

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
AUGUST 10, 2010

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 May 25, 2010 Cabinet Meeting.

(See Attachment 1, Pages 1-7)

RECOMMEND APPROVAL

Substitute Item 2 Naples Sailing and Yacht Club, Inc. Recommended Consolidated Intent/Lease Modification/Easement

REQUEST: Consideration of an application for (1) modification of an existing five-year sovereignty submerged lands lease to increase the preempted area from 125,956 square feet to approximately 158,752 square feet, more or less, for a proposed 95-slip private yacht club docking facility; (2) issuance of a 10-year sovereignty submerged lands private easement containing 41,690 square feet, more or less, for a proposed navigation channel; and (3) authorization for the severance of 1,590 cubic yards of sovereignty material.

APPLICANT: Naples Sailing and Yacht Club, Inc.
Lease No. 110546725
Easement No. 41250
BOT No. 110234845
Application No. 11-0165611-002

LOCATION: 896 River Pointe Drive
Naples, Collier County
Section 10, Township 50 South, Range 25 East
Aquatic Preserve: No
Waterbody Classification: Naples Bay, Class II, not approved for shellfish harvesting
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Yes, idle speed-no wake zone

CONSIDERATION: \$52,567.92, representing (1) \$24,333.67 as the initial lease fee computed at the base rate of \$0.153281 per square foot; (2) \$1,256.75 as the initial 25 percent surcharge payment for the additional area; (3) \$23,400 as the easement fee computed at \$13,800 for the easement value and \$9,600 as ten percent of the value enhancement; and (4) \$3,577.50 for the severance of 1,590 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard, pursuant to section 18-21.011(3)(a)2, F.A.C. Sales tax and county discretionary sales

Substitute Item 2, cont.

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., and 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 that require authorization to use sovereignty submerged lands.

Project Synopsis

The lessee proposes to modify the existing private yacht club docking facility by removing three existing boat slips and constructing 16 new boat slips, resulting in a 95-slip private yacht club docking facility.

Background

On February 21, 1984, the Board of Trustees approved a five-year sovereignty submerged lands lease containing 87,234 square feet for the original docking facility.

On February 21, 1989, under a delegation of authority, the former Department of Natural Resources (DNR) renewed the lease.

On April 26, 1989, under a delegation of authority, DNR modified the lease to add 2,980 square feet (90,214 square feet total) and increasing the number of boat slips to 69.

On December 1, 1992, the Board of Trustees approved a lease modification that expanded the lease by 34,640 square feet (124,854 square feet total), authorized 11 additional boat slips (80 total) and authorized dredging of 658 cubic yards of sovereign material. DNR subsequently issued the modified lease instrument.

On September 28, 1995, an inspection by Department of Environmental Protection (DEP) revealed vessels mooring partially outside of the lease. The non-compliance did not entail adverse environmental impacts to sovereignty submerged lands. DEP notified the lessee of the non-compliance and the lessee immediately corrected the non-compliance; therefore, no administrative fines or lease fees in arrears were assessed. A June 10, 1999 inspection by DEP revealed the lease to be in compliance.

On March 20, 1996, DEP renewed and modified the lease to add 1,141 square feet (125,956 square feet total) under delegation.

On April 26, 1999, DEP renewed the lease under delegation.

On June 10, 1999, a site inspection determined the facility to be in compliance.

Substitute Item 2, cont.

On April 7, 2004, an inspection by DEP revealed vessels mooring partially outside of the lease. The non-compliance did not entail adverse environmental impacts to sovereignty submerged lands. DEP verbally informed the dockmaster of the non-compliance during the inspection, and the dockmaster immediately corrected the non-compliance; therefore, no administrative fines or lease fees in arrears were assessed.

On April 26, 2004, DEP renewed the lease under delegation.

