

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
AUGUST 25, 2009
Substitute Page

Attachments to the items below can be viewed at the following link:

http://www.dep.state.fl.us/secretary/cab/public_notices.htm

Substitute Item 1 40 Audusson, LLC/T&S Properties, LLC (Pelican's Perch Marina and Boatyard) Lease

DEFERRED FROM THE AUGUST 11, 2009 AGENDA

REQUEST: Consideration of an application for an after-the-fact five-year sovereignty submerged lands lease containing 139,825 square feet, more or less, for an existing 91-slip commercial docking facility.

APPLICANTS: 40 Audusson, LLC, and T&S Properties, LLC
(known as Pelican's Perch Marina and Boatyard)
Lease No. 170343361
Application No. 17-0289756-001-DE

LOCATION: 40 Audusson Avenue
Pensacola, Escambia County
Section 59, Township 02 South, Range 30 West
Aquatic Preserve: No
Waterbody/Classification: Bayou Chico, Class III, not approved for shellfish harvesting
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speeding Zone: No

CONSIDERATION: \$14,628.29 representing the initial annual lease fee computed at the base rate of \$0.149455 per square foot, discounted 30 percent because a minimum of 90 percent of the slips are open to the public for rent on a first-come, first-served basis. 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 may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)l, F.A.C. Fees may be revised upon receipt of an acceptable survey.

STAFF REMARKS:

Background Synopsis (chronology included in backup)

A commercial docking facility, at this site, has been in operation since the late 1950s early 1960s. During the 1970s, an area of sovereignty submerged lands, west of the marina, was filled. The Department of Environmental Protection (DEP) issued a Certificate [No. 40814(5700-17)], pursuant to section 18-21.019(3), F.A.C., to clear title to those filled, formerly submerged, sovereignty lands on December 21, 2007. In 1985, the former Department of Natural Resources registered the docking facility as a grandfathered structure (GSR No. 170006).

On August 12, 1997, the Florida Marina Patrol and the U.S. Coast Guard responded to a complaint of discharges from this site into Bayou Chico and notified DEP. DEP's August 13, 1997 site inspection revealed: (1) a floating work barge had sunk and was no longer functional; (2) an unauthorized sunken ferry that was being used as a work shed located at the northwestern

Substitute Item 1, cont.

side of the land peninsula located immediately to the northwest of the marina basin (labeled as Area “A” on the survey); (3) staging of numerous sunken, non-operational vessels on sovereignty submerged lands destined for salvage or recycling; (4) violation of dredge and fill permit due to the use of unauthorized material in the riprap; and (5) hazardous waste violations due to the storing of large amounts of hazardous waste and disposing of hazardous waste into the ground.

The applicants were notified by letter, dated September 11, 1997, of the requirement to bring grandfathered facilities under lease. The applicants submitted an application for a sovereignty submerged lands lease on December 22, 1997. DEP determined the application for lease would not be processed until violations were resolved.

On August 26, 1998, a proprietary consent order was executed. The proprietary consent order required: (1) payment of \$250 for costs and expenses; (2) removal of all material from the shoreline that was not clean riprap; (3) removal of all unauthorized, non-floating structures and/or vessels from sovereignty submerged lands except for the sunken ferry (labeled as Area “A” on the survey) which was authorized as a marginal dock and restricted to water dependent uses; and (4) removal and placement on the uplands of the welding shop from the sunken ferry/marginal dock. On September 9, 1998, a regulatory consent order was executed. The regulatory consent order required payment of \$36,500, with \$34,000 for settlement of hazardous waste matters, \$500 for civil penalties, and \$2,000 for costs and expenses.

On May 22, 2007, a meeting between DEP and the applicants was held to discuss bringing the facility under a sovereignty submerged lands lease. On May 29, 2008, DEP and the applicants entered into a proprietary consent order authorizing the repair of damaged structures as a result of Hurricane Ivan (September 2004) and a temporary use agreement (TUA) for the prior unauthorized use of sovereignty submerged lands. The consent order required payment of \$1,000 for costs and expenses. The TUA required payment of \$104,995.06 for lease fees in arrears. On June 30, 2008, the applicants submitted an application for a sovereignty submerged lands lease as required by the TUA.

The TUA expired on May 29, 2009 and the application for lease was not complete. Lost records due to Hurricane Ivan (2004), the death of the original owner (2005), and pending estate settlement issues have delayed completion of the application beyond the original TUA timeframe of one year. On July 10, 2009, a TUA extension was executed granting temporary exclusive use of the existing structures preempting approximately 140,284 square feet of sovereignty submerged lands through August 29, 2009.

