

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JANUARY 23, 2013

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 Grand Harbor Condominium Owners Association, Inc., Lease Renewal/Modification/Authorization/Conservation Easement Modification

REQUEST: Consideration of an application for (1) authorization to exceed the preempted area to shoreline ratio; (2) a modification of an existing conservation easement to allow for additional preemption; and (3) renewal and modification of a five-year sovereignty submerged lands lease to increase the (a) term to ten years, pursuant to section 253.0347(1), F.S.; and (b) preempted area from 16,906 square feet to 27,334 square feet, more or less, for a private residential multi-family docking facility.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Grand Harbor Destin Condominium Owners Association, Inc.
Lease No. 460028621
Application No. 46-0134434-011-EE

LOCATION: 662 Highway 98 East, Destin
Destin Harbor (a/k/a Old Pass Lagoon), Okaloosa County

CONSIDERATION: \$4,116.67, representing: (1) \$4,378.74 as the initial annual lease fee computed at the base rate of \$0.160194 per square foot; (2) less \$679.70 as the lease fee discount for private residential multi-family facilities, pursuant to section 253.0347(2)(b), F.S.*; and (3) plus \$417.63 as the one-time 25 percent surcharge payment for the additional area, pursuant to rule 18-21.011(1)(b)3., F.A.C. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee shall be adjusted based on six percent of the annual income if it proves to be greater than the fee computed at the base rate, pursuant to rule 18-21.011(1)(a)1., F.A.C.

*HB 13 was enacted by the legislature during the 2012 legislative session and became effective July 1, 2012. Chapter 2012-202, Laws of Florida (HB 13), codified in section 253.0347, F.S., states, among other things, that private residential multi-family facilities are not required to pay a lease fee on a preempted area of 10 square feet of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest given that there is no more than one wet slip per upland residential unit.

STAFF REMARKS: The project is required to demonstrate that it is “not contrary to the public interest,” pursuant to Article X, Section 11 of the Florida Constitution, Chapter 253, F.S., and rule 18-21.004(1)(a), F.A.C. The lessee has provided reasonable assurance that the proposal will maintain essentially natural conditions; will not significantly impact fish and wildlife and other natural resources, including public recreation and navigation; is consistent with the goals and objectives of the “Conceptual State Lands Management Plan”; is consistent with the local government’s comprehensive plan; and will not interfere with the riparian rights of adjacent property owners. Therefore, the Department of Environmental Protection (DEP) is of the opinion that the proposal is “not contrary to the public interest” and otherwise meets all

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applicable requirements for a proprietary authorization to use sovereignty submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, Chapter 253, F.S., associated rule 18-21, F.A.C., and the direction of the Board of Trustees.

Background

The original lease containing 16,906 square feet was authorized by DEP under delegation for a term of five years beginning on June 4, 1999. On March 24, 2011, DEP documented boats mooring outside of the existing lease area. A Temporary Use Agreement (TUA) was executed on June 15, 2012, to expire on June 15, 2013, for the additional 6,238 square feet of preempted area. The lessee has paid all fees in accordance with the terms of the TUA and is current on lease fees through June 3, 2013.

Project Detail

The proposed project is to expand the existing lease area from 16,906 square feet to 27,334 square feet (an increase of 10,428 square feet) in order to accommodate larger vessels within the facility's existing slips. The existing facility accommodates vessels ranging in length from 30 to 50 feet. The proposed expansion will accommodate vessels up to 65 feet in length with drafts up to five feet. No additional structures are proposed, and the use will remain as a 20-slip private residential multi-family docking facility associated with a 47-unit upland residential condominium development.

Net Positive Public Benefit

The lessee's shoreline is approximately 424 linear feet and is used in the 40 square foot to 1 linear foot ratio calculation, or 40 to 1, pursuant to rule 18-21.004(4)(b)2., F.A.C., which allows the lessee to preempt up to 16,960 square feet without requiring net positive public benefit (NPPB). The proposed lease area exceeds the 40 to 1 ratio by approximately 10,374 square feet and is required to provide NPPB, pursuant to rule 18-21.004(4)(b)2.e., F.A.C. As NPPB, the lessee has proposed to contribute \$46,800 to the City of Destin (City) towards Captain Royal Melvin Heritage Park and Plaza (Heritage Park) and Harbor Boardwalk.

