

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MARCH 13, 2007
Substitute Page

Substitute Item 1 City of Stuart Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a 25-year sovereignty submerged lands lease containing 22,540 square feet, more or less, for a staging area associated with a public dry storage facility (Northern Facility); (2) a modification of an existing 5-year sovereignty submerged lands lease to (a) extend the term to 25 years; and (b) increase the preempted area from 28,809 square feet to 562,666 square feet, more or less, for a public marina (Southern Facility); and (3) authorization for the severance of 3,521 cubic yards of sovereignty material.

COUNTY: Martin
 Northern Lease No. 430340696
 Southern Lease No. 430034296
 File No. 43-0234909-001

APPLICANT: City of Stuart (City)

LOCATION: Section 05, Township 38 South, Range 41 East, in St. Lucie River, Class III waters, within the local jurisdiction of city of Stuart
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: Yes
Manatee Protection Speed Zone: Yes (slow speed year-round)

CONSIDERATION: Northern Facility: \$6,486.65, representing (1) \$2,944.28 as the initial annual lease fee computed at the base rate of \$0.1375 per square foot, discounted 30 percent because 90 percent of the slips are open to the public for rent on a first-come, first-served basis, and including the initial 25 percent surcharge payment; (2) \$542.37 as the annual lease fee for extended term lease calculated as the annual lease fee times \$0.25; and (3) \$3,000.00 for the severance of sovereignty material computed at \$1.25 per cubic yard pursuant to section 18-21.011(3)(a)3, F.A.C.

Southern Facility: \$87,448.35, representing (1) \$72,507.95 as the initial lease fee computed at the base rate of \$0.1375 per square foot, discounted 30 percent because 90 percent of the slips are open to the public for rent on a first-come, first-served basis, and including the initial 25 percent surcharge payment for the additional area; (2) \$13,539.15 as the annual lease fee for extended term lease calculated as the annual lease fee times \$0.25; and (3) \$1,401.25 for the severance of sovereignty material computed at \$1.25 per cubic yard pursuant to section 18-21.011(3)(a)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 fees maybe adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a) 1, F.A.C.

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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 which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial".

Northern Facility:

The City proposes to construct a staging area with 14 temporary wet slips to be used in conjunction with the proposed upland 120-slip dry storage facility. The staging area will preempt 22,540 square feet of sovereignty submerged lands. This facility will accommodate recreational vessels ranging in length from 45 to 50 feet, with drafts ranging from 3 to 5 feet.

The City is also proposing to: (1) dredge 2,400 cubic yards of sovereignty material to a depth of -6.5 feet mean low water (MLW) to create an ingress/egress area for access and the temporary mooring of vessels associated with the upland storage facility. The spoil material will be temporarily stored in an approved upland spoil site until the potential for reuse is determined; (2) excavate approximately 1,000 cubic yards of upland material to -6.5 feet MLW; and (3) install a 345-foot-long seawall prior to the commencement of excavation and back-filling activities.

Southern Facility:

The City is proposing to replace an existing 2-slip docking facility, presently used in conjunction with an upland dockmasters office, parking lot, and nearby associated mooring field, by constructing a 198-slip marina to be used in conjunction with an upland marine retail office, restaurant, and parking lot. The existing sovereignty submerged lands lease approved by DEP, under delegation of authority, on October 20, 2003 authorizes the preemption of 28,809 square feet of sovereignty submerged lands. The proposed addition is 533,857 square feet, for a new total of 562,666 square feet. This facility will accommodate recreational vessels ranging in length from 45 to 100 feet, with drafts ranging from 3 to 7 feet.

The City's existing mooring field directly east of the Southern Facility will be reduced from 86 moorings to 69 moorings to provide the area needed for the proposed marina construction. The reduction of 17 moorings reduces the mooring field by 445,183 square feet (10.22 acres) more or less. The remaining 69 moorings (containing 26.38 acres) will maintain the right to use all of the upland amenities at the new public facility.

The City is also proposing to dredge 1,121 cubic yards of sovereignty material to a depth of -7.9 feet mean low water (MLW) to increase maneuverability near the existing seawall. No

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submerged resources exist at the site. The spoil material will be temporarily stored in an approved upland spoil site until the potential for reuse is determined.

