

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OCTOBER 17, 2017

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 Board of Trustees' Minutes from the August 16, 2017 Cabinet Meeting.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

(See Attachment 1 at http://www.dep.state.fl.us/secretary/cab/public_notices.htm)

RECOMMEND APPROVAL

Item 2 DEP/Division of State Lands' FY 2018-2019 Proposed Legislative Budget Request

Submittal of the Department of Environmental Protection's Division of State Lands' Fiscal Year 2018-2019 Proposed Legislative Budget Request.

STAFF REMARKS: In accordance with the Cabinet Governance Guidelines, approved on March 10, 2015, the Department of Environmental Protection is submitting the Division of State Lands' Fiscal Year 2018-2019 Proposed Legislative Budget Request.

(See Attachment 2, Pages 1-2)

RECOMMEND INFORMATIONAL

Item 3 Old Seaport Place, Inc./Nonwater Dependent Activities/Determination

REQUEST: Consideration of a request (1) for a determination, pursuant to rule 18-21.004(1)(g), F.A.C., that it is in the public interest to allow nonwater dependent activities to occur on sovereignty submerged lands leased by the Applicant; and (2) to allow nonwater dependent, open-air, over-the-water dining activities to be conducted on a total of 1,540 square feet, more or less, of the Applicant's existing structures.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Old Seaport Place, Inc., a Florida corporation
Lease No. 360421085

Item 3, cont.

LOCATION: 645 Old San Carlos Boulevard, Town of Fort Myers Beach
Matanzas Pass, Lee County
Class II Waters

CONSIDERATION: \$4.40 per square foot, based on the appraised market rental value, will be applied annually to the proposed 1,540 square feet, more or less, associated with the nonwater dependent activity, pursuant to rule 18-21.011(1)(b)6., F.A.C.

STAFF REMARKS: Rule 18-21.004(1)(g), F.A.C., provides that activities on sovereignty lands shall be limited to water dependent activities only unless the Board of Trustees determines that it is in the public interest to allow an exception as determined by a case-by-case evaluation.

Effective July 1, 2016, section 253.03(15), F.S., which encourages the use of sovereignty submerged land for public access and water dependent uses, was amended to include related minimal secondary nonwater dependent uses. The over-the-water dining activities involve a nonclimatized area with minimal secondary nonwater dependent use of placing tables, chairs and shading structures on an existing structure over sovereignty submerged land for dining activities.

Background

The Applicant acquired the upland property in 2016 and assumed the existing lease authorizing the preemption of 35,770 square feet of sovereignty submerged lands for a 21-slip commercial docking facility. The Applicant has applied for a lease modification to reconstruct/reconfigure the docking facility and to conduct over-the-water dining activities at two locations within the existing lease area (a 900-square-foot area and a 640-square-foot area) for approximately 1,540 square feet of over-the-water dining on existing structures.

Project Detail

The Applicant is in compliance with its lease which is adjacent to privately-owned submerged lands obtained through a Butler Act disclaimer. The over-the-water dining structures will be nonclimatized, with tables, chairs, and shading structures, and will be open to the public.

The existing nonwater dependent structures are not a public project (public projects include government owned/operated structures/activities); however, the proposed project conforms to two of the three criteria listed in rule 18-21.004(1)(g), F.A.C., for public projects. The structures and nonwater dependent activities are along a seawall and constitute only minor nearshore encroachments on sovereignty submerged lands. The structures are not located in an aquatic preserve but are in Class II waters. Although the proposed nonwater dependent activities will be conducted over Class II waters, the Applicant is utilizing its existing structures. If approved, the lease for the Applicant will define the nonwater dependent structures in a survey so that they cannot be improved or expanded without Board of Trustees' approval.

Item 3, cont.

Lease Fees

Rule 18-21.011(1)(b)6., F.A.C., provides that the annual lease fees for nonwater dependent uses shall be negotiated considering the appraised market rental value of the riparian uplands. A market rental value appraisal was completed to obtain a basis for negotiating annual lease fees. The Department of Environmental Protection (DEP) recommends that the nonwater dependent structures, which involve minimal secondary nonwater dependent use as stated in section 253.03(15), F.S., should be assessed at a negotiated nonwater dependent rate of \$4.40 per square foot. The remaining lease area should be assessed the standard water dependent rate. Approval of this item does not supersede or eliminate any local, state or federal permitting requirements.

Public Interest

DEP is recommending the Board of Trustees find the project meets the public interest requirement because the nonwater dependent, open-air, over-the-water dining activities will continue to provide public access and enhance public enjoyment of sovereignty submerged lands without impairing traditional access. Additionally, it does not entail a significant adverse impact to sovereignty submerged lands and resources. It will also continue to provide an economic benefit to the Applicant and potential secondary economic benefits to nearby businesses.

