

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
FEBRUARY 22, 2011

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 Minutes from the November 9, 2010 and December 7, 2010 Cabinet Meetings.

VOTING REQUIREMENT FOR APPROVAL: Simple majority

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

RECOMMEND APPROVAL

Item 2 Board of Trustees/University of West Florida Foundation, Inc Exchange Agreement/Determination/Release

REQUEST: Consideration of (1) a determination that, pursuant to section 18-2.018(3)(b)1.c., F.A.C., an exchange of a 37.25-acre parcel of state-owned non-conservation land in Escambia County provides a greater benefit to the public than its retention in Board of Trustees' ownership; (2) approval of an exchange agreement to convey the 37.25 acres of state-owned land in exchange for 60.58 acres owned by University of West Florida Foundation, Inc.; and (3) approval of a release of restrictive covenant.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTY: Escambia

APPLICANT: University of West Florida Board of Trustees (UWF)

LOCATION: Sections 24 and 25, Township 01 North, Range 30 West (Parcel 2); and Section 25, Township 01 North, Range 30 West (Parcel 1)

CONSIDERATION: Value-for-value

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>EXCHANGE VALUE</u>	<u>CLOSING DATE</u>
		<u>09/15/09</u>	<u>02/26/10</u>		
Parcel 1 (Foundation)	60.58	\$1,210,000	\$650,000	\$650,000	120 days after BOT approval
Parcel 2 (BOT)	37.25*	\$1,154,750**	\$650,000	\$650,000	

*Two appraisals were completed for Parcel 2 for 68.77 acres. Fruitticher valued Parcel 2 at \$2,130,000 and Brantley valued Parcel 2 at \$1,200,000. The Brantley appraisal of \$1,200,000 was selected for the exchange value for Parcel 2. Because of the difference in the value of Parcel 2 over Parcel 1 (\$1,200,000 versus \$650,000), Parcel 2 was reduced from 68.77 acres to 37.25 acres to provide a value-for-value exchange and eliminate the need for cash boot on the part of the Foundation.

**\$1,154,750 is allocated from Fruitticher's appraised value of \$2,130,000 for 68.77 acres.

Item 2, cont.

History

In 2000, the Board of Trustees purchased 542.45 acres, including 424.93 acres from J.H. Baroco Foundation, Inc. (Baroco), for lease to UWF for its west campus. Access to the west campus is via Greenbrier Boulevard on its south boundary. The UWF main campus, containing approximately 1,000 acres, is immediately east of these lands, but is separated by Thompson's Bayou. Until Thompson's Bayou is bridged to allow extension of Greenbrier Boulevard, there is no connection between the main and west campuses.

In 2000, University of West Florida Foundation, Inc. (Foundation) also acquired 105.34 acres by donation from Baroco. The Foundation land consists of three parcels that form a corridor that splits UWF's west campus resulting in 367.60 acres of campus west of the Foundation lands, and 174.85 acres of campus east of the Foundation lands.

Current Request

UWF is requesting approval of an exchange that would connect the two halves of its west campus. The exchange would also result in the Foundation having a property with a more usable configuration and enhanced access to Greenbrier Boulevard, which will allow the Foundation to move forward with plans to develop its property for a corporate park. The Foundation initially requested an acre-for-acre exchange; however, appraisals of the exchange parcels placed a much higher value on the Board of Trustees' land than the Foundation's land. Rather than pay cash boot, the Foundation agreed to a reduction in acreage from 68.77 acres to 37.25 acres for a value-for-value exchange. The Department of Environmental Protection (DEP) staff recommends that the Board of Trustees approve the exchange to provide for optimal development of the UWF west campus.

Access

The UWF west campus and Foundation property are split by Pate Street, which is a private road owned by Gulf Power Company (GPC). In 2000, when the Board of Trustees and Foundation acquired their respective properties from Baroco, a representative of GPC indicated that the company would be willing to allow a road crossing. That same representative has now indicated to one appraiser that GPC would no longer allow such a crossing. UWF and the Foundation are working with GPC to resolve the issue. A recent addition to the UWF Board of Trustees is GPC's Vice President of External Affairs and Corporate Services. UWF anticipates resolving the issue to everyone's satisfaction because alternative access is available, and denial of the road crossing would not prevent development of the property.