The purpose of Heritage Park is to provide additional harbor access, open space, as well as recreational and educational opportunities along the Destin Harbor as detailed in the City's adopted Harbor Community Redevelopment Area Plan. The City's goal is to preserve waterfront views, promote water dependent activities, foster a pedestrian-oriented environment, and provide convenient public access to the planned Harbor Boardwalk and charter fishing fleet activities.

Florida Communities Trust (FCT) approved the City's management plan for Heritage Park in May 2010, which called for the shoreline of Heritage Park to be incorporated into the planned Harbor Boardwalk that will eventually run along the northern shore of Destin Harbor. The management plan estimated that the construction costs of the portion of the Harbor Boardwalk on the Heritage Park site will cost \$500,000. In June 2010, FCT awarded \$2 million in Florida Forever funds to the City, with the City contributing \$2.6 million in local matching funds, for the acquisition of Heritage Park. Management and improvement costs for Heritage Park were not

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included in the \$4.6 million used to acquire the property. At this time, the Harbor Boardwalk project is substantially completed, and the Heritage Park improvements are scheduled to commence by September 2013.

Conservation Easement

When the original lease was authorized by DEP in 1999, the lessee was required to record a conservation easement (CE) in favor of the Board of Trustees over the entire shoreline, thereby waiving any further riparian rights of ingress and egress for additional docks and piers, pursuant to rule 18-21.004(4)(g), F.A.C. A conservation easement was recorded on August 31, 1999 in the public records of Okaloosa County. The lessee is now requesting a modification of the existing CE to allow for additional preemption. The modification of the CE has been included as a special lease condition.

Net Positive Environmental Benefit

The proposed project is located in Destin Harbor, a/k/a/ Old Pass Lagoon. Old Pass Lagoon has experienced a decline in water quality dating back to the early 1980s. As a result of these concerns, on March 6, 1984, the Board of Trustees imposed a condition that future developments on sovereignty submerged lands in Old Pass Lagoon must not only meet water quality standards, but must also have a net positive environmental benefit (NPEB) to the water quality in the lagoon. The lessee completed various NPEB projects as required when they obtained their permit in 1999. Because no new structures or slips are proposed, no additional NPEB is required at this time.

Noticing/Interested Parties

The lease modification request was noticed to property owners, within a 500-foot radius of the project, and other interested parties, pursuant to rule 18-21.004(1)(m), F.A.C. Fourteen property owners and interested parties were specifically noticed and no objections were received.

(See Attachment 1, Pages 1-10)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$4,116.67**

**Item 2 Lease and Sublease Amendments/BOT/DEP/Division of Recreation and Parks/
Department of Agriculture and Consumer Services/Florida Agriculture Center
and Horse Park/Marjorie Harris Carr Cross Florida Greenway State Recreation
and Conservation Area/Determination**

REQUEST: Consideration of a request to (1) determine, pursuant to rule 18-2.018(3)(a)1., F.A.C., that it is in the public interest to extend Lease No. 4013, between the Board of Trustees and the Department of Environmental Protection (DEP) for the use and benefit of the Division of Recreation and Parks (DRP), and Sublease No. 4013-090, between DRP and the Department of Agriculture and Consumer Services (DACS), for a term greater than 50 years; and (2) amend Lease No. 4013 and Sublease No. 4013-090 to (a) extend the term to the year 2072; and (b) allow the encumbrance of the leasehold estates created by the sublease to DACS and the subsubleases thereunder for the purpose of facilitating the financing of improvements on the leasehold premises by the Florida Agriculture Center and Horse Park Authority in accordance with the Florida Horse Park Master Development Plan.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTY: Marion

APPLICANT: Florida Agriculture Center and Horse Park Authority, Inc. (Authority)

LOCATION: Sections 30, 31, and 32, Township 16 South, Range 22 East

STAFF REMARKS:

Cross Florida Greenway

In 1942, the U.S. Congress authorized construction of the Cross Florida Barge Canal. Actual construction by the U.S. Army Corps of Engineers did not begin until 1964. Due to environmental concerns, the federal government deauthorized the barge canal project in 1990. In 1993, both the federal government and the Canal Authority of the State of Florida transferred title to barge canal lands (approximately 51,000 acres at that time) to the Board of Trustees, ultimately leading to the creation of the Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area (Cross Florida Greenway).