Both facilities will be operated on an open to the public on a first-come, first-serve basis, with no longer than one-year rental terms. This requirement has been included as a special lease condition in both of the proposed leases.

Severance fees for the spoil material from both facilities shall be paid in full prior to issuance of the ERP permit and the lease documents and pursuant to section 18-21.011, F.A.C., however, if it is determined that the spoil material has no economic value, it must be disposed of at an approved landfill.

The City will be the lessee at the Northern Facility, and a recorded Memorandum of Lease exists with the managing entity, SDG Group, LLC. The City will remain the lessee at the Southern Facility, and a recorded Memorandum of Lease exists with the managing entity, Huizenga Holdings, Inc.

DEP's environmental resource permit authorizes sewage pumpout facilities and fueling facilities at the Southern Facility. Liveaboards will not be permitted at either facility and permanent mooring will not be allowed at the Northern Facility. There are no shoreline or submerged resources including seagrasses at either of the project sites. The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the permit and included as a special lease condition. Martin County is a designated manatee county with an approved manatee protection plan. FWC has stated that the proposed project is consistent with the plan.

Water quality samples in the St. Lucie River indicate levels of coliform bacteria, in excess of state water quality standards. To date, investigations conducted on the River have not been successful in identifying the source(s) of the coliform bacteria. When a waterbody does not meet water quality standards, applicants for projects must demonstrate that the proposed activity will not contribute to the existing violation pursuant to section 373.414(1)(b), F.S. In order to provide assurance that the new facilities will not contribute to the fecal coliform levels, the City has agreed to and will enforce a special lease condition prohibiting overboard discharge and inform all slip occupants of the requirement to use the pumpout facilities located on the uplands. In addition, the City will install educational outreach and awareness signage in appropriate locations at both facilities associated with pump-out procedures to educate citizens on the environmental impacts caused by illegal dumping of sewage within the St. Lucie River. These signs shall educate citizens on how to properly dispose of marine related sewage and information detailing specific contact information in the event illegal activities is observed.

In addition, the City has provided information on its Watershed Protection Program (WPP) that was initiated in 2000. The City secured funding for more than \$13 million to identify and improve the quality of all watersheds within City limits contributing to the St. Lucie River.

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Watershed improvement activities have included land acquisition, wetland restoration, stormwater control modifications including the proposed installation of 32 baffle boxes and educational outreach awareness programs.

Further, the City has established a streets and stormwater page on its website (www.cityofstuart.com). This page provides educational information about the impact of stormwater run-off into waterways and provides a 24-hour hotline where citizens can report improper pollutant discharges.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs (DCA) determined that the plan was in compliance. The proposed action is consistent with the plan according to a letter received from the City of Stuart.

(See Attachment 1, Pages 1-45)

RECOMMEND WITHDRAWAL

Substitute Item 2 BOT/William C. Saba, et al. Settlement Agreement

WITHDRAWN FROM THE DECEMBER 5, 2006 AGENDA

REQUEST: Consideration of a proposed settlement agreement in the case of William C. Saba, individually, and Linda C. Firkins, Frank J. Conrad, and Jennifer Lee Saba, as Co-Trustees of the William Conrad Saba Trust, dated December 29, 1987 v. Board of Trustees of the Internal Improvement Trust Fund, District Court of Appeal, Second District, State of Florida, Case No. 2D05-5358.

COUNTY: Manatee

APPLICANTS: Department of Environmental Protection, Division of State Lands; William C. Saba; and Linda C. Firkins, Frank J. Conrad, and Jennifer Lee Saba as Co-Trustees of the William Conrad Saba Trust

LOCATION: Section 15, Township 35, Range 16

STAFF REMARKS: This settlement is the result of a dispute over ownership of submerged real property adjacent to Longboat Key, Florida. Plaintiffs, collectively referred to as "Saba," filed suit in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida to quiet title to three lots in the Longbeach Plat that they allege became partially submerged as the result of construction of seawalls and other shore protection measures permitted by the Department.

Substitute Item 2, cont.

