed by FAU.

2nd Substitute Item 6, cont.

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 6, Pages 1-58)

RECOMMEND APPROVAL

Item 7 Board of Trustees Title Acceptance/Department of Community Affairs/Florida Communities Trust's Harbor Branch Preserve Project

REQUEST: Consideration for the Board of Trustees to accept title to 268.44 acres being purchased within the Florida Communities Trust's Harbor Branch Preserve project.

COUNTY: St. Lucie

LOCATION: Sections 05, 08, and 09, Township 34 South, Range 40 East

STAFF REMARKS:

Project Description

St. Lucie County (County) submitted a grant application to Florida Communities Trust (FCT) to acquire 268.44 acres within the Harbor Branch Preserve FCT project (Property). FCT and the County are purchasing the Property from the Harbor Branch Oceanographic Institution Foundation, Inc. (Harbor Branch), a Direct Support Organization of Florida Atlantic University (FAU). The Property was approved for FCT Florida Forever funding by the FCT Governing Board on November 2, 2007. The Property is intermingled with the 134.74-acre acquisition proposed by the Board of Trustees, which is located within the Indian River Lagoon Blueway Florida Forever project boundary.

This acquisition will extend the County's Indrio Greenway, an approximately 880-acre preserve, and reconnect the tidal swamp to the Indian River Lagoon. The Property contains predominately native vegetative communities, including scrub and tidal swamp. These communities are recognized as providing habitat for listed animal species, including the gopher tortoise, the Florida scrub jay and Black-whiskered Vireo. Recreational improvements will include a wildlife observation platform, canoe launch, fishing pier and nature trails.

The parties involved, Harbor Branch, FAU, the County, the Department of Environmental Protection and FCT, agreed it would be beneficial if title to the Property were vested in the Board of Trustees. The proposed acquisition of 134.74 acres by the Board of Trustees, in conjunction with the title to the Property vesting with the Board of Trustees, would ensure that management is coordinated in an efficient and environmentally conscious manner.

Item 7, cont.

Pursuant to section 9K-8.004(1), F.A.C., a recipient of FCT Florida Forever funds may elect that title to real property be vested in either the recipient or the Board of Trustees. Section 9K-8.004(5), F.A.C., states that if the recipient elects that title vest in the Board of Trustees then that election must be approved by the FCT Governing Board and by the Board of Trustees. The FCT Governing Board approved this election by executing an addendum to the Grant Contract that indicated the County's election to have title vest with the Board of Trustees. To satisfy the requirements set forth in section 9K-8.004(5), F.A.C., the Board of Trustees must approve the County's election.

Management

The Property will be managed by the County.

(See Attachment 7, Pages 1-30)

**RECOMMEND ACCEPTANCE OF TITLE TO 268.44 ACRES BEING ACQUIRED BY
FCT AND THE COUNTY**