

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JANUARY 19, 2011

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

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

Substitute Page

Substitute Item 1 Blue Water VI, LLC (Gateway Daytona) Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for (1) a modification of a five-year sovereignty submerged lands lease to (a) change the use from a fishing pier to a commercial docking facility; (b) increase the term to ten years; and (c) increase the preempted area from 1,024 square feet to 242,766 square feet, more or less, for a proposed 156-slip commercial docking facility; and (2) authorization for the severance of 18,494 cubic yards of sovereignty material.

VOTING REQUIREMENT: Three affirmative votes

APPLICANT: Blue Water VI, LLC (a/k/a Gateway Daytona)
Lease No. 640722464
ERP Application No. 4-127-107217-1

LOCATION: 115 East International Speedway Boulevard, Daytona Beach
Halifax River, Volusia County

CONSIDERATION: \$58,429.11 representing (1) \$26,048.00 as the initial annual lease fee computed at the base rate of \$0.153281 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; (2) \$9,263.61 as the 25 percent surcharge payment for the additional area; and (3) \$23,117.50 for the severance of sovereignty material computed at the rate of \$1.25 per cubic yard. Sales tax and county discretionary sales surtax will be assessed pursuant to the 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 rule 18-21.011(1)(a)1, F.A.C.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this "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 that require authorization to use sovereignty submerged lands.

Project Detail

The applicant is proposing to construct a 156-slip (141 permanent, 2 temporary, and 13 transient for those using upland retail shops and restaurant) commercial docking facility for the proposed upland commercial development. Proposed upland activities include a 300-unit hotel, 16 townhomes, restaurant, and retail shops. The docking facility will accommodate recreational vessels not to exceed 50 feet in length with a maximum draft of 4.5 feet.

A minimum of 90 percent of all of the slips will be maintained on an open to the public, first-come, first served-basis pursuant to rule 18-21.003(27), F.A.C. This requirement has been included as a special lease condition.

Substitute Item 1, cont.

The applicant is also proposing to dredge 18,494 cubic yards of sovereignty material to approximately -6.0 feet mean low water (MLW) to provide adequate water depth for the vessels proposed to be moored at the docking facility. The current depths in the project footprint range from approximately -0.7 feet to -8.5 feet MLW. The spoil material will be disposed of at an appropriate self-contained upland site. All dredging on sovereignty submerged lands will be included in the proposed lease.

Noticing/Interested Parties

The project was noticed pursuant to rule 18-21.004(1)(m), F.A.C. Sixty property owners were specifically noticed and the District received a letter of concern from one couple, and multiple emails from an individual objecting to the issuance of the permit. The couple expressed concern that the proposed dredging activities may result in sediment deposits blocking the access from their dock to the channel. The District responded to the letter advising that the proposed dredging will occur only within the footprint of the proposed docking facility, not near their property or the channel, the applicant will use weighted turbidity curtains, and the permit requires the applicant to transport the dredge material off-site.

The individual objecting to the issuance of the permit sent the District three emails and numerous pages of supporting documentation. The correspondence expressed concerns regarding manatees, pollution and the applicant's financial capability of maintaining the system, as well as issues with local government actions regarding the project. The District responded, in writing, addressing those issues within its regulatory authority and included the objector on the distribution list to receive notice of agency action.

Additionally, the District forwarded all correspondence to the applicant for response.

(See Attachment 1, Pages 1-76)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$58,429.11**

Item 2 Snook Bight Marina, LLC Recommended Consolidated Intent/Lease Modification

REQUEST: Consideration of an application for (1) a modification of a ten-year sovereignty submerged lands lease to (a) increase the preempted area from 86,217 square feet to 139,083 square feet, more or less, for a proposed reconfigured 74-slip commercial docking facility; and (b) reduce the term of the lease to five years; (2) authorization for the severance of 3,325 cubic yards of sovereignty material; and (3) authorization for installation of two mangrove planters.

VOTING REQUIREMENT: Three affirmative votes

Item 2, cont.

APPLICANT: Snook Bight Marina LLC, a Florida limited liability company
(d/b/a Snook Bight Yacht Club and Marina)
Lease No. 361577255
ERP File No. 36-0171129-011

LOCATION: 4761 Estero Boulevard, Town of Fort Myers Beach
Matanzas Pass, Lee County

CONSIDERATION: \$30,825.87, representing: (1) \$21,318.78 as the initial lease fee computed at the base rate of \$0.153281 per square foot; (2) \$2,025.84 as the initial 25 percent surcharge payment for the additional area; and (3) \$7,481.25 for the severance of 3,325 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard, pursuant to rule 18-21.011(3)(a)2, 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 may be adjusted based on six percent of the annual income pursuant to rule 18-21.011(1)(a)1, F.A.C. Fees may be revised upon receipt of an acceptable survey and legal description.

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.

Project Detail

The existing commercial docking facility contains 76 wet slips and 201 upland dry storage units. Currently, all of the slips over sovereignty submerged lands are available for rent to the general public on a first-come, first-served basis for periods of one year or less.

