

**AGENDA
BOARD OF TRUSTEES
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES
JULY 29, 2008**

Item 1 Minutes

Submittal of the Minutes from the January 18, 2007 and March 13, 2007 Cabinet Meetings.

(See Attachment 1, Pages 1-4)

RECOMMEND APPROVAL

Item 2 Hemmel/Brinkley Aquaculture Leases

REQUEST: Authorization to issue two independent ten-year sovereignty submerged lands aquaculture leases for the purpose of shellfish aquaculture.

COUNTY: Manatee County

APPLICANTS: Curtis D. Hemmel d/b/a Bay Shellfish Company (41-AQ-1060) and Kyle Brinkley (41-AQ-1061).

LOCATION: Two tracts of sovereignty submerged lands in Township 33 South, Range 17 East, in Tampa Bay, Manatee County, Florida. The proposed parcels are located within the Terra Ceia Aquatic Preserve.

CONSIDERATION: An annual fee of \$52.66 for each two-acre lease parcel, representing a base annual rental fee of \$16.33 per acre or fraction thereof; and an annual surcharge of \$10.00 per acre or fraction thereof, for deposit in the General Inspection Trust Fund pursuant to section 597.010, F.S. On January 1, 2010, the annual rental fee will be adjusted, based upon the five-year average change in the Consumer Price Index and will be adjusted accordingly every five years of the lease term.

STAFF REMARKS: The applicants request consideration by the Board of Trustees to authorize two independent aquaculture leases; each parcel includes two acres of sovereignty submerged lands. The requested parcels will be used for the purpose of farming indigenous bivalve species, primarily hard clams (*Mercenaria mercenaria* and *Mercenaria campecheinsis*), and secondarily, the eastern oyster (*Crassostrea virginica*), the bay scallop (*Argopecten irradians*), and other native bivalve mollusks. The Department of Agriculture and Consumer Services (DACs) has combined the two requests within the same agenda item, since both parcels are located adjacent to each other in the same tract of submerged lands.

On February 1, 2005, the Board of Trustees authorized the issuance of two ten-year sovereignty submerged lands aquaculture leases to the same applicants. The two original four-acre parcels are situated adjacent to each other in Tampa Bay, a short distance from where the two newly requested parcels are located. The applicants' request for additional acreage is based on their businesses growing and need for additional area to grow out clams to market size.

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DACS, in cooperation with the Department of Environmental Protection's (DEP) Office of Coastal and Aquatic Managed Areas, assessed the marine resources within and adjacent to the proposed areas, determined that the area was suitable for commercial shellfish aquaculture activities, and determined that the activities would not result in adverse impacts to seagrasses, existing shellfish beds, or other sensitive habitats.

The aquaculture 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 three years of the lease term. DACS has reviewed the applications for completeness, evaluated the business plans, and completed background checks to ensure that applicants have had no public health or marine resource violations or felonies. The applications were noticed pursuant to section 253.70, F.S., and no objections were filed for these applications.

If the Board of Trustees approve the requested aquaculture leases, the applicants will have their individual lease parcels surveyed, and submit the survey to DEP's Bureau of Surveying and Mapping for approval. After DACS receives the approved survey and legal descriptions of the lease parcels, new lease instruments will be executed. The lessees will then record the leases with Manatee County and with DEP's Division of State Lands, mark the leases according to the lease agreements, and begin production.

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

(See Attachment 2, Pages 1-39)

RECOMMEND APPROVAL

Item 3 Rule 5I-7, F.A.C., Notice of Proposed Rulemaking

REQUEST: Consideration of a request to publish a Notice of Proposed Rulemaking for Rule 5I-7, F.A.C. This rule establishes the requirements for application, evaluation, ranking and acquisition of perpetual less-than-fee easements on working agricultural lands pursuant to the Rural and Family Lands Protection Act, Sections 570.70 and 570.71, F.S.

COUNTY: Statewide

APPLICANT: Department of Agriculture and Consumer Services, Division of Forestry

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STAFF REMARKS:

Overview

The Department is requesting approval to begin the rulemaking process for the Rural and Family Lands Protection Program. This program is a “willing seller” easement acquisition program within the Department of Agriculture and Consumer Services. The program is designed to acquire perpetual easements that ensure the land will be preserved in agricultural use and provide protection of natural resources.

The Department has developed a draft rule in consultation with other state agencies and held a workshop to receive public comment on the draft rule. The Department is seeking Board of Trustees approval to proceed with rulemaking and publish a Notice of Proposed Rulemaking for Rule 5I-7, F.A.C. in the Florida Administrative Weekly. At the conclusion of the rulemaking process, including public hearings, if any, the Department will return with a proposed final rule recommended for adoption by the Board of Trustees.

Background

The Rural and Family Lands Protection Act was created in 2001 and is codified in Sections 570.70 and 570.71, F.S. The purpose of the act is:

to bring under public protection lands that serve to limit subdivision and conversion of agricultural areas that provide economic, open space, water and wildlife benefits by acquiring land or related interests in land such as perpetual, less-than-fee easements . . . in rural areas. (Section 570.70(5), F.S.)

The program will ensure sustainable agricultural practices and protection of natural resources through adherence to established Best Management Practices on the lands that are acquired.

In December, 2001, Commissioner of Agriculture Charles H. Bronson submitted to the Governor, Senate President, and House Speaker a report on the Rural and Family Lands Protection Act. The report substantiated the need for this key economic, environmental and growth management program.

The program was unfunded until this year. During the 2008 legislative session, the Legislature adopted SB 542, which reauthorized the Florida Forever Program. This legislation was signed into law on June 30, 2008 by Governor Crist (Chapter 2008-229, Laws of Florida). The new law amended the Florida Forever Act, s. 259.105, F.S., providing 3.5 percent of the \$300 million Florida Forever appropriation (or approximately \$10.5 million annually) to the Department of Agriculture and Consumer Services for the implementation of the Rural and Family Lands Protection Program (RFLPP).