Today, the Cross Florida Greenway is managed by DRP and is comprised of over 70,000 acres of publicly-owned conservation lands across Citrus, Levy, Marion, and Putnam counties. Over a million visitors annually take advantage of the Cross Florida Greenway's diverse resource-based recreational opportunities, ranging from hiking, bicycling, and equestrian activities, to camping, boating, fishing, and hunting.

Florida Agriculture Center and Horse Park

In 1994, the Florida Legislature authorized construction of an agriculture center and horse park on former canal lands and created the Authority within DACS pursuant to section 570.952, F.S. The legislation empowered the Authority to develop and implement construction and operation of the proposed Florida Agriculture Center and Horse Park (Horse Park), after consultation with the Agriculture Commissioner. It also recognized the promotion of the Horse Park as a joint

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effort between the state and the private sector to utilize experts and generate revenue from many areas to ensure the success of the Horse Park. In 1997, the Horse Park was initially established on 250 acres within the Cross Florida Greenway just east of Interstate 75 in Marion County. In 2002, that acreage was expanded to its current 500-acre boundary, subsequent to a 1999 statutory amendment increasing the maximum acreage allowed for this purpose. Interest in the property was granted via a lease between the Board of Trustees and DEP/DRP, a sublease between DEP/DRP and DACS, and a subsublease between DACS and the Authority.

The Authority commissioned GH2 Gralla Equestrian Architects to develop a Master Development Plan (Master Plan) as a conceptual design to guide development and future growth of the Horse Park. The Master Plan was completed in May 2009, accepted by DEP's Office of Greenways and Trails (now a part of DEP's DRP) in January 2010 following the public review and comment period. The Master Plan conforms to the DRP unit management plan for Lease No. 4013. Within the Master Plan, the Horse Park was designed to be constructed in multiple phases. Under the provisions of section 253.7825, F.S., any amendments to the Master Plan would require review and acceptance by DACS and DRP to ensure compliance with the DRP unit management plan.

Request to Amend Term

In an effort to implement the Master Plan for business development of the Horse Park, the Authority is requesting to extend the term of Lease No. 4013 from the original expiration date of October 26, 2043 until March 31, 2072 and amend the term of Sublease No. 4013-090 to conform to this extension. The amendment to the lease and sublease will then enable DACS to extend its subsublease with the Authority to demonstrate to investors and business partners that the Authority has a long-term interest in and site control of the property in order to facilitate the financing of leasehold improvements on the Horse Park by the Authority.

Public Interest

Pursuant to rule 18-018(3)(a)1., F.A.C., the term of any lease or sublease shall not exceed a maximum term of 50 years unless determined by the Board of Trustees to be in the public interest. DEP offers the following to assist the Board of Trustees in making an affirmative determination that it is in the public interest to extend Lease No. 4013 and Sublease No. 4013-090 for a term greater than 50 years:

- development of the Horse Park, as authorized by the Legislature, will enhance the multiple-use, user-oriented, and resource-based activities anticipated for the Cross Florida Greenway, as set out in section 253.7825, F.S.

Possessory Agreements

The Authority intends to enter into possessory agreements with various as yet unidentified third-parties for uses as approved by DACS that do not [a] exceed ten (10) years in initial term, [b] exceed \$2 million in construction of permanent improvements, or [c] vary from the scope of the Master Plan as approved by DRP or the unit management plan for the Cross Florida Greenway. Indemnification and insurance requirements will be included in the agreements. The planned

Item 2, cont.

uses are defined by the Master Plan and include, but are not limited to, an event plaza, an outdoor arena, stall barns, polo fields, steeplechase tracks, outfitter buildings, and a concession pavilion.

The Authority will seek authorization of the Board of Trustees for any agreement that exceeds the parameters listed above. No authorization shall be granted by the Authority to any third-party that would encumber the fee-simple interest of the Board of Trustees in the subject property or the DRP leasehold interest.