The proposed project consists of removing the existing 76-slip commercial docking facility and constructing a 74-slip commercial docking facility (53 permanent wet slips and 21 temporary slips). The docking facility will accommodate private recreational boats, commercial tour boats, commercial fishing boats, and rental boats. Boat sizes will range in lengths from 20 to 50 feet, with a maximum draft of up to 5.5 feet. The lease authorizes mooring of commercial and recreational vessels in conjunction with an upland marina, restaurant and 201-slip dry storage facility, along with fueling facilities, a sewage pumpout facility, and liveaboards. The leased facility has accommodated liveaboards since prior to the grandfather registration and initial lease.

The permanent boat slips located over sovereignty submerged lands and the upland dry storage spaces may be available for rent to the general public based on market conditions. Therefore, the applicant no longer qualifies for the 30 percent discount to the lease fee and the lease term will be reduced from ten to five years.

Item 2, cont.

The applicant is also proposing to dredge 3,325 cubic yards of sovereignty material to approximately -6.5 feet mean low water (MLW) in the northwest basin as well as along the waterward side of dock A and to -6.0 feet MLW in the southeast basin to provide adequate water depths for the vessels proposed to be moored at the docking facility. The current depths in the project footprint range from less than -3.0 feet nearshore to approximately -10.6 feet MLW.

Noticing/Interested Parties

The lease modification request was noticed pursuant to rule 18-21.004(1)(m), F.A.C. Sixty-four property owners were specifically noticed and one objection was received by the end of the comment period. The concerns raised in the objection received pertained to:

- (1) elimination of the limit on the number of powerboats at the docking facility;
- (2) the potential for increased water pollution from fuel leakage and emissions;
- (3) the validity of the 25-foot setback waiver from the Ocean Harbor condominium;
- (4) the potential for vessels or floating docks to become loose during a storm event and adversely affecting nearby properties.

DEP is of the opinion that the concerns have been addressed in the following ways:

- (1) comments/recommendations from the Florida Fish and Wildlife Conservation Commission (FWC);
- (2) DEP's environmental resource permit and the marina operations plan;
- (3) the setback waiver was signed by the president of the condominium association (verified by the Florida Department of State, Division of Corporations), acting as president of the condominium association; and
- (4) the structural integrity of the floating docks has been confirmed by the lessee's agent, a Professional Engineer. Also, while there is the possibility that vessels may become loose during a significant storm event such as a tropical storm or hurricane, the lessee has provided reasonable assurance, through the marina operations plan, that reasonable precautions will be taken to appropriately manage vessels and vessel mooring at all times, including storm events.

(See Attachment 2, Pages 1-53)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$30,825.87**

Item 3 Pointe One, LLC Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for (1) a five-year sovereignty submerged lands lease containing 106,721 square feet, more or less, for a proposed 51-slip private residential multi-family docking facility; (2) authorization to exceed the preempted area to shoreline ratio; and (3) authorization for the severance of 590 cubic yards of sovereignty material.

Item 3, cont.

VOTING REQUIREMENT: Three affirmative votes

APPLICANT: Pointe One, LLC (Pointe One)
Lease No. 460338621
Application No. 46-0251677-004-DF

LOCATION: 1 Gulf Shore Drive, Destin
Destin Harbor, Okaloosa County

CONSIDERATION: \$70,260.28, representing: (1) \$16,358.30 as the initial annual lease fee computed at the base rate of \$0.153281 per square foot for the total of 106,721 square feet; (2) \$4,089.58 as the 25 percent surcharge payment for the initial area; and (3) \$49,074.90 as the one-time premium pursuant to rule 18-21.011(1)(c), F.A.C.; and (4) \$737.50 for the severance of 590 cubic yards of sovereignty material computed at a rate of \$1.25 per cubic yard pursuant to rule 18-21.011(3)(a)3, F.A.C. Sales tax and county discretionary sales surtax will be assessed pursuant to section 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 rule 18-21.011(1)(a)1, F.A.C.

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 that require authorization to use sovereignty submerged lands.

Background

This project was brought before the Board of Trustees for its consideration and approval on July 29, 2010, but failed to receive a motion. The applicant has since proposed to increase the Net Positive Public Benefit (NPPB) for this project, as well as committed to maintain sufficient water depths in areas of navigational concern.

Project Detail

The proposed project site is to be located within Destin Harbor, just south of Norriego Point. The upland parcel contains water frontage along both the north side, on Destin Harbor, and the south side, on the East Pass Channel. Both water front shorelines have existing upland retaining walls.

Pointe One is proposing to construct a 51-slip private residential multi-family docking facility to be used in conjunction with a 79-unit condominium complex. The docking facility will accommodate recreational vessels ranging from 36 to 145 feet in length with drafts up to 10 feet.