Project Detail

The applicants are requesting after-the-fact authorization for an existing 91-slip (85 permanent and 6 transient) docking facility preempting 139,825 square feet of sovereignty submerged lands. The docking facility is used in conjunction with the upland commercial marina facility that includes an office, a boat repair and service facility, and a dry storage yard that provides space

Substitute Item 1, cont.

primarily for boats needing repair as well as providing dry storage for operational boats. The docking facility and dry storage yard accommodate recreational vessels ranging in lengths from 22 to 47 feet, with drafts up to 5 feet.

A minimum of 90 percent of all the wet slips will be maintained on an open to the public, first-come, first-served basis, pursuant to section 18-21.003(25), F.A.C. This requirement has been included as a special lease condition.

A ferry, known as the “Tenneco”, is currently moored in the basin (slips 68-71). The “Tenneco” was built in St. Marks in 1940 by Tennessee Gas Transmission. It was originally named the “H. H. Hardin” (vessel # 263244) and was constructed with a concrete hull, unusual for that time period. The applicants have been actively working since 2008 to relocate the ferry to the Apalachicola Maritime Museum. In order to relocate the ferry, it may be necessary to conduct an exempt maintenance dredge in the interior of the boat basin prior to removal as the basin has silted in due to Hurricane Ivan (2004) and Hurricane Dennis (2005). A special lease condition has been included which requires removal of the ferry prior to the end of the five-year lease term.

There is a sunken ferry currently being used as a marginal dock located at the facility. Initially, 375 square feet of the sunken ferry were calculated to be on sovereignty submerged lands and proposed to be included in the preempted area. However, the submitted survey used to determine the preempted area was found to be incorrect. The sunken ferry is estimated to preempt approximately 1,200 square feet of sovereignty submerged lands. The correct square footage will be determined by a revised survey to be submitted pursuant to a special approval condition. In order to remove the sunken ferry, it will be necessary to obtain a permit from DEP. A special lease condition has been included which requires removal of the portion of the sunken ferry located on sovereignty submerged lands within three years from the issuance of the lease.

Noticing

The project was noticed pursuant to section 253.115, F.S. Approximately 72 property owners were noticed and one objection was received. The objection concerned the applicants’ prior history of non-compliance and pollution concerns. Since 1997, DEP’s Hazardous Waste Section and Submerged Lands’ Section have been working with the previous owners and the current applicants to resolve all compliance issues including the pollution issues that the objection letter referenced.

Comprehensive Plan

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

(See Attachment 1, Pages 1-14)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION, THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$14,628.29

Item 2 Mussallem Option Agreement/Office of Greenways and Trails’ State Road 207 Rail Trail - Mussallem Trailhead Project

REQUEST: Consideration of an option agreement to acquire 24 acres within the Office of Greenways and Trails’ State Road 207 Rail Trail - Mussallem Trailhead project from Anthony and Madalyn Mussallem.

COUNTY: St. Johns

LOCATION: Section 04, Township 08 South, Range 29 East

CONSIDERATION: \$406,560

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Tompkins (10/30/08)	APPROVED <u>VALUE</u>	SELLER’S PURCHASE <u>PRICE</u>	TRUSTEES’ PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Mussallem	24	\$423,500	\$423,500	\$325,000*	\$406,560** (96%)	120 Days After BOT Approval

* Seller purchased the property on October 9, 1998. The acquisition parcel was purchased as part of a larger 162.33-acre parcel.

** \$16,940 per acre

STAFF REMARKS: The State Road 207 (SR 207) - Mussallem Trailhead project has been identified on the Department of Environmental Protection’s (DEP) Office of Greenways and Trails’ (OGT) Florida Forever approved acquisition list. DEP’s Division of State Lands (DSL), on behalf of OGT, negotiated this acquisition under the Florida Forever Greenways and Trails program. This acquisition will be for the entire project area. If the Board of Trustees approves this agreement, the project will be complete.

