

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
SEPTEMBER 29, 2009

Attachments to the items below can be viewed at the following link:

http://www.dep.state.fl.us/secretary/cab/public_notices.htm

Substitute Page

Item 1 Minutes

Submittal of the Minutes from the August 11, 2009 Cabinet Meeting.

(See Attachment 1, Pages 1-18)

RECOMMEND APPROVAL

Substitute Item 2 Hall of Fame Associates Lease Modification

REQUEST: Consideration of an application for an after-the-fact modification of an existing 25-year sovereignty submerged land lease to increase the preempted area from 115,399.54 square feet to 146,978 square feet for an existing 43-slip commercial marina.

APPLICANT: Hall of Fame Associates, a California Limited Partnership
Lease No. 060447536

LOCATION: 435 Seabreeze Boulevard
Fort Lauderdale, Broward County
Section 12, Township 50 South, Range 42 East, in New River Sound
Aquatic Preserve: No
Waterbody Classification: New River Sound, Class III, not approved for shellfish harvesting
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Slow speed, year round

CONSIDERATION: \$14,359.85, representing (1) \$13,179.96, 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 discounted 10 percent for participation in the Clean Marina Program; and (2) \$1,179.89 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:

Background

The original 5-year lease was modified to a 25-year term in 1990 and expires in 2015. The lease authorizes the use of 115,399.54 square feet for 43 slips. The marina is divided into two parcels, the north parcel and the south parcel. The north parcel consists of 59,690.54 square feet and the south parcel consists of 55,709 square feet. The proposed addition of 31,578.46 square feet is to the north parcel, for a new total of 146,978 square feet.

**Board of Trustees
Agenda - September 29, 2009
Substitute Page Two**

Substitute Item 2, cont.

On March 9, 2006, the Department of Environmental Protection conducted a site inspection and discovered that vessels moored at the north parcel extended beyond the lease boundary resulting in preemption of an unauthorized area. On October 31, 2008, a Temporary Use Agreement (TUA) was executed for the prior unauthorized use of sovereignty submerged lands. Lease fees are current through April 1, 2010 and the lessee has paid \$2,500 in administrative costs.

In addition to the proprietary violations, the Lessee conducted a minor unpermitted modification to the leased structures at the west end of the southern parcel docking structures. These modifications would have required a regulatory permit and entailed the redirection of two finger piers and occurred within the lease area. The unauthorized activity did not create additional slips or preempt additional area, but resulted in a modified mooring layout. On December 28, 2006, a regulatory consent order was executed which required the payment of \$2,000 for civil penalties and \$500 for costs and expenses, totaling \$2,500.

A July 14, 2009 site inspection confirmed that the existing facility remains in compliance with the TUA.

Project Detail

The lessee is requesting after-the-fact authorization to expand the existing lease by 31,578.46 square feet to include the currently preempted area located outside of the authorized lease area.

The upland property adjacent to the northern parcel is used as a small dock masters office and parking for the marina. The upland property adjacent to the southern parcel is used as parking for the marina and a restaurant, which is currently closed.

A minimum of 90 percent of all the slips will continue to be maintained on an open to the public first-come, first-served basis pursuant to section 18-21.003(28), F.A.C. This requirement has been included as a special lease condition.

Noticing

The project was noticed to 19 property owners and no objections were received. The project is located within the 25-foot setback area on both sides and letters of concurrence have been obtained from the affected adjacent property owners.

Commenting Agency

Broward County is a designated manatee county with an approved manatee protection plan. The Florida Fish and Wildlife Conservation Commission has reviewed the application and provided comments dated March 4, 2009 and has no objection to this application provided the Lessee maintains the manatee awareness signs required in the existing lease.

**Board of Trustees
Agenda - September 29, 2009
Substitute Page Three**

Substitute Item 2, cont.

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 Fort Lauderdale on May 11, 2009.

(See Attachment 2, Pages 1-10)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF \$14,359.85

Item 3 Boothco Hansford, LLC Option Agreement/Bailey's Mill/Conservation Easement/Monitoring Agency Designation

REQUEST: Consideration of (1) an option agreement to acquire a perpetual conservation easement over 436.39 acres within Jefferson County from Boothco Hansford, LLC; and (2) designation of Department of Environmental Protection, Office of Environmental Services as the monitoring agency.

COUNTY: Jefferson

LOCATION: Section 06, Township 01 North, Range 04 East; Section 31, Township 02 North, Range 04 East.