Boundary Amendment and Easements

The current 500-acre boundary is also being amended to better accommodate Cross Florida Greenway trail users passing around the Horse Park via a network of trail corridors along the Horse Park's perimeter. Any access easements that will be required as a result of the boundary amendment will be processed by DEP under delegation of authority. The boundary amendment will also exclude a Florida Champion live oak tree from the Horse Park boundary and include it in the DEP-managed Cross Florida Greenway in order to provide better protection. The comparable land area will be added to the northeast corner and along the northern boundary of the Horse Park to maintain its 500-acre size. This boundary amendment will be processed by DEP under delegation of authority.

Comprehensive Plan

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

(See Attachment 2, Pages 1-2)

RECOMMEND APPROVAL

Item 3 BOT/Festival Fun Parks, LLC, Amended and Restated Lease Amendment/Silver River State Park/Determination

REQUEST: Consideration of a request to (1) determine, pursuant to rule 18-2.018(1), F.A.C., the proposed amendment to Amended and Restated Lease Number 4022A is not contrary to the public interest; and (2) approve Amendment Number One to Amended and Restated Lease No. 4022A by and between the Board of Trustees of the Internal Improvement Trust Fund and Festival Fun Parks, LLC, subject to the full execution of the Asset Transfer Agreement by and between Festival Fun Parks, LLC and the Department of Environmental Protection, Division of Recreation and Parks no later than August 1, 2013.

VOTING REQUIREMENT FOR APPROVAL: Three votes

Item 3, cont.

COUNTY: Marion

APPLICANT: Festival Fun Parks, LLC (FFP)

LOCATION: Section 06, Township 15 South, Range 23 East; and Section 01, Township 15 South, Range 22 East

CONSIDERATION: \$4,000,000 lease buyout in addition to continued payment of current lease fees through September 30, 2013, and Festival Fun Parks, LLC, will continue to operate the Silver Springs Attraction (Silver Springs) through September 30, 2013.

STAFF REMARKS:

Background

On July 21, 1992, the Board of Trustees authorized the former Department of Natural Resources to negotiate an acquisition agreement with Florida Leisure Acquisition Corporation (FLAC), the owners of Silver Springs. FLAC refused to sell the property on which Silver Springs was located unless the state agreed to lease the property back to FLAC to continue operating its tourist attraction. This was with the understanding that Silver Springs would eventually be restored to its natural condition and managed as a state park. The Board of Trustees and FLAC entered into a 15-year lease on December 16, 1993.

On March 6, 1996, the lease was assigned to Ogden Entertainment Services, Inc., and on December 8, 1998, the Board of Trustees approved extending the lease until December 31, 2029. On November 9, 2001, the lease was assigned to Ogden Parks – Florida, Inc., which changed its name to Smartparks – Silver Springs, Inc. In January 2010, Smartparks – Silver Springs, Inc., merged into its corporate parent, Festival Fun Parks, LLC (FFP), the current lessee.

Current Request

Prior to the installation of the Interstate Highway System, Silver Springs was located along a major north/south transportation corridor and attracted thousands of out-of-state visitors annually. Today, instead of passing in front of Silver Springs, tourists take Interstate 75 which is eleven miles away. With big-name draws such as Disney, Universal, SeaWorld and other commercial sites in the Orlando area, natural attractions such as Silver Springs have become secondary destinations. The bulk of visitors are local and regional Floridians. In 2004, three back-to-back hurricanes caused considerable damage and additional loss of revenue for Silver Springs. Profit margins dropped from approximately 23.5 percent to 5.3 percent. As a result, the lessee requested, and the Board of Trustees agreed, to a reduction of annual lease fees on December 7, 2004. In exchange for the fee reduction, the Trustees directed the lessee to commit to investing \$250,000 per year for calendar years 2005 through 2009 in facility maintenance and improvements. FFP met this commitment with the exception of \$280,401, which is in an escrow account and will be spent on facility improvements with approval by the Department of Environmental Protection's (DEP) Division of Recreation and Parks (DRP). This chain of

Item 3, cont.

events, along with the current economic downfall, has left the lessee unable to profitably manage Silver Springs. In an effort to avoid additional loss of funds, FFP is requesting early termination of its lease.

