

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
APRIL 13, 2010

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

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

Item 1 Minutes

Submittal of the Minutes from the February 9, 2010 Cabinet Meeting.

(See Attachment 1, Pages 1-14)

RECOMMEND APPROVAL

Item 2 Chapter 18-1, F.A.C., Rule Amendments Adoption/State Land Acquisition Procedures/Appraisal Requirements

REQUEST: Final adoption of proposed amendments to chapter 18-1, F.A.C., "State Land Acquisition Procedures," pursuant to section 120.54(3)(a)1, F.S., that will update and modify appraisal requirements for Board of Trustees land transactions.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP), Division of State Lands (DSL)

STAFF REMARKS: Pursuant to section 120.54(3)(a)1, F.S., consent of the Board of Trustees as the agency head is required before DEP may adopt a proposed rule.

DSL published a Notice of Development of Rulemaking for these proposed amendments in the Florida Administrative Weekly (F.A.W.) on October 30, 2009. The Board of Trustees approved the Notice of Proposed Rulemaking on January 26, 2010 which was published in the F.A.W. on February 5, 2010. No comment has been received by the public or others. The Joint Administrative Procedures Committee has no comments after reviewing the proposed amendments to chapter 18-1, F.A.C.

In 2008, the Legislature passed Senate Bill 542, modifying section 253.025(6)(f), F.S., requiring the Board of Trustees to adopt a rule specifying the guidelines for waiver of a sales history in appraisal reports for land acquisitions. Thus, amendments are proposed to rule 18-1.006, F.A.C., to implement the requirements for a waiver of the sales history. Pursuant to section 253.025(6)(f), F.S., appraisal reports shall include a sales history of an acquisition parcel for at least the prior 5 years. The statute also provides that if the sales history would not be useful, or it is cost prohibitive compared to the value of the parcel, the sales history may be waived. The proposed amendments to rule will waive the sales history when there are large numbers of similarly sized parcels. The criteria for a waiver would be an appraisal assignment where: 1) there are 25 or more parcels, and 2) each parcel is 20 acres or less in size, and 3) the most recent ad valorem tax assessment for each parcel is \$75,000 or less, excluding tax exemptions. As an example of this, an appraisal of multiple lots within a subdivision would not require the sales history for each lot.

Item 2, cont.

Senate Bill 542 (2008), also made changes to section 253.025(6)(e), F.S., regarding the appraisal review requirements for non-conservation land acquisitions. The changes to statute removed the requirement for a field inspection when approving an appraisal for parcels with a value in excess of \$250,000. As a result to this change in statute, the proposed amendments to rule 18-1.007(5), F.A.C., will make the review requirement for non-conservation land acquisitions consistent with the existing appraisal review requirements for conservation land. The proposed rule change will require that, for acquisition parcels with values greater than \$500,000, an appraisal review will be developed and reported according to the requirements of Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP) and the Supplemental Appraisal Standards for Board of Trustees Land (Supplemental Standards). For acquisition parcels with values of \$500,000 or less, a cursory review by DEP's Bureau of Appraisal will be conducted for assurance that requirements of the appraisal assignment were met.

An additional change to chapter 18-1, F.A.C., and the Supplemental Standards will update the citation of the USPAP to the version effective January 1, 2010. Also, several typographical errors will be corrected in the Supplemental Standards in regard to the name of the document. There are several references which include the previous name which had "Acquisitions" in the title. The Supplemental Standards now apply to all appraisals for acquisition, surplus and use of state land; thus, "Acquisitions" was deleted from the title. The Supplemental Standards are adopted by reference in rule 18-1.002(27), F.A.C.

DEP recommends that the Board of Trustees approve the proposed amendments to chapter 18-1, F.A.C. and authorize the Secretary to execute and submit the certification documents to the Secretary of State in accordance with chapter 120, F.S.