Because the applicant has 618 linear feet of riparian shoreline, rule 18-21.004(4)(b)2., F.A.C., limits the preempted area to 24,720 square feet of sovereignty submerged lands (the "40:1" rule). The applicant proposes to preempt 106,721 square feet, which would exceed the rule by 82,001

Item 3, cont.

square feet. Rule 18-21.004(4)(g), F.A.C., requires the applicant to record a conservation easement over the entire 618 linear feet of the riparian shoreline to prohibit future construction or expansion of the facility.

Net Positive Public Benefit

The shoreline adjacent to the East Pass Channel is 618 feet in length and was used for the 40:1 calculation. The docking facility exceeds the 40:1 ratio and is required to provide NPPB. As NPPB, the applicant has proposed to contribute:

- 1) \$1,676,022 towards:
 - a. construction of an ADA-accessible public restroom facility and utility connections located on Norriego Point accessible by a crushed gravel road; and
 - b. the extension of Gulf Shore Drive along with 18 public parking spaces, a pedestrian boardwalk, a transit parking space, bicycle racks, lighting and landscaping.

The total estimated construction cost of the public restroom facility and the improvements to the Gulf Shore Drive extension is \$2,768,625. However, \$1,092,603 of this total will pay for improvements which the applicant would need to undertake as a part of the proposed upland development, so only \$1,676,022 of the total cost of these projects qualifies as an NPPB.

- 2) \$500,000 to the City of Destin (City) to be used by the City for the development of the Capt. Royal Melvin Heritage Park & Plaza (Heritage Park) or another similar project with prior written approval from the Department of Environmental Protection (DEP).

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

The City submitted a management plan for Heritage Park to the Florida Department of Community Affairs in May, 2010. This plan calls for the shoreline of the parcel to be incorporated into the planned Harbor Boardwalk that will eventually run along the northern shore of Destin Harbor. The management plan estimates that the cost of the portion of the Harbor Boardwalk on the Heritage Park site will cost \$500,000.

The Lessee is required to complete construction and payment of all NPPB improvements within five years of recording of the lease instrument. Prior to commencing construction of the marina, the Lessee shall have no right to exclude the general public from the proposed lease area.

Item 3, cont.

Dredging

Pointe One is proposing to dredge 590 cubic yards of near-shore, sovereignty material to approximately -8 feet mean low water (MLW) to provide adequate depths for vessels that will moor at the facility. All dredging on sovereignty submerged lands is included in the proposed lease area.

A separate application was made to DEP by the City and Pointe One for the dredging of 60,585 cubic yards from the existing federal channel in Destin Harbor and a shoal surrounding the channel. This permit was issued on March 17, 2010. The authorized dredging is expected to reduce congestion from boat traffic seeking to enter and exit the mouth of Destin Harbor. The dredging is part of the applicant's reasonable assurances that the use of the proposed docking facility will not contribute to increased congestion near the harbor entrance or impede navigation. The dredging is also projected to increase flushing at the mouth of Destin Harbor by approximately five percent, as indicated in a hydrographic study.

The Lessee is required to maintain -10 feet MLW depths between the dock and the shoal, extending approximately 100 feet, within the Lessee's riparian rights area. With water depths maintained at -10 feet MLW, navigational concerns will be alleviated in the areas adjacent to the federal channel. Depths in this area are currently at -10 feet MLW, however if the area is in need of future maintenance dredging, that activity will require a separate DEP review authorization.

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 1980's. 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.

In order to satisfy the NPEB, the applicant is required to pay \$21,420 to the City of Destin Stormwater Management Trust Fund. This amount is based on a contribution of \$420 per slip and is consistent with previous Board of Trustees' actions.

Noticing/Interested Parties

The current lease request was required to be noticed pursuant to section 253.115, F.S., and section 18-21.005(3), F.A.C. One hundred and thirty-three property owners were specifically noticed and fifty-four objections were received. The objectors raised the following concerns:

- (1) navigation concerns;
- (2) potential increased boat traffic;
- (3) water quality concerns;
- (4) increased vehicular traffic, noise, parking, upland property values, property zoning issues, loss of view due to construction of the condominium; and
- (5) potential construction danger to threatened or endangered bird species nesting sites.

Item 3, cont.

DEP is of the opinion that the objectors' concerns have been addressed as follows:

- (1) the department issued a wetland resource permit on March 17, 2010 authorizing the dredging of the federal channel and the shoal surrounding the channel thereby alleviating the congestion and the potential for navigation concerns at the mouth of the channel. Also, a special lease condition has been added requiring the applicant to maintain minus ten foot MLW depths around the perimeter of the facility, extending approximately 100 feet, between the dock and the shoal;
- (2) the department has included a specific condition in the wetland resource permit that will address the timing of the marina construction so it will not impact vessel traffic during the boating season;
- (3) all water quality parameters tested were in compliance with state standards;
- (4) the local government is responsible for the noise, parking, increased vehicular traffic, upland property values, property zoning issues and loss of view; and
- (5) the department has included a specific condition in the wetland resource permit that addresses the timing of the construction and requires nesting surveys and protective buffer zones if nesting occurs between February 15 and September 1 to avoid impacts to species nesting sites.

(See Attachment 3, Pages 1-90)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$70,260.28**