Project Description

The SR 207 - Mussallem Trailhead is a parcel of land being proposed for development as a major trailhead facility and open space greenway. This parcel provides direct access to the SR 207 Rail Trail. The vision for the development of the proposed parcel will provide the following amenities: nature trail, picnic pavilion, restrooms, parking and interpretive signage. The parcel is located just west of Interstate 95 (I-95) along the eastern boundary of SR 207 Rail Trail. The SR 207 Rail Trail is a 19.4-mile abandoned rail corridor currently owned and being developed by the Department of Transportation (DOT) as a multi-use trail. This trail runs from west of I-95 near St. Augustine through the communities of Vermont Heights, Elkton, Spuds and Hastings. The proposed trailhead will enhance the 260+ mile “St. Johns River to the Sea Loop” (Loop). In September 2008, U.S. Representative John Mica and State Representative Bill Proctor joined delegates from the five counties (Putnam, St. Johns, Flagler, Volusia and Brevard) as they signed a Memorandum of Understanding calling for the Loop to be paved and off-road by 2013, to commemorate the 500th anniversary of Spain in Florida.

Office of Greenways and Trails’ Federal Procedures

This property is being acquired using federal acquisition procedures in accordance with the Federal Intermodal Surface Transportation Efficiency Act and the Code of Federal Regulations

Item 2, cont.

Title 49. On June 22, 1999, the Board of Trustees approved a recommendation to substitute the land acquisition procedures of the Federal Highway Administration for the state of Florida's procedures outlined in section 259.041, F.S., for the projects that qualify for federal enhancement funding, as administered by the Department of Transportation (DOT). Under the federal guidelines, DEP is required to disclose the fair market value of the parcel at the beginning of negotiations.

Mortgages and Liens

All mortgages and liens will be satisfied at the time of closing. 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 any title issues that arise prior to closing.

Access to the acquisition parcel will be via an existing 60-foot-wide non-exclusive easement over the east line of the parent tract from SR 207.

Closing Information

A title insurance commitment, a survey, and an environmental site assessment will be obtained by the Board of Trustees prior to closing.

Florida's Statewide Greenways & Trails System

The major components of the Florida Statewide Greenways and Trails Program are established by a legislatively adopted plan. This plan was developed through the work and consensus of a broad range of interested persons such as recreational users, conservation groups, and private landowners. The foundation for the plan's development consisted of various legislative actions and efforts that occurred throughout the more than 20 years prior to its adoption in 1999. OGT in coordination with the Florida Greenways and Trails Council (Council) is charged with overseeing the establishment of the statewide system of greenways and trails.

One important component of the Florida Greenways and Trails Program is the identification of ecological and recreational connections (opportunity areas) throughout the state. These opportunity areas have been identified, mapped and prioritized, and form the basis for developing and evaluating acquisition projects.

OGT Application Process

Applicants apply for OGT's 1.5 percent (\$4.5 million) annual allocation of Florida Forever funding through an application process. The applicants must meet criteria specified by chapter 260, F.S., and detailed by rule in chapter 62S-1, F.A.C. Applications are initially reviewed by OGT staff and biologists and then forwarded to the Council for review and approval. The Council consists of 21 members, as outlined in chapter 260, F.S. At a public meeting, the Council evaluates the projects before recommending a final acquisition list. The list is then forwarded to the Secretary of DEP for final approval.

Item 2, cont.

In order to be eligible, applicants must apply for and receive a Certificate of Eligibility. A Certificate of Eligibility is approved by OGT staff if: (1) the proposed project meets the definition of a greenway or trail, as defined in chapter 260, F.S.; (2) the planned project corridor is located within or adjacent to at least one opportunity segment on one or more of the Recreational Prioritization Maps; (3) at least 80 percent of the planned project corridor has a landowner willing to negotiate; and (4) the project has a willing manager. Once the Certificate of Eligibility is approved, the project application may be submitted to OGT during an open cycle period. Proposed projects are evaluated based on the following criteria: (1) the rank (high, medium, or low) assigned to the project based on the Recreational Prioritization Maps; (2) percentage of any matching funds available or committed to the project; (3) the percentage of acreage that is proposed for less-than-fee acquisition; (4) ecological values; (5) recreational attributes; and (6) historical and cultural resources.

Management

OGT will be the interim manager, while the County will be the long term manager of the property. The County has committed to the development and management of the property. The County and the seller have entered into a Memorandum of Understanding which specifies how the access easement to the trailhead will be maintained.

Comprehensive Plan

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands' section of the State Comprehensive Plan.

(See Attachment 2, Pages 1-39)

RECOMMEND APPROVAL

Substitute Item 3 August 2009 Florida Forever Five-Year Plan/Florida Forever Priority List

REQUEST: Consideration of (1) the August 2009 Florida Forever Five-Year Plan; and (2) the Acquisition and Restoration Council's recommended August 2009 Florida Forever Priority List.