FFP is proposing a lease buyout in the amount of \$4,000,000, which will be reinvested in the Silver Springs property by transitioning it from a tourist attraction, with exotic animals and associated habitats and infrastructure, to a state park with nature-based recreation activities. Silver Springs has been in existence since the 1930s and despite FFP's investments, it remains in serious need of repair. Many of the buildings have been in place since the 1960s and 1970s and despite constant maintenance, FFP and its predecessors have been unable to preserve the integrity of the infrastructure. Because the Board of Trustees' original intent was to have Silver Springs ultimately included as a part of Silver River State Park, DEP has determined that the proposed amendment is not contrary to the public interest. FFP will, if the amendment is approved, prepare Silver Springs for transition to a state park by September 30, 2013. This will be accomplished by removing the exotic animals currently housed on the property, removing amusement rides owned by FFP, and demolishing and removing buildings as designated by DRP.

DRP and FFP will work together in the preparation of an Asset Transfer Agreement that will provide for the transfer of those FFP assets used in connection with the operation of Silver Springs and Wild Waters to DRP that DRP wants to remain in the parks upon termination of Amended and Restated Lease Number 4022A. The proposed amendment to the lease requires the parties to fully execute the Asset Transfer Agreement no later than August 1, 2013.

If the Board of Trustees approves this transaction, management of the subject property will be turned over to DRP as part of Silver River State Park on October 1, 2013. As a result, DRP will have more opportunities to provide public recreational activities such as hiking, biking, wildlife-viewing, picnic areas and more. Vetted and approved concessionaires will join the 100 current concessionaires that operate in Florida's state parks, and utilize, to the extent possible, the current skilled workforce in operating the concession activities to continue to provide nature-based recreation activities and operate the concert series.

Comprehensive Plan

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

(See attachment 3, Pages 1-15)

RECOMMEND APPROVAL SUBJECT TO THE FULL EXECUTION OF THE ASSET TRANSFER AGREEMENT BY AND BETWEEN FESTIVAL FUN PARKS, LLC, AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF RECREATION AND PARKS, NO LATER THAN AUGUST 1, 2013

**Substitute Item 4 New Hope Sugar Company/Okeelanta Corporation/Closter Farms, Inc./
New Hope South, Inc./Vandegrift-Williams Farms, Inc./Agricultural
Leases/Amendments/ Determinations/Affirmation**

REQUEST: Consideration of a request to (1) determine, pursuant to rule 18-2.018(1), F.A.C., that the decision to authorize the use of Board of Trustees-owned uplands is not contrary to the public interest; (2) determine, pursuant to rule 18-2.018(2)(i), F.A.C., that it is in the public interest to waive the competitive bid process; (3) affirm that five leases in Palm Beach County are not standard agricultural leases; and (4) amend five agricultural leases contingent upon completion of a land exchange of 4,700 acres of private property adjacent to Stormwater Treatment Area 1W and land owned by the South Florida Water Management District.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTY: Palm Beach
Lease Nos. 1447, 1971S, 3420, 3433, and 3543

APPLICANTS: New Hope Sugar Company, Okeelanta Corporation, Closter Farms, Inc., New Hope South, Inc., and Vandegrift-Williams Farms, Inc.

LOCATIONS: #1447 - Sections 01, 02, 12 and 13, Township 42 South, Range 38 East; #1971S - Sections 15 and 16, Township 46 South, Range 35 East; #3420 - Sections 25, 26, 35, and 36, Township 42 South, Range 36 East; Sections 30 and 31, Township 42 South, Range 37 East; Section 01, Township 43 South, Range 36 East; and Sections 05, 06, and 07, Township 43 South, Range 37 East; #3433 - Section 24 and 36, Township 46 South, Range 35 East; and #3543 - Section 07, Township 42 South, Range 38 East

CONSIDERATION: Appraised market rental rate to be deposited into the Internal Improvement Trust Fund and State School Fund, as applicable.