(See Attachment 2, Pages 1-26)

RECOMMEND APPROVAL

Item 3 Doctors Lake Marina, Inc. Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for modification of (1) an existing conservation easement to allow for the construction of additional docking structures; and (2) a 25-year sovereignty submerged lands lease to increase the preempted area from 135,452 square feet to 227,570 square feet for a 158-slip commercial docking facility.

APPLICANT: Doctors Lake Marina, Inc.
Lease No. 100555972
Application No. 10-064662-008-EI

Item 3, cont.

LOCATION: 3108 Highway 17 South
Orange Park, Clay County
Section 44, Township 04 South, Range 26 East
Aquatic Preserve: No
Waterbody/Classification: Doctors Lake, Class III, not approved for shellfish
harvesting
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Zone: variable width slow speed shoreline buffer

CONSIDERATION: \$24,459.28 representing (1) \$20,929.29 as the initial annual lease fee computed at the base rate of \$0.153281 per square foot, discounted (a) 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 (b) discounted 10 percent for participation in the Clean Marina Program pursuant to section 18-21.011(1)(b)13, F.A.C.; and (2) \$3,529.99 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. 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., 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 Detail

The applicant is proposing to expand an existing 98-slip (96 permanent and 2 temporary for sewage pumpout) docking facility by: (1) increasing the preempted area by 92,118 square feet for a total of 227,570 square feet; and (2) transferring 60 dry storage slips to wet slips, thereby creating a 158-slip (156 permanent and 2 temporary for sewage pumpout) docking facility.

Background

On April 12, 1988, the Board of Trustees approved a 5-year lease for a 98-slip commercial marina preempting 116,930 square feet of sovereignty submerged lands for Inlet Marine Sales & Services, Inc. (Inlet Marine), subject to a conservation easement (CE) prohibiting any additional docking facilities and/or boat ramps along the shoreline. The CE was not granted until the applicant purchased the upland property.

Item 3, cont.

On December 28, 1992, the applicant purchased the upland property. On February 11, 1993, the applicant granted the required CE to the Board of Trustees. The purpose of the CE was to ensure no additional structures were constructed, placed, or maintained on the property or the adjacent submerged lands.

On March 12, 1993, DNR, under delegation of authority, assigned the lease to the applicant and modified the lease to increase the term to 25 years.

On November 10, 1997, the Department of Environmental Protection (DEP) observed boats at the facility moored outside of the existing lease area. On January 12, 1998, DEP and the applicant entered into a temporary use agreement (TUA) for the unauthorized preemption of approximately 4,000 square feet of sovereignty submerged lands. The TUA required payment of (1) \$656.20 in lease fees in arrears, which were assessed from June 5, 1997 to December 15, 1998; and (2) \$4,000 in administrative fines, for a total of \$4,656.20.

On April 23, 1999, DEP and the applicant entered into a second TUA because the first TUA expired during the review process. The second TUA covered the unauthorized preemption of 4,000 square feet, covered in the first TUA, and an additional 6,822 square feet along the terminal ends of the existing docks, for a total of 10,822 square feet. The TUA required payment of \$1,132.26 in lease fees for the additional area to cover a period from December 16, 1998 to April 1, 2000.

On August 12, 1999, the Board of Trustees approved a lease modification to (1) increase the preempted area by 10,822 square feet, covered in the second TUA, for a total of 127,752 square feet; and (2) allow liveaboards at the docking facility. This modification did not require construction of new in-water structures only an increase to the lease boundary.

On February 22, 2002, DEP, under delegation of authority, modified the lease to increase the preempted area from 127,752 square feet to 135,452 square feet to allow vessels to moor perpendicular, instead of parallel, to the northern-most dock because these vessels were subject to excessive wind and wave action from Doctors Lake, especially during nor'easters. This modification did not increase the number of slips (98); however, an additional 7,700 square feet of sovereignty submerged lands were preempted.