Noticing

This request is not subject to noticing pursuant to section 253.115, F.S.

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 1-3)

RECOMMEND APPROVAL

Item 4 DEP's FY 2016-2017 4th Quarter Performance Accountability Measures/ Proposed FY 2017-2018 Performance Accountability Measures

REQUEST: Consideration of the Department of Environmental Protection's (1) Fiscal Year 2016-2017 4th Quarter Performance Accountability Measures; and (2) Proposed Fiscal Year 2017-2018 Performance Accountability Measures.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

Item 4, cont.

STAFF REMARKS: In accordance with the Cabinet Governance Guidelines, approved on March 10, 2015, the Department of Environmental Protection is submitting its Fiscal Year 2016-2017 4th Quarter Performance Accountability Measures and proposed Fiscal Year 2017-2018 Performance Accountability Measures.

(See Attachment 4, Pages 1-4)

RECOMMEND ACCEPTANCE

Item 5 Indian River Oyster Company Aquaculture Leases/Mosquito Lagoon Aquatic Preserve/Canaveral National Seashore

REQUEST: Approval to issue two, ten-year sovereignty submerged land aquaculture leases to authorize use of the full water column for the purpose of shellfish aquaculture.

VOTING REQUIREMENT FOR APPROVAL: Three votes

LOCATIONS: Indian River Lagoon, Volusia County, Florida; Mosquito Lagoon Aquatic Preserve and Canaveral National Seashore

APPLICANT: Indian River Oyster Company

CONSIDERATION: Pursuant to rule 18-21.022, Florida Administrative Code (F.A.C.) a base annual rental fee of \$33.46 per acre or fraction thereof; and an annual surcharge of \$10.00 per acre or fraction thereof will be collected and deposited in the General Inspection Trust Fund, pursuant to Sections 597.010(5)(b) and (7), F.S.

STAFF REMARKS: The two requested lease parcels are located in the Indian River Lagoon, with the northern proposed 2.44-acre lease located within Mosquito Lagoon Aquatic Preserve and the southern proposed 5-acre lease located within Canaveral National Seashore. The applicant is requesting authorization from the Board of Trustees, pursuant to section 253.68(1), F.S., for the purpose of culturing oysters in floating gear using the full water column. The proposed gear and activities are covered under the Florida Department of Agriculture and Consumer Services' (FDACS) general permit from the Army Corps of Engineers.

The applicant will be required to apply for an Aquaculture Certificate of Registration and comply with all FDACS Aquaculture Best Management Practices. Upon approval, the leases will be surveyed by the applicant.

Item 5, cont.

Agency Review

FDACS has reviewed the applications for completeness and determined that the proposed leases and associated aquaculture activities will not result in adverse impacts to seagrasses, existing shellfish beds, natural reefs or other sensitive habitats. Additionally, FDACS has coordinated the review of the applications with the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, Florida Department of State, and the Volusia County Board of County Commissioners, pursuant to rule 18-21.021, F.A.C.

Special Conditions

The proposed leases will be subject to the terms and conditions applied to other aquaculture leases issued throughout the state for the same purposes, including the provision that the transfer or sale of the lease will not be approved during the first five years of the lease terms. The leaseholder will be required to obtain a Private Aids to Navigation permit from the United States Coast Guard to install associated lighting and signage to aid boaters with navigation. This requirement will be a special condition of the leases.

Public Interest

The Florida Aquatic Preserve Act provides that no further sale, lease, or transfer of sovereignty submerged lands shall be approved within an aquatic preserve, unless the sale, lease, or transfer is in the public interest. The Aquatic Preserve Act specifically provides that “aquaculture is in the public interest and aquaculture leases may be authorized in aquatic preserves...” [Section 258.42(1)(b), F.S.] Accordingly, FDACS recommends that the Board of Trustees find that the lease is in the public interest, as set forth in statute.

Noticing

The proposed leases were noticed pursuant to section 253.70, F.S., and no objections were received.

Comprehensive Plan

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

(See Attachment 5, Pages 1-29)

RECOMMEND APPROVAL

Item 6 Corona Ranch Conservation Easement/FDACS/Rural & Family Lands Protection Program

REQUEST: Consideration of (1) an option agreement to acquire a 2,523-acre perpetual conservation easement over lands lying within the Corona Ranch project of the Florida Department of Agriculture and Consumer Services’ Florida Forest Service (FDACS/FFS) Rural & Family Lands Protection Program (RFLPP) from Corona Holdings XIV LLC; and (2) designation of FDACS/FFS as the monitoring agency.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

APPLICANT: Florida Department of Agriculture and Consumer Services’ Florida Forest Service