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The legislation allows for the acquisition of only perpetual easements that achieve the objectives of the Rural and Family Lands Protection Act and the Florida Forever Act. The legislation directed the Board of Trustees to ensure that the rules are consistent with the acquisition process provided for in s. 259.041, F.S. In addition, the legislation required that the rule provide for the following:

- The development of annual priority acquisition list that is reviewed by the Acquisition and Restoration Council (ARC) and approved by the Board of Trustees;
- Terms of easements and acquisitions proposed under this program shall be approved by the Board of Trustees and shall not be delegated to any entity;
- All acquisition documents shall contain a clear statement that acquisition is subject to legislative appropriation.

Finally, the legislation specified that no funds made available to the Department may be expended until final adoption of the rule by the Board of Trustees.

Pursuant to s. 570.71(10), F.S., the Department of Agriculture and Consumer Services, Department of Environmental Protection, Department of Community Affairs, Fish and Wildlife Conservation Commission, the five water management districts, and other interested parties worked together to create Department draft rule 5I-7 for the RFLPP. A Notice of Rule Development was published in the Florida Administrative Weekly on May 30, 2008, and a workshop was held on June 20, 2008, in Tallahassee. The proposed rule addresses the requirements contained in Sections 570.70, 570.71 and 259.105, F.S.

Summary of the Draft Rule

Eligible Projects

In order to qualify for acquisition, a project must protect the integrity and function of working landscapes, ensure opportunities for viable agricultural activities on working lands, and meet at least one of the following public purposes:

- Perpetuate open space on working lands that contain significant natural areas;
- Protect, restore or enhance water bodies and aquifer recharge areas, including uplands and springsheds, wetlands or watersheds;
- Promote a more complete pattern of protection, including buffers to natural areas, ecological greenways and functioning ecosystems;
- Promote the restoration, enhancement or management of species habitat, consistent with the purposes for which the easement is acquired.

Evaluation and Ranking of Projects

Once eligible applications are received, the Commissioner of Agriculture will submit the applications to a review team for a technical evaluation of the project. The review team members

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may be selected from the Department of Agriculture and Consumer Services; the Florida Natural Areas Inventory or similar scientific organization; a state or local agency responsible for land planning and growth management; water management districts, adjacent public land managers, if any; and others. The composition of the review team may vary from project to project, so that unique characteristics of a particular application can be properly evaluated by individuals with the appropriate expertise. For instance, a representative from a water management district would be selected to review an application where hydrological considerations are integral to the project. These experts will review the project application and complete an evaluation report that will be independently submitted to the Department.

After the Department has compiled the reports on each project, the projects will be reviewed by a selection committee at a public meeting. The purpose of the public meeting will be to receive public input on the projects and to adopt an annual list of priority projects proposed for acquisition.

After the ranking of projects by the selection committee, the priority project list will be submitted to the Acquisition and Restoration Council for review and subsequently to the Board of Trustees for approval. As set forth in statute, the Board of Trustees may remove projects from the list, but may not add projects or change project ranking.

Once the list has been approved by the Board of Trustees, the Department will begin the acquisition process for the approved projects. The rule prohibits the Department from beginning purchase negotiations until the list has been approved.

Acquisition Process

The funding legislation directs the Board of Trustees to ensure that the provisions of the rule are consistent with the acquisition process established in s. 259.041, F.S. The rule has been developed to meet that requirement and these products will meet established criteria that the Board of Trustees has developed as part of the traditional Florida Forever land acquisition process, including:

- Appraiser selection, appraisal requirements, establishment of maximum amounts, and review requirements are consistent with s. 259.041, F.S.;
- Appraisals, offers and counter-offers will be confidential, consistent with s. 259.041(7) and (8), F.S.;
- Title insurance and certified surveys will be obtained for all easement purchases; and
- The rule provides for the review and approval of all purchase instruments by the Board of Trustees.

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Partnerships

The rule includes provisions to help identify potential cost sharing partnerships with complementary local, state and federal programs. A cost-sharing opportunity would be recommended to the Board of Trustees if the objectives of the partnering program are compatible with this program and the landowner is willing to comply with the requirements of all entities involved in the partnership.

The opportunity to cost-share on these projects will provide the Board of Trustees with the ability to bring lands under the same level of protection at a reduced cost. For instance, there are several U.S. Department of Agriculture (USDA) programs that may provide partnership opportunities for the state. The most notable of these is USDA's "Farm and Ranch Land Protection Program," which provides federal matching funds to states and others to purchase development rights that will keep productive farm and rangeland in agricultural uses. The recently enacted federal Farm Bill doubled the funding for the Farm and Ranch Land Protection Program to \$773 million. This program, as well as other federal, state and local conservation programs may provide an opportunity for the state to maximize its program dollars.

Compliance, Monitoring and Enforcement

The rule requires that all easements acquired under this program include provisions for the continued compliance, monitoring and enforcement of the terms and conditions of the easements. The easements will include a Baseline Documentation Report, which summarizes the condition of the property, including agricultural operations, structures, conservation values and natural features of the property. This Baseline Documentation Report will serve as the basis for the regular monitoring of the property. The rule requires that easements contain provisions for the ongoing monitoring of easements acquired by the Board of Trustees. The easements will also contain enforcement provisions, ensuring the interests of the state are protected.

(See Attachment 3, Pages 1-50)

RECOMMEND APPROVAL TO FILE NOTICE OF PROPOSED RULEMAKING FOR PROPOSED RULE 5I-7, F.A.C.