STAFF REMARKS:

Background

The Everglades Forever Act (Act) enacted in 1994 (chapter 94-115, Laws of Florida), codified at section 373.4592(5), F.S., offered for lease to farmers impacted by the Everglades Restoration Project (Project) several Board of Trustees' parcels in the Everglades Agricultural Area in Palm Beach County. The law stated that impacted farmers should have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. For those parcels that had previously been competitively bid, the rental rate would not be less than the rate the Board of Trustees received at the time. The Board of Trustees could also adjust the rental rate on an annual basis using an appropriate index, and update the appraisal at five-year intervals. If more than one impacted farmer desired to lease the same parcel of land, the one that had the greatest number of acres affected by the Project had priority. The Department of Environmental Protection (DEP)

Substitute Item 4, cont.

developed new leases to implement the Act. Four of the leases are scheduled to expire on April 1, 2015, and the fifth will expire on January 31, 2016. All five leases are issued to companies owned by affiliates of Florida Crystals Corporation (Florida Crystals) and are located on non-conservation and state school lands.

Current Request

The South Florida Water Management District (SFWMD) has contacted DEP to request that the five leases be amended to extend the terms for an additional 30-years, and to delete a provision that allows the Board of Trustees to terminate a lease if the lessee ceases to be an impacted farmer. The extensions have been requested as a condition of a land exchange between SFWMD and Florida Crystals to secure additional stormwater treatment area that is critical to SFWMD's efforts under the Act. Construction of an approximately 6,500-acre stormwater treatment area expansion is needed as part of a strategy to achieve the ultra-low phosphorus water quality standard established for the Everglades. To construct the additional stormwater treatment area, SFWMD must acquire 4,700 acres of additional private property owned by Florida Crystals and S.N. Knight that is currently in sugar cane production. Florida Crystals' lands are ideally located to meet the additional stormwater treatment area needs; however, Florida Crystals seeks the lease extensions of their five leases as a condition to willingly participate in the land exchange. If the leases are not extended, SFWMD will have to seek alternative lands or condemnation at significant additional cost and with uncertain results.

The leases currently allow for early termination if the Board of Trustees determines that the lessee has ceased to be an impacted farmer as provided in the Act, upon two years written notice and compensation for any documented, unamortized planting costs and any unamortized capital costs associated with the lease and incurred prior to notice. The proposed lease extension amendments delete the impacted farmer termination provisions, which were only applicable to the initial 20-year leases. A provision has been added to Lease Numbers 1971-S and 3433 allowing early termination if the lands are needed for a governmental project approved by the Board of Trustees for which construction permits have been obtained prior to the lease termination date.

Florida Administrative Code

A 20-year term was originally authorized in the Act for all five leases. Pursuant to rule 18-2.018(3)(a)1.b., F.A.C., the standard lease term for agricultural leases shall be six years. DEP offers the following to assist the Board of Trustees in affirming that the Florida Crystals leases are not standard leases:

- the leases are critical to the SFWMD's acquisition of the 4,700 acres of private property adjacent to Stormwater Treatment Area 1W. Unless the leases are extended, SFWMD will have to seek condemnation at great cost to the state and no other fiscally reasonable and technologically practical site exists for acquisition;
- the specific project that will be constructed on the exchange lands is included in enforceable state and federal water quality consent orders issued by DEP to SFWMD and was mandated by the permits issued by DEP under the federal Clean Water Act to improve the quality of water flowing into the Everglades;

Substitute Item 4, cont.

- the five lessees remain the farmers most impacted by acquisition of land for Everglades restoration and hydroperiod purposes as identified in the Act; and
- the Act recognizes the need to maintain the quality of life for South Florida residents, including those in agricultural-related jobs, which contribute to the regional economy.

Public Interest

Pursuant to rule 18-2.018(1), 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. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, shall be taken into consideration.

DEP offers the following to assist the Board of Trustees in making an affirmative determination that the lease extensions are not contrary to the public interest:

- SFWMD has been charged with implementation of the Everglades Restoration Strategies Project. The Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The lease extensions are critical to SFWMD's acquisition of the lands needed for stormwater treatment. Unless the leases are extended, SFWMD will have to seek condemnation, at great cost to the state, as no other fiscally reasonable and technologically practical sites exist for acquisition;
- reduced levels of phosphorus from the SFWMD's stormwater treatment area will benefit the ecology of the Everglades Protection Area;
- the Board of Trustees will continue to receive fair market lease fees from the lessees based on appraisals that will be updated at five year intervals, with fees adjusted annually based on changes in the Producer Price Index for raw sugar cane and byproducts; and
- the Act recognizes the need to maintain the quality of life for South Florida residents, including those in agricultural-related jobs, which contribute to the regional economy.