COUNTY: Okeechobee

LOCATION: Portions of Section 31, Township 34 South, Range 33 East; Section 36, Township 34 South, Range 32 East; Sections 1, 9, 10, 11, 12, and 15, Township 35 South, Range 32 East

CONSIDERATION: \$5,700,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>SELLER’S PURCHASE PRICE</u>	<u>TRUSTEES’ PURCHASE PRICE</u>	<u>OPTION DATE</u>
		<u>String (05/18/17)</u>	<u>Holden (05/18/17)</u>				
Corona Ranch	2,523	\$6,550,000	\$6,560,000*	\$6,560,000	**	\$5,700,000***	120 days after BOT approval

*Fee value was determined to be \$12,363,000 (Holden)
 **Property was assembled over many years by the Corona Family
 ***The purchase price for the conservation easement is \$2,259.22 per acre

STAFF REMARKS:

This acquisition was negotiated by FDACS/FFS under its RFLPP. If approved, this will be the thirty-eighth perpetual conservation easement proposed for acquisition, with a total of approximately 39,229 acres preserved under the RFLPP. The Corona Ranch project is ranked in Tier One on the 2016 RFLPP Acquisition List.

PROPERTY DESCRIPTION:

The Corona Family has a strong multi-generational agricultural legacy and have been in the cattle business since the mid 1800’s in Cuba. They began ranching in Florida after they moved here from Cuba in 1961 and have been ranching this northern Okeechobee County property since the 1980’s.

The western portion of the proposed easement area is within the 100-year Flood Zone for the Kissimmee River. Approximately 34% of the property (1,103 acres) is considered wetlands, with

Item 6, cont.

885 acres under a flowage easement. The easement is monitored by the South Florida Water Management District (SFWMD) and is associated with restoration of the Kissimmee River. The appraisers were advised of the flowage easement, which is not included in the RFLPP easement and has no effect on its value.

If approved, 100% of the ranch will be protected through conservation easements, including 2,523 acres protected under the RFLPP easement and 885 acres protected under the SFWMD's Kissimmee River easement.

Corona Ranch drains to the Kissimmee River which flows into Lake Okeechobee. It is located within the Lake Okeechobee Watershed and the recharge range for the Kissimmee River Basin. The ranch is located within the Lake Okeechobee Protection Area and the Northern Everglades Watershed. Oak Creek flows through the western portion of the RFLPP easement area and remnants of Underhill Sawgrass Pond are found on the eastern portion of the proposed easement.

Most of the wetlands have altered hydrology by ditching, although the Corona's have restored many acres through various Natural Resources Conservation Service / FDACS projects (Environmental Quality Incentives Program). The Corona's are engaged in on-going restoration of the wetland systems, with a focus on managing and restoring the hydrology for the health of the Kissimmee River and related downstream benefits.

Corona Ranch is within the Florida Wildlife Corridor and the U.S. Fish & Wildlife Service Everglades Headwaters Conservation Area. The property is home to many native plants and animals, some of which are listed as threatened and endangered species, and include: gopher tortoise, fox squirrels, and burrowing owls. The owners report three recent sightings of Florida Panther. Corona Ranch is also home to four of Florida's endemic prairie bird species.

The RFLPP easement borders the SFWMD's Kissimmee River easement and the Triple Diamond project, approved for acquisition through the Florida Forever program. Corona Ranch is in close proximity to multiple Wetland Reserve Program easements and less than 5 miles south of Kissimmee Prairie Preserve State Park and southwest of the Kissimmee - St. Johns River Connector Florida Forever Project. Additionally, the ranch is adjacent to RFLPP's Ruff Diamond and Clemons Oak Creek projects and less than one mile from the Todd Clemons RFLPP project. The ranch lies within the Military Influenced Planning Area (MIPA II) of Avon Park Air Force Range. Acquisition of the easement will provide an excellent connection between these parcels, as well as create a more consolidated conservation landscape and enhanced military buffer.

PROHIBITED USES:

- Dumping of non-biodegradable, toxic or hazardous substances, trash garbage, wastes, abandoned vehicles, appliances, machinery or similar material is prohibited.
- The 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 either directly or indirectly by Grantor or on Grantor's behalf, etc.

Item 6, cont.