Recently, Frank J. Conrad, one of the Trustees of the William Conrad Saba Trust, died. Plaintiff's counsel states that the trust documents require the two remaining trustees to act as co-trustees, and that they can fully execute the documents on behalf of the Trust.

The Board of Trustees prevailed on a Motion for Summary Judgment, and Saba has appealed the decision to the 2nd District Court of Appeal. The Board of Trustees currently has an extension of time to file its answer brief until March 16, 2007 for the purposes of negotiating a settlement agreement.

Saba's property was likely subject to artificial erosion because of the DEP permitted structures on neighboring properties. However, Saba could not meet the rigid requirements of Rule 18-21.019(5), Florida Administrative Code, and the Department could not process this claim under the Rule. Therefore, this settlement agreement is necessary.

Saba and Department staff, recognizing the strengths and weaknesses in their cases, the costs and length of continued litigation, and the uncertainty of the outcome of appeal, have negotiated a proposed settlement agreement. The transfer contemplated by the agreement exceeds the Department's expectations. Even if the parties were not in litigation, staff would recommend the proposed exchange. Staff believes that the settlement agreement is in the public interest.

The material terms of the settlement agreement are as follows:

- (1) Upon approval to fill 0.2 acres of the parcel, Saba will deliver a special warranty deed to the Board of Trustees for the western 0.14-acre portion of the disputed parcel.
- (2) The Board of Trustees will deliver a quitclaim deed to the remainder of the disputed parcel comprising 0.2 acres adjacent to the upland portion.
- (3) A deed restriction will be placed on the 0.2-acre parcel, quitclaimed to Saba, that limits construction to a single-family dwelling with a two-slip multi-family dock.
- (4) Saba will purchase and deliver a warranty deed and title insurance policy to the Board of Trustees for a 3-acre parcel of uplands and submerged lands selected by the Department of Environmental Protection near Perico Bayou within the boundaries of the Sarasota Bay Estuarine System (Outstanding Florida Waters).

(See Attachment 2, Pages 1-19)

RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT

2nd Substitute Item 3

Palm Beach County Deed Restriction Modifications

REQUEST: Consideration of modifications of deed restrictions for Board of Trustees' Deed Numbers 18516-G and 18537-C to Palm Beach County to further allow the property to be used for municipal well sites and utility lines.

2nd Substitute Item 3, cont.

COUNTY: Palm Beach
Deed Numbers 18516-G and 18537-C

APPLICANT: Palm Beach County (County)

LOCATION: Sections 29 and 32, Township 44 South, Range 43 East

STAFF REMARKS: Pursuant to chapter 19133, Laws of Florida (1939), the Board of Trustees, on October 9, 1939, conveyed 555.7 acres, including approximately 303 acres of submerged land within Lake Osborne, to the County by Board of Trustees' Deed Number 18516. On March 21, 1940, the Board of Trustees approved the conveyance of an additional 239 acres of submerged land to the County by Board of Trustees' Deed Number 18537. The initial conveyance to the County was for no charge. The second conveyance was for \$100. Both deeds contain a restriction and reverter limiting use of the land to park and forest purposes. In the event the land is used for any other purpose, title reverts to the Board of Trustees. Over the years, Deed Number 18516 has been modified by the Board of Trustees to further allow facilities for assisting disabled children and adults, treating victims of child abuse, public education, a county fairground, and aviation. In 1943, the County conveyed 1.7 acres of the restricted land without Board of Trustees' approval to Ms. Agnes Goodman following relocation of a roadway that left the small parcel in between the county right-of-way and Ms. Goodman's property. In 1969, the Board of Trustees approved two quitclaim deeds to Ms. Goodman's successors in title for the purpose of clearing their title. Approximately 500 acres of the former Board of Trustees land continues to be managed as part of the County's John Prince Memorial Park in conjunction with other county-owned lands.

The City of Lake Worth (City) has contacted the County for permission to locate five municipal water wells on the restricted lands to supply the City's nearby water treatment plant. The Floridan Aquifer wells are part of a City Alternative Water Supply Program to reduce the demand on the surficial aquifer. The water quality and quantity benefits of the program include reducing the risk of salt water intrusion into the surficial aquifer. The program is part of the Lower East Coast Water Supply Plan and is being partially funded by the South Florida Water Management District's Alternative Water Supply Grant Program.