Pursuant to rule 18-2.018(2)(i), F.A.C., equitable compensation shall be required when the use of uplands will limit or preempt use by the general public or will generate income or revenue for a private user. The Board of Trustees shall award authorization for such uses on the basis of competitive bidding rather than negotiation, unless determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use.

Substitute Item 4, cont.

DEP offers the following to assist the Board of Trustees in making an affirmative determination that waiving the competitive bid requirement is in the public interest:

- SFWMD has confirmed that the five lessees remain the farmers most impacted by acquisition of land for Everglades restoration and hydroperiod purposes as identified in the Act;
- the lease rates will be set by appraisal at the time of approval of the extension and adjusted every five years based on new appraisals; therefore, the Board of Trustees can expect to receive market rate for the leases; and
- competitive bid may result in higher lease fees; however, the state will benefit by avoiding condemnation costs or higher acquisition costs if required to seek alternative lands, as well as from the SFWMD's Everglades restoration efforts.

Noticing

Pursuant to sections 253.034 and 253.115, F.S., state agencies, state universities and community colleges, the county and 500-foot landowners were notified of the potential lease extensions. No interest was expressed and no objections were received.

Comprehensive Plan

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

(See Attachment 4, Pages 1-35)

RECOMMEND APPROVAL CONTINGENT UPON COMPLETION OF THE 4,700-ACRE LAND EXCHANGE

Item 5 A. Duda and Sons, Inc., Agricultural Leases/Amendments/Determinations/Affirmation

REQUEST: Consideration of a request to (1) determine, pursuant to rule 18-2.018(1), F.A.C., that the decision to authorize the use of Board of Trustees-owned uplands is not contrary to the public interest; (2) determine, pursuant to rule 18-2.018(2)(i), F.A.C., that it is in the public interest to waive the competitive bid process; (3) affirm that two leases in Palm Beach County are not standard agricultural leases; and (4) amend two agricultural leases contingent upon completion of an acquisition of 638 acres of private property adjacent to Lake Hicpochee in Glades County by the South Florida Water Management District.

Item 5, cont.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTY: Palm Beach
Lease Nos. 3422 and 1935/1935-S

APPLICANT: A. Duda and Sons, Inc. (Duda)

LOCATION: #3422 - Section 08, Township 44 South, Range 37 East; and #1935/1935-S - Sections 01, 12 and 13, Township 45 South, Range 37 East; and Sections 06, 07, 08, 16, 17, and 18, Township 45 South, Range 38 East

CONSIDERATION: Appraised market rental rate to be deposited into the Internal Improvement Trust Fund and State School Fund, as applicable.

STAFF REMARKS:

Background

The Everglades Forever Act (Act) enacted in 1994 (chapter 94-115, Laws of Florida), codified at section 373.4592(5), F.S., offered several Board of Trustees' parcels in the Everglades Agricultural Area in Palm Beach County for lease to farmers impacted by the Everglades Restoration Project. The law stated that impacted farmers should have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. Duda's Lease Numbers 3422 and 1935/1935-S were included in the leases granted for the extended term. They are located on non-conservation land and state school land.

Current Request

The South Florida Water Management District (SFWMD) has contacted the Department of Environmental Protection (DEP) to request that Lease Numbers 3422 and 1935/1935-S to Duda be extended for additional 30-year terms. Lease Number 3422 is scheduled to expire on December 31, 2016, and Lease Number 1935/1935-S is scheduled to expire on August 25, 2018. The extensions have been requested as a condition of land acquisition negotiations between SFWMD and Duda to secure property for water storage that is critical to SFWMD's efforts to protect the Caloosahatchee River and Estuary under the Northern Everglades and Estuary Protection Act (NEEP Act). To address water quality and quantity associated with existing flows from Lake Okeechobee to the Caloosahatchee River and Estuary, the SFWMD will construct a surface water reservoir on the property acquired from Duda. The primary objectives will be to rehydrate Lake Hicpochee and intercept harmful excess flows to the Caloosahatchee River. These objectives were identified in the legislatively approved Caloosahatchee River Watershed Protection Plan (Caloosahatchee Plan). Duda has agreed to convey 638 acres to the SFWMD at 44 percent of appraised value contingent upon the SFWMD facilitating the extension of its leases. The SFWMD will also have a four-year option to acquire an additional 2,489 acres at appraised value. If the leases are not extended, SFWMD will have to seek alternative lands at significant additional cost and with uncertain results.