- Activities that affect the hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish and wildlife habitat, etc.
- Planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Grantor shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property.
- Concentrated and confined animal feed lot operations as defined by the United States Department of Agriculture.
- 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 permitted hereinafter, or as necessary by Grantor for maintenance or normal operations of the Property or during emergency situations or as may otherwise be specifically provided for in the Easement.
- Construction or placing of roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the Easement, and except for linear facilities described in section 704.06(11), F.S. Grantee may erect and maintain signs designating the Property as land under the protection of Grantee.
- Fertilizer use for agriculture activities shall be in accordance with agricultural Best Management Practices (BMPs) recommended by the Natural Resources Conservation Service or the Florida Department of Agriculture and Consumer Services, whichever is more stringent, as those BMPs may be amended from time to time. No agricultural activities shall occur within a 100-foot buffer around sinkholes and other karst features that are connected to spring conduits, except as provided in the applicable BMPs.
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species.
- Commercial water wells on the Property.
- Harvesting of cypress trees in the designated Significant Natural Areas (SNA).
- Mitigation banks pursuant to Section 373.4135, et. seq., F.S.
- Construction or improvements in any SNA or conversion of SNAs to more improved areas or more intense uses. Any use of the Property which would impair, adversely impact, or destroy the SNAs, including a change to more intensive agricultural practices, is also prohibited.
- Activities detrimental to the preservation of historical, architectural, archaeological, or cultural resources on the Property.

Item 6, cont.

- Conversion of forested areas within the SNA as shown in the Baseline Documentation Report to non-forested areas.
- Any subdivision of the Property.

OWNER'S RIGHTS:

- Grantor has, and shall be deemed hereby to have retained, the underlying fee simple absolute title in the Property.
- The right to conduct silvicultural and agricultural operations on the Property; provided, however, that prior to any timbering in a Significant Natural Area, Grantor shall consult with Grantee concerning methods to minimize damage.
- The right to conduct prescribed burning on the Property; provided, however, that Grantor shall obtain and comply with a prescribed fire authorization from the FDACS' FFS or its successor agency.
- 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, all existing buildings, barns, animal pens, outbuildings, fences, roads, ponds, wells, utilities, drainage ditches and such other facilities on the Property as depicted in the BDR.
- The right to sell, devise or otherwise transfer ownership of the Property to a third party. This right, however, does not include the right to sell the remaining property rights on the Property for the purposes of a conservation easement or other restriction that would divest the Property of its use under the terms and conditions of the Easement.
- The right to exclusive use of the improvements on the Property.
- Grantor shall obtain and comply with all permits for management of stormwater, for water wells and consumptive uses as may be required by the water management district or any successor agency having jurisdiction over those activities.
- The right to construct, after giving notice to Grantee, buildings or other structures incident to agricultural uses carried on in accordance with sound agricultural practices. Such buildings shall not be used as residences.

Item 6, cont.

- Nothing shall prohibit Grantor from establishing (by survey, fencing or marking) and maintaining property lines around the perimeter of the Property to protect the Property from trespassing and to assist Grantor in the management of the Property in accordance with the Easement.
- The right to observe, maintain, photograph, introduce, and stock native fish or wildlife on the Property, to use the Property for hiking and horseback riding. Grantor reserves, and shall continue to own, the hunting and fishing rights on or related to the Property and Grantor may lease and sell privileges of such rights.
- The right to install connections to normal utility systems, such as electric, cable, water and sewer, and telephone. If a connection to a sewer system is not available, this right shall include the right to install a septic system. The granting of easements or rights-of-way for power lines, gas lines, sewer lines, waterlines, telecommunications towers, and wind farms is prohibited, unless approved by Grantee. Notwithstanding this prohibition, the Grantor may grant or modify easements for utility connections necessary to serve the permitted uses of the Property that are consistent with the Easement Purposes. Existing utilities may be replaced or repaired at their current location.
- Grantor reserves 2 Building Envelopes and the right, after giving notice to Grantee, to develop within each envelope up to 20,000 square feet of impervious surfaces for residential purposes. Each Building Envelope will not exceed 10 contiguous acres and is limited to one single family residence and ancillary structures. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property. This includes, but is not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. Any such development may not be constructed within the SNAs. Grantor shall provide a legal description and survey for the building envelope(s) to the Grantee prior to development.
- The right to relocate endangered or threatened species or species of special concern that are native to the State of Florida.
- The right to engage in wetland restoration or water storage program(s), provided such programs are consistent with the Easement Purposes and do not impede the Significant Natural Areas.

ENCUMBRANCES:

There are no known encumbrances on the property that adversely affect marketability or the ability to enforce the rights granted under the easement.

MORTGAGES AND LIENS:

All mortgages and liens will be satisfied or subordinated at the time of closing.

Item 6, cont.

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 these and any other title issues that arise prior to closing.

CLOSING INFORMATION:

A title insurance commitment, a survey, and an environmental site assessment of the property will be provided by FFS prior to closing.

EASEMENT MONITOR:

This perpetual conservation easement will be monitored by the FFS.

COMPREHENSIVE PLAN:

This acquisition is consistent with section 187.201(22), F.S., the Agriculture Section of the State Comprehensive Plan.

(See Attachment 6, Pages 1-72)

RECOMMEND APPROVAL