CONSIDERATION: \$1,975,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>MAXIMUM APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>OPTION DATE</u>
		<u>(07/20/09)</u>	<u>(07/20/09)</u>				
Boothco Hansford, LLC	436.39	\$2,095,000	\$1,960,000	\$2,095,000	\$3,055,262.50*	\$1,975,000** (94%)	120 days

* Seller purchased the property on March 29, 2006.

** \$4,525.77 per acre; Fee value is \$3,186,000; Conservation Easement Purchase Price is 62% of the fee value.

STAFF REMARKS: The project contains 436.39 acres, of which no acres have been acquired. If the Board of Trustees approves this agreement, the project will be complete.

Project Description

This acquisition was negotiated by the Department of Environmental Protection's (DEP) Division of State Lands (DSL). Funds for the acquisition were appropriated during the 2008 Legislative Session and are still available for use by DSL for acquisition and other costs associated with this purchase. The Acquisition and Restoration Council reviewed the acquisition proposal and found it worthy of state acquisition.

Item 3, cont.

The property lies at the southern end of Lake Miccosukee immediately south of U.S. Highway 90. Its northwestern boundary is contiguous with the Letchworth Mounds Conservation Easement, which adjoins the eastern two-thirds of Letchworth-Love Mounds Archaeological State Park.

The conservation easement (Easement) would enable the property to be protected from future development, provide valuable watershed and aquifer recharge protection for the St. Marks River/Apalachee Bay Watershed, and ensure the protection of surface and ground water quality.

Prohibited Uses

The property will be restricted in perpetuity by the provisions of the Easement, a summary of which includes, but is not limited to the following prohibited uses:

- dumping of soil, trash, liquid or solid waste (including sludge), or unsightly, offensive, or hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants will be prohibited;
- exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand, and similar substances will be prohibited, except as reasonably necessary to combat erosion or flooding, or except as necessary and lawfully allowed for the conduct of allowed activities;
- activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation will be prohibited, unless otherwise provided for in this Easement;
- removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation, including but not limited to cypress trees, will be prohibited except as specifically provided for in the Easement;
- planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council or its successor will be prohibited;
- commercial or industrial activity, or ingress, egress or other passage across or upon the property in conjunction with any commercial or industrial activity including but not limited to swine, dairy and poultry operations and confined animal feed lot operations will be prohibited;
- new construction or placing of temporary or permanent buildings, mobile homes or other structures in, on or above the ground of the property except as may be necessary by grantor for maintenance or normal operations of the property or during emergency situations will be prohibited or as may otherwise be specifically provided for in the Easement;
- construction or creation of new roads or jeep trails, except as otherwise provided for in this Easement;
- motorized vehicles will be prohibited except on established trails and roads unless necessary: (i) to protect or enhance the purposes of this Easement, (ii) for emergency purposes, and (iii) to retrieve game that has been hunted legally;

Item 3, cont.

- areas currently used for silvicultural activities as established by the baseline documentation may continue to be used for those activities; lands that are depicted in the baseline documentation as being natural areas shall remain natural areas;
- actions or activities that may reasonably be expected to adversely affect threatened or endangered species shall be prohibited;
- any subdivision of the land except as otherwise provided for in the Easement shall be prohibited;
- signs, billboards, or outdoor advertising of any kind erected or displayed on the property, except that grantee may erect and maintain signs designating the property as land under the protection of grantee will be prohibited;
- commercial water wells on the property will be prohibited;
- cattle operation on the property for either private or commercial use will be prohibited;
- cutting of cypress trees anywhere on the property will be prohibited;
- mitigation banks pursuant to section 373.4135, et seq., F.S., will be prohibited; and
- fallow agriculture lands as depicted on the baseline documentation shall not be converted to active agriculture use except as otherwise provided in the Easement.