Item 5, cont.

Lease Number 3422 currently allows for early termination if the Board of Trustees determines that the lessee has ceased to be an impacted farmer as provided in the Act, upon two years written notice and compensation for any documented, unamortized planting costs and any unamortized capital costs associated with the lease and incurred prior to notice. The proposed amendment to Lease Number 3422 deletes the impacted farmer termination provision, which was only applicable to the initial 20-year lease.

Florida Administrative Code

Pursuant to rule 18-2.018(3)(a)1.b., F.A.C., the standard lease term for agricultural leases shall be six years. DEP offers the following to assist the Board of Trustees in affirming that the Duda leases are not standard leases:

- the lease extensions are critical to SFWMD's acquisition of the lands needed for water storage and treatment as a component of both the NEEP Act and Caloosahatchee Plan;
- Duda remains one of the farmers most impacted by acquisition of land for Everglades restoration as identified in the Act; and
- if the leases are not extended, SFWMD will have to seek alternative lands at significant additional costs with uncertain results.

Public Interest

Pursuant to rule 18-2.018(1), 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. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, shall be taken into consideration.

DEP offers the following to assist the Board of Trustees in making an affirmative determination that the lease extensions are not contrary to the public interest:

- SFWMD, DEP, and the State of Florida Department of Agriculture and Consumer Services have been charged with implementation of the NEEP Act and the Caloosahatchee Plan. Both are significant with regard to water quality protection, natural resource protection, fish and wildlife values, and wetland values. The lease extensions are critical to SFWMD's acquisition of the lands needed for water storage and treatment as a component of both the NEEP Act and Caloosahatchee Plan. If the leases are not extended, SFWMD will have to seek alternative lands at significant additional costs with uncertain results;
- the Board of Trustees will continue to receive a fair market lease fee from Duda based on an appraisal that will be updated at five year intervals; and

Item 5, cont.

- SFWMD will be able to acquire the 638 acres it needs at 44 percent of appraised value.

Pursuant to rule 18-2.018(2)(i), F.A.C., equitable compensation shall be required when the use of uplands will limit or preempt use by the general public or will generate income or revenue for a private user. The Board of Trustees shall award authorization for such uses on the basis of competitive bidding rather than negotiation, unless determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use.

DEP offers the following to assist the Board of Trustees in making an affirmative determination that waiving the competitive bid requirement is in the public interest:

- Duda remains one of the farmers most impacted by acquisition of land for Everglades restoration as identified in the Act;
- the lease rate will be set by appraisal at the time of approval of the extension and adjusted every five years based on new appraisals; therefore, the Board of Trustees can expect to receive market rate for the leases; and
- competitive bid may result in a higher lease fee; however, the state will benefit from the SFWMD's reduced purchase price as well as the SFWMD's efforts to protect the Caloosahatchee Estuary, rehydrate Lake Hicpochee, and intercept harmful excess flows to the Caloosahatchee River.

Noticing

Pursuant to sections 253.034 and 253.115, F.S., state agencies, state universities and community colleges, the county and 500-foot landowners were notified of the potential lease extensions. No interest was expressed by a governmental or educational entity. Two objections have been received from adjacent landowners. One objection was received from Hundley Farms, Inc., and one from Roth Farms, Inc. Both object to the Duda lease extensions being granted without being competitively bid. Because of the above-mentioned public benefits to be derived from the direct leases to Duda, DEP's recommendation remains a waiver of the competitive bid process.

Comprehensive Plan

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

(See Attachment 5, Pages 1-41)

**RECOMMEND APPROVAL CONTINGENT UPON ACQUISITION OF THE 638
ACRES BY THE SFWMD**