On October 26, 2007, DEP denied a previous version of the proposed project because the project did not adequately address DEP's concerns about the need to minimize impacts to sovereignty submerged lands and to ensure that the proposed project would maintain navigable access for the general public between the east and west sides of Naples Bay. The lessee subsequently filed requests for extensions of time to file a petition challenging the denial, which DEP approved. DEP and the lessee immediately engaged in constructive negotiations to address the reasons for denial.

On December 15, 2008, an inspection by DEP revealed: (1) vessels mooring partially outside of the lease; and (2) wooden bumpers had been installed on some of the docks, making the docks wider than authorized, increasing the preempted area. The non-compliance did not entail adverse environmental impacts to sovereignty submerged lands. To resolve the non-compliance, DEP and the lessee entered into Consent Order No. 08-2958-11-SL on July 12, 2010. The consent order required payment of \$250 as an administrative fine, \$1,000 regulatory penalty, \$500 for DEP costs and expenses, and \$646.38 as lease fees in arrears. Payment was received on July 12, 2010. A July 30, 2010 inspection by DEP revealed that the lessee is in compliance.

On April 26, 2009, the lease expired. Lease fees are current through 2011.

On May 22, 2009, DEP issued a revised denial to clarify the reasons for denial of the previous version of the proposed project. On June 5, 2009, the lessee filed its First Amended Petition challenging the revised denial. DEP and the lessee continued constructive negotiations to address the reasons for denial. On November 4, 2009, DEP and the lessee entered into a settlement agreement to jointly move the Division of Administrative Hearings to relinquish jurisdiction over this matter to DEP in order for DEP to revise its proposed agency action consistent with the terms of the settlement agreement. The settlement agreement provided that the lessee would submit a modified application to DEP to revise the proposed project to address the reasons for denial.

On December 23, 2009, the lessee submitted a revised application that reduced the number of proposed boat slips and the proposed dredge area. The proposed project will maintain boating access for the general public between the east and west sides of Naples Bay by providing a clearly defined navigation channel marked with navigation aids meeting requirements of the United States Coast Guard and the Florida Fish and Wildlife Conservation Commission (FWC).

Substitute Item 2, cont.

Project Detail

The proposed project will eliminate three existing boat slips and add 16 boat slips to the existing 82-slip facility, thereby creating a 95-slip docking facility. The docking facility will accommodate private recreational boats. Upland activities will remain a private yacht club. Boat slips will accommodate vessels up to 50 feet long, with a maximum draft of four feet.

The lessee proposes to dredge: (1) 65 cubic yards of sovereignty material to provide adequate water depth (approximately -5 feet mean low water) for the vessels proposed to be moored at the modified docking facility; and (2) 1,525 cubic yards of sovereignty material to create a navigation channel to -6 feet mean low water adjacent to the modified docking facility. The lessee does not qualify for a waiver of the severance fees, pursuant to section 18-21.011(3)(c), F.A.C.; therefore, a special approval condition requires the lessee to pay severance fees to DEP prior to receipt of a fully executed modified lease. There are no significant benthic resources in or adjacent to the area proposed to be dredged. The spoil material will be disposed of at an appropriate self-contained upland site.

The lessee has submitted an appraisal for the value of the easement and DEP has accepted the conclusion of value of \$13,800 for the easement and \$9,600 as ten percent of the enhanced value for a total of \$23,400.

Noticing

The current modified lease request and easement request were required to be noticed pursuant to section 18-21.004(1)(m), F.A.C. DEP has received five letters objecting to the lessee's proposed project. DEP also received 14 letters and a petition with 107 signatures by local property owners objecting to the lessee's previously proposed project. The objections received raised the following concerns:

- (1) the bathymetric data provided to DEP misrepresents water depths, and the area to be dredged is shallower than shown on the submitted bathymetric data;
- (2) navigation and safety issues, including increased boat traffic and congestion;
- (3) inconsistency with the City's comprehensive plan;
- (4) water quality concerns;
- (5) adverse impact to riparian views;
- (6) adverse impacts to riparian rights;
- (7) nighttime lighting of the expanded docking facility;
- (8) removing open water areas from use by fishermen, boaters, kayakers, dolphins and manatees;
- (9) susceptibility to high winds from tropical storms and hurricanes, and potential damage to nearby properties;
- (10) upland parking issues including access for emergency vehicles; and
- (11) a significant portion of the material to be dredged is rock, and the removal of that rock will allow interchange between surface waters and groundwater, thereby adversely affecting groundwater.