On October 27, 2006, DEP responded to an anonymous complaint that turbid water was observed in the man-made canal at the facility. No water quality violation was observed; however, a dock with two boat moorings, located outside of the lease area, was observed. On November 20, 2006, DEP issued a non-compliance letter to the applicant for the unauthorized dock and boat moorings.

On April 28, 2009, DEP and the applicant entered into a Consent Order for the unauthorized dock and boat moorings preempting approximately 600 square feet of sovereignty submerged lands. The Consent Order required payment of (1) \$159.83 for lease fees in arrears, which were

Item 3, cont.

assessed from October 3, 2006 to March 12, 2009; (2) \$1,000 for civil penalties; and (3) \$250 for costs and expenses, for a total of \$1,409.83.

Project Description

(1) Conservation Easement Modification

The applicant is requesting a modification of the existing CE to allow for the construction of additional docking structures to accommodate the transfer of 60 dry slips to wet slips. In exchange for modifying the existing CE, which is 10 foot wide and runs along the applicant's entire shoreline, the applicant proposes to place a CE over its entire upland parcel. The proposed conservation easement would: (1) prohibit the construction of any additional docking facilities or other such water access development along the applicant's shoreline; and (2) limit the total number of wet and dry slips, inclusive of all shoreline and upland storage, to 373.

The existing CE was required by the Board of Trustees, at the recommendation of the former Department of Natural Resources' (DNR) Bureau of Marine Research, to significantly reduce the potential adverse impact to manatees.

The Florida Fish and Wildlife Conservation Commission (FWC) performed a manatee impact review on the proposed project. To ensure that this request to modify the lease and CE did not change the intent to limit the development of the site, the existing number of upland dry slips had to be determined. Based upon aerial photography and records of upland dry storage customers, it was determined that 275 upland dry storage slips and 98 wet slips, a total of 373 vessel slips, currently exist at this facility. On April 6, 2009, FWC provided DEP with recommended manatee protection measures, for this proposed project, that would satisfy the requirements of section 373.414(1)(a)2, F.S. These measures have been addressed in the permit and/or included as special lease conditions.

(2) Lease Modification

The docking facility will be used for the mooring of recreational vessels in conjunction with an upland commercial marina, dry dock, sales and service facility and will accommodate recreational vessels up to 70 feet in length with drafts of 5 feet. This facility has an existing clean marina designation and the applicant has committed to continuing its participation in the clean marina program.

A minimum of 90 percent of all the wet 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.

There is an existing boat ramp and temporary staging area, in the eastern portion of the lease area, which will continue to be utilized exclusively for the applicant's dry storage, sales, and services facilities. There is also an existing dock in the man-made canal, adjacent to the applicant's western shoreline, used as a temporary staging area for the applicant's dry storage, sales, and services facilities.

Item 3, cont.

If the Board of Trustees approves this request, there will be an increase in the number of wet slips at the docking facility; however, there will not be an increase in the total number of wet and dry slips at the facility (158 wet and 215 dry).

Noticing

The proposed project was required to be noticed pursuant to section 18-21.004(1)(m), F.A.C. Approximately 48 property owners were specifically noticed and one objection was received. DEP is of the opinion that the objector's concerns have been addressed.

Permit Summary

DEP's environmental resource permit does not address sewage pumpout facilities or fueling facilities in the expansion area, as these facilities were previously authorized/permitted by DEP and have been constructed. Sewage pumpout facilities, fueling facilities, and liveboards are authorized in the existing lease and will continue to be authorized in the proposed lease modification.

Commenting Agency

The recommendations of FWC regarding protection of manatees have been addressed in the permit and/or included as special lease conditions. Clay County is not a designated manatee county; however, Clay County voluntarily developed a manatee protection plan (MPP), which received local, state, and federal approval in 2006. FWC stated the proposed project is consistent with the MPP.

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 Clay County.

(See Attachment 3, Pages 1-36)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$24,459.28**