Owner's Rights

The proposed Easement will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- the right to observe, maintain, photograph, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding; the right to own the hunting and fishing rights on the property and grantor may lease and sell privileges of such rights;
- the right to conduct controlled or prescribed burning on the property;
- the right to mortgage the property; provided, however, that the mortgagee's lien shall be inferior to and lower in priority than this Easement;
- the right to contest tax appraisals, assessments, taxes, and other charges on the property;
- the right to continue to use maintain, repair, and reconstruct, but not to relocate or enlarge, all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches, and such other facilities on the property as depicted in the baseline documentation;
- the right to exclusive use of the improvements depicted in the baseline documentation or provided for in this Easement;
- the right to prepare and implement an upland and wetland restoration plan on those portions of the property that have been altered by past agriculture activities. Upland restoration will include conversion of fallow agricultural lands as depicted in the baseline documentation to longleaf pine-wiregrass, or other vegetative communities as appropriate, and wetland restoration will include previously impounded wetlands. The Florida Fish and Wildlife Conservation Commission and other government and private conservation agencies and organizations will be consulted for preparing and implementing the restoration plan;
- the right to host on the property relocation of endangered or threatened species and species of special concern;

Item 3, cont.

- the right to engage in silviculture only within those areas depicted on the baseline documentation as silvicultural or agricultural areas, in accordance with the best management practices of the Division of Forestry of the Department of Agriculture and Consumer Services (DACCS). Pine trees may be removed from any areas of the property that are not shown as hydric communities on the baseline documentation, and hardwoods may be removed from upland communities to restore the native pine communities;
- the right to construct one new residential structure on the property, along with an access driveway and appropriate-sized outbuildings such as barns, more particularly described hereinafter. The residential structure shall be limited to 7,500 square feet of heated and cooled area and 1,500 square feet of overhangs, porches and other such non-heated and cooled areas and have no more than two related outbuildings limited to 3,000 square feet each. The new residential and outbuilding impacts shall be limited to 7.5 acres, including the access driveway and utilities serving such lot, all of which shall be located at least 150 feet from any wetland area as identified in the baseline documentation and shall not be located in any natural areas identified in the baseline documentation;
- the right to use five acres on the northerly portion of the property and five acres on the southerly portion of the property as an area for the construction and maintenance of buildings and structures to be used in the conservation and restoration of the property. The total square footage of structures allowed under this paragraph shall not exceed 10,000 square feet;
- the right to manage the property for recreational hunting. Management may include use of herbicides for habitat restoration and use of temporary structures such as tree stands, quail pens, feeders, picnic areas, and duck blinds;
- the right to maintain existing game food plots as indicated on the baseline documentation report;
- the right to keep a maximum of five adult horses on the areas that are currently designated as agricultural in the baseline documentation for personal, non-commercial use by the property's residents, so long as Grantor uses best management practices for equine operations as may be adopted from time to time by DACCS or its successor; and
- the right to convert to improved pasture 10 acres of existing old field within those areas currently designated as agricultural in the baseline documentation for personal, non-commercial use.

Public Access

The grantor grants to members of the public the limited right to conduct scientific studies and environmental education programs on the property provided the person or persons seeking access is a member of a legitimately recognized scientific, environmental, conservation, or educational organization. Grantor shall not be required to allow this right to be exercised more than six times in a calendar year. Additionally, the grantor shall make good faith effort to allow public, private, and chartered schools or other educational organizations the opportunity to conduct educational programs or tours on the property twelve times a year. Any person or group desiring to exercise the right granted herein to conduct scientific studies or environmental education programs on the property shall make written request to the grantor at least 30 days in advance of any proposed

Item 3, cont.

visit, and include in the request the proposed date(s) and time(s), identity of the proposed participants, location(s), and purpose(s). Grantor may require that each participant execute an appropriate liability waiver and furthermore may impose additional rules governing any such access in order to assure prevention or restoration of any environmental or other damage to the property, trash removal, use of off-road vehicles, and other reasonable rules to assure compliance with the terms of this Easement. The grantor is not required to provide any access that would cause him to be unable to obtain liability insurance.

Mortgages and Liens

All mortgages and liens will be satisfied or subordinated 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. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

A 40-foot-wide unrecorded roadway and utility easement for Tallamont Road affects 20 feet of the property along the northeastern boundary, which encompasses 0.93 acres.

Closing Information

A title insurance commitment, environmental site assessment, baseline documentation report, and, if necessary, a survey will be obtained by the Board of Trustees prior to closing.

Management

As an Easement, or less-than-fee interest, the project will be managed by the private landowner with restrictions. The purchase of the development rights, the prohibition of the further conversion of existing natural areas to more intensive uses and limited public access is the primary focus of the Easement.

Pursuant to section 259.032(9)(e), F.S., DSL staff recommends that the Board of Trustees designate DSL's Office of Environmental Services as the Easement monitor for this site.

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 3, Pages 1-97)

RECOMMEND APPROVAL