Substitute Item 2, cont.

DEP is of the opinion that the objections received are addressed as follows:

- (1) water depths have been provided on drawings signed and sealed by a professional engineer registered in the state of Florida;
- (2) this portion of Naples Bay is an idle-speed zone, the docking facility expansion will not be constructed until after the lessee dredges the proposed navigation channel south of the proposed docking facility expansion, and the channel will be required to be marked by navigation aids pursuant to Section 327.41, F.S. Also, the U.S. Coast Guard provided written comments on July 16, 2010, stating that it has no objection to the proposed project. Additionally, the lessee's docking facility expansion (docks and mooring pilings) will have lights and reflectors adequately illuminating the proposed structures;
- (3) the City has determined that the proposed project is consistent with the City's comprehensive plan;
- (4) water quality has been addressed via special lease conditions and specific conditions in the draft permit for the proposed docking facility expansion and navigation channel, including: (a) implementation of a marina operations plan that will minimize discharges of pollutants to Naples Bay; (b) the proposed dredging that will remove sediments that have high concentrations of copper and provide increased water depth that may reduce re-suspension of copper laden sediments into the water body; (c) the lessee's one-time financial commitment of \$78,000 to partially fund the design and construction of a stormwater treatment system within the City of Naples (City); and (d) the lessee's annual \$1,500 payment, for the first five years of the operational phase of DEP's permit, to the City to be used by the City exclusively for funding educational seminars for landscape contractors seeking certification from the City as lawn/landscape professionals;
- (5) riparian rights as they may relate to unobstructed views across an affected waterbody are not specifically defined by rule;
- (6) the lessee has submitted a survey and legal description prepared by a Professional Surveyor and Mapper showing that the proposed project is within the lessee's riparian area;
- (7) nighttime lighting is a local government issue and the City of Naples has provided a comprehensive plan consistency letter for the proposed action;
- (8) the proposed navigation channel will ensure continued navigable access in Naples Bay, and recommendations of the Florida Fish and Wildlife Conservation Commission regarding the protection of manatees have been addressed as specific conditions in DEP's environmental resource permit;
- (9) the proposed docking facility is no more susceptible to adverse weather conditions than the existing docking facility;
- (10) upland parking is a local government issue and the City of Naples has provided a comprehensive plan consistency letter for the proposed action; and
- (11) the agent, a Professional Engineer, states that the new channel dredging will not include any rock dredging according to the boring profiles received from another engineering firm. Also, while there is rock in the Gordon River north of the proposed dredging project, that rock is surficial rock and not a confining layer and therefore does not separate the salt water from the freshwater aquifer. As such, no saltwater intrusion will occur as a result of the proposal.

Substitute Item 2, cont.

Permit Summary

DEP's environmental resource permit (ERP) prohibits liveaboards, requires sewage pumpout facilities, and prohibits fueling of vessels.

Commenting Agency

The recommendations of the FWC regarding the protection of manatees have been addressed as specific conditions in the ERP. Additionally, Collier County is a designated manatee county with an adopted and implemented manatee protection plan (MPP) that has been approved by the FWC. FWC has stated that the proposed project is consistent with the approved 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 the City of Naples.

(See Attachment 2, Pages 1-43)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$52,567.92**

**Substitute Item 3 Chapter 18-14, F.A.C., Notice of Proposed Rulemaking/
Administrative Fines for Damaging State Lands or Products Thereof**

REQUEST: Approval to publish a Notice of Proposed Rule regarding amendments to Chapter 18-14, F.A.C., Administrative Fines for Damaging State Lands or Products Thereof, regarding assessing and collecting administrative fines for violations on state-owned submerged lands.