The City proposes to locate approximately five well sites in areas of underutilized open land adjacent to roadways that will not impact existing natural landscaping or active recreation facilities. The location of the first well site (F-3) has been finalized. Four additional well sites have been tentatively located. The sites were chosen based upon requirements of the Department of Environmental Protection (DEP) for a minimum setback for well sites from sanitary systems and a recommended minimum 1,500-foot separation criteria between Floridan well sites. This criteria limits the available locations for the wells within the City limits, and the City would prefer not to condemn private property to acquire well sites. The County has no objection to the request since the wells will benefit facilities located on the restricted lands.

2nd Substitute Item 3, cont.

During the process of reviewing the City's request, the County noted that over the years various utility lines have been allowed to cross the restricted lands including, but not limited to, water and wastewater lines, lift stations, powerlines, and telephone lines. These utilities do not interfere with the designated use of the property; however, they are not consistent with the restricted uses of the property. The County would like the Board of Trustees to approve the existing utilities and affirm that any future utility lines may be considered, provided they do not interfere with the designated uses of the property.

In the event of a violation of the deed restriction, the Board of Trustees will have the option of enforcing the reverter as it pertains to the portion of the property occupied by the well sites and any utilities rather than automatic reversion of these sites. DEP's Division of State Lands' (DSL) staff has reviewed the request and recommends that the Board of Trustees approve the proposed modification to allow the five well sites and utilities. The proposed modification will also require prior notification and approval by DSL if future well sites are necessary.

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 1-85)

RECOMMEND APPROVAL

Substitute Item 4 **Babcock Ranch, Inc. Articles of Incorporation/Bylaws**

REQUEST: Consideration of approval of the articles of incorporation and bylaws for Babcock Ranch, Inc., a non-profit organization to manage the Babcock Ranch, as provided for in section 259.1053, F.S., and approved at the first meeting of the Babcock Ranch, Inc. board of directors.

COUNTY: Charlotte and Lee

LOCATION: Sections 01 through 36, Township 41 South, Range 26 East; Sections 01 through 36, Township 42 South, Range 26 East; Sections 01 through 07, 09, and 12, Township 43 South, Range 26 East; Sections 19 through 36, Township 41 South, Range 27 East; Sections 01 through 36, Township 42 South, Range 27 East; and Sections 04 through 09, 17 and 18, Township 43 South, Range 27 East

STAFF REMARKS: The Babcock Ranch was an "A" group project on the Florida Forever Full Fee Project Interim List approved by the Board of Trustees on August 23, 2005. The Board of Trustees approved the purchase on November 22, 2005. The transaction closed on July 31, 2006.

Substitute Item 4, cont.

Babcock Ranch, Inc. was created, pursuant to section 259.1053, F.S., as a Florida not-for-profit corporation, to participate in the management of Babcock Ranch Preserve in an advisory capacity until the expiration of the management agreement attached as Exhibit "E" to the agreement for sale and purchase approved by the Board of Trustees on November 22, 2005; and thereafter to provide management and administrative services for the Babcock Ranch Preserve. The nine members of the board of directors were appointed by the Board of Trustees (four members), the Florida Fish and Wildlife Conservation Commission, the Florida Department of Agriculture and Consumer Services, Charlotte County, Lee County, and the Babcock Florida Company.

The board of directors held its initial meeting on February 23, 2007 at Edison College Auditorium in Punta Gorda, Florida. At this meeting, the board elected the following officers:

- Chairperson - Mr. R.Z. "Sandy" Safley;
- Vice-Chairperson - Dr. Hilary Swain; and
- Treasurer - Mr. Manley K. Fuller III.

The board of directors then voted on and adopted articles of incorporation and bylaws necessary to govern its activities. Pursuant to section 259.1053(9)(a), F.S., these must be approved by the Board of Trustees before they can be filed with the Florida Department of State. As approved by the board of directors, the articles of incorporation and bylaws detail the purpose and structure of Babcock Ranch, Inc., as well as the corporate seal, and designate the principal office of the corporation.

(See Attachment 4, Pages 1-12)

RECOMMEND APPROVAL