STAFF REMARKS:

(1) August 2009 Florida Forever Five-Year Plan: The August 2009 Florida Forever Five-Year Plan was prepared pursuant to Chapter 259, F.S., and Rule 18-24, F.A.C. During the Acquisition and Restoration Council (ARC) meetings of February 13 and June 12, 2009 ARC approved three new projects for the August 2009 priority list. One of the three added projects, Windover Archeological Site, was approved contingent upon Brevard County's agreement to manage the property. The County has not yet made that decision; therefore, the project is not included on the August 2009 priority list. In addition, one of the new projects was added to an

**Board of Trustees
Agenda - August 25, 2009
Substitute Page Seven**

Substitute Item 3, cont.

existing project. ARC amended the boundary of three projects and recommended removal of two projects from the list. No projects moved from Group A to Group B. One project moved from Group B to Group A.

<u>New Projects Added to List</u>	<u>Total Acres</u>	<u>County</u>
Kissimmee Billy Strand (A List)*	4,694	Hendry
Triple Diamond (A List)	7,991	Okeechobee

<u>Projects with Boundary Amendments</u>	<u>Acres +/-</u>	
Charlotte Harbor Estuary	79	Charlotte
Panther Glades (Kissimmee Billy Strand*)	4,694	Hendry
Charlotte Harbor Flatwoods	(3,035)	Charlotte
Florida Keys Ecosystem	(7)	Monroe

<u>Project Moved from Group B to Group A</u>	
Panther Glades	Hendry

<u>Projects Removed from List</u>	<u>Reason</u>	
Ochlockonee Bluffs	97% complete	Liberty
Promise Ranch	100% complete	Lake

* *New project added to project previously on list = boundary amendment as well.*

(2) ARC's Recommended August 2009 Florida Forever Priority List: The August 2009 Five-Year Plan includes the August 2009 Florida Forever Priority List of acquisition projects approved by ARC on June 12, 2009 and proposed for adoption by the Board of Trustees. This list includes 66 projects in Group A and 43 projects in Group B. Pursuant to section 259.04(1)(c), F.S., "... the board shall approve, in whole or in part, the lists of projects in the order of priority in which such projects are presented."

Accomplishments of Florida Forever Program: Since its inception in July 2001 through May 2009, the state's Florida Forever land acquisition program has been extremely successful, as evidenced by the protection of:

- 259,330 acres of Strategic Habitat Conservation Areas;
- 426,290 acres of rare species habitat conservation areas, and over 480 listed species locations of 200 different species, 99 of which are state-listed as endangered, 39 state-listed threatened, and 19 species of special concern;
- 638,450 acres of ecological greenways;
- 57,310 acres of under-represented natural communities;
- 77,920 acres of natural floodplains;
- 645,350 acres important to significant water bodies;
- 5,190 acres of fragile coastline;

Substitute Item 3, cont.

- 273,000 acres of functional wetlands;
- 625,710 acres of significant groundwater recharge areas;
- 206,390 acres of land to support priority recreational trails;
- 302,130 acres of sustainable forest land; and
- 554 archaeological and historic sites.

These acreages were derived from the most recently updated Florida Forever data layers, which are continuously amended to reflect the most current scientific analyses of Florida's natural resources. Additionally, the acreages recorded for each measure often overlap, and thus should not be added together. Collectively, the State of Florida has protected over 638,500 acres of land with \$2.62 billion in Florida Forever funds through June 30, 2009.

All property within the boundaries of the Florida Forever projects, unless specifically noted otherwise, is proposed to be purchased, in fee-simple or a lesser interest, for conservation purposes.

The August 2009 Florida Forever Priority List is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

The August 2009 Florida Forever Five-Year Plan is being submitted in digital format.

Division of State Lands' Annual (FY09-10) Florida Forever Work Plan

Section 259.105(17), F.S., requires the Department of Environmental Protection's (DEP) Division of State Lands (DSL) to develop, and ARC to adopt, an annual Florida Forever Work Plan (work plan). A copy of the work plan is required to be provided to the Board of Trustees no later than October 1 of each year. The work plan is being submitted with this agenda item for your review.

(See Attachment 3, Page 1)

RECOMMEND (1) ACCEPTANCE OF THE AUGUST 2009 FLORIDA FOREVER FIVE-YEAR PLAN; AND (2) APPROVAL OF ARC'S RECOMMENDED AUGUST 2009 FLORIDA FOREVER PRIORITY LIST