APPLICANT: Department of Environmental Protection (DEP)

LOCATION: Statewide

STAFF REMARKS: Pursuant to Section 120.54(3)(a)1., F.S., approval of the Board of Trustees, as the agency head, is required before DEP may publish a proposed rule for eventual adoption. If the Board of Trustees approves publication, DEP will publish the rule in the *Florida Administrative Weekly* (FAW). The notice will include a date for a hearing to be held, if requested. There will be a 21-day period following publication for anyone to comment on or challenge the proposed rules. The hearing, if one is requested, is another opportunity for the public to comment and propose amendments. DEP staff will consider all comments to determine

Substitute Item 3, cont.

if the rule should be revised and will publish a Notice of Change, if needed. However, if the changes are significant, DEP will present a revised proposed rule to the Board of Trustees before publishing a Notice of Change. DEP will bring the final rule back to the Board of Trustees for adoption.

Background

Chapter 18-14, F.A.C., was first adopted in 1985 and has not been amended since then. In December 2008, DEP began reviewing the procedures for collection of fines and fine amounts in Chapter 18-14, F.A.C., to determine if rule revisions were appropriate. The Department realized that changes were needed to amend the rule with the goal to achieve greater compliance. Additionally, over the past several months, the Department has been conducting process improvement efforts and this rule was identified as needing improvement.

The proposed changes are needed to encourage compliance, allow staff to resolve issues more quickly, and help streamline the process. This streamlining also will allow non-compliant owners time to make corrections immediately and avoid penalties. These changes will benefit the public and Department staff.

Noticing and Public Workshop

Pursuant to delegation from the Board of Trustees to initiate rulemaking and hold public workshops, staff published a “Notice of Development of Rulemaking” in the FAW on October 2, 2009, which included announcing the October 23, 2009, public workshop. Staff mailed the notice to 358 potential interested parties. To make the workshop as available to the public as possible, it was held with a teleconference number so that anyone around the state could call in. A preliminary draft rule was distributed to all on the interested parties mailing list for discussion at the workshop.

The public had minimal issues and concerns with the initial alterations to the rule. Comments from the public were taken into consideration and concerns were addressed by changes to the rule. Staff thereafter made additional revisions to a degree that staff announced a second workshop in a notice published in the FAW March 19, 2010, to be held April 16, 2010. The workshop was held in Tallahassee, also with a call in number. There were no additional concerns. Notices of both workshops were published on the Department’s Public Notices Calendar.

Summary of the Rule

The purpose of the amendments is to revise and clarify the assessment of administrative fines for violations on state-owned submerged land. The proposed amendments will provide for issuance of a Warning Letter instead of a Notice of Violation. Currently, Chapter 18-14, F.A.C., requires staff to use a formal Notice of Violation to provide initial notice of unresolved violations and potential fines. The proposed amendments streamline this process to one document that notifies the responsible party of possible violations and allows for the Department to collect fines if the responsible party refuses to comply with required corrections. This change will be more efficient for staff and the public. Further, the proposed amendments remove language that

Substitute Item 3, cont.

imposes limits on fines for first and second offenses. Lastly, the amendments make it a violation of the rule to fail to comply with an order of the Board of Trustees of the Internal Improvement Trust Fund or to fail to comply with a condition of authorization to locate a structure or vessel on state land.

Commenting Agencies

This rule does not affect other agencies and no comments were received from any on the interested parties mailing list.

Comprehensive Plan

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

(See Attachment 3, Pages 1-6)

RECOMMEND WITHDRAWAL

**Item 4 Deepwater Horizon Oil Spill Incident Status Update/Emergency Response Efforts/
BP/Gulf of Mexico**

Status update of the emergency response efforts to protect Florida's shoreline from the Deepwater Horizon oil spill incident in the Gulf of Mexico.

RECOMMEND INFORMATIONAL