Appraisals

With regard to the parcel to be acquired by the Board of Trustees (Parcel 1), pursuant to section 18-1.006(5), F.A.C., a third appraisal shall be obtained for an acquisition if the first two appraisals differ significantly. Two appraisals shall be considered to differ significantly if the higher of the two values exceeds 120 percent of the lower value. However, a third appraisal shall not be obtained if the decision is made by the Division of State Lands' (DSL) director to attempt to negotiate an acquisition price of no more than 120 percent of the lower of the two appraisals. In this instance, the decision was made to waive the third appraisal and set the

Item 2, cont.

maximum value at 120 percent of the low value of \$650,000, or \$780,000. The low appraised value of \$650,000 was negotiated for Parcel 1.

With regard to the parcel to be acquired by the Foundation (Parcel 2), pursuant to section 253.034(6)(g), F.S., a second appraisal is at the sole discretion of DSL if a surplus parcel yields an initial value equal to or greater than \$1 million. In instances of a land exchange, a second appraisal has typically been required for the surplus parcel if the acquisition parcel required two appraisals and the value of the surplus parcel exceeded \$1 million. There is no provision in surplus rule or statute for what to do if the first two appraisals differ significantly. Since the Board of Trustees has historically gone with either both high appraisals or both low appraisals for exchanges, and the low appraisal was negotiated for the acquisition parcel, the low appraisal has been used for the exchange value of the surplus parcel as well.

Noticing

Pursuant to section 253.115, F.S., property owners within 500 feet were notified of the proposed exchange. No objections were received. Pursuant to section 253.111, F.S., exchanges are exempt from county notice.

Pursuant to section 253.034(15), F.S., state agencies and state universities were notified of the proposed exchange. The Department of State, Division of Historical Resources (DHR) requested that a cultural resources assessment survey meeting the specifications outlined in chapter 1A-46, F.A.C., be completed on the state property to be exchanged. UWF and the Foundation propose to complete the survey after the exchange is completed. The exchange agreement contains language whereby the state property will be conveyed subject to a restrictive covenant prohibiting construction until such time as the survey can be completed and protective measures, if any, have been taken to DHR's satisfaction. Following notification by DHR, a release of restrictive covenant will be executed for recording in the public records.

Mineral Interests

Both the Board of Trustees and Foundation will convey their respective lands without a reservation for phosphate, mineral, metal and petroleum interests as provided by section 253.62, F.S.

Comprehensive Plan

DEP has determined that conveyances of land are not subject to the local government planning process. The acquisition of Parcel 1 is consistent with section 187.201(17), F.S., the Public Facilities section of the State Comprehensive Plan.

(See Attachment 2, Pages 1-36)

RECOMMEND APPROVAL

Substitute Item 3 Martin County Board of County Commissioners (Jensen Beach Mooring Field) Recommended Consolidated Intent/Lease

REQUEST: Consideration of (1) a determination that, pursuant to rule 18-20.004(1)(b), F.A.C., it is in the public interest to lease 1,501,293 square feet (34.47 acres), more or less, of sovereignty submerged lands; and (2) an application for a 25-year sovereignty submerged lands lease containing approximately 1,501,293 square feet for a proposed 51-buoy managed mooring field and associated 18-slip dinghy dock.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Martin County Board of County Commissioners (County)
Lease No. 430345996
Application No. 43-0298844-001

LOCATION: The project is located to the south side of the Jensen Beach Causeway (State Road 732) and west of the Intracoastal Waterway, Jensen Beach Indian River, Martin County

CONSIDERATION: The project qualifies for a waiver of lease fees pursuant to section 18-21.011(1)(b)7, F.A.C., which states that fees shall be waived for government entities that are either not-for-profit or non-profit uses when the revenues are used for operation and maintenance of the structure and the activity is consistent with the public purposes of the County organization and is not an adjunct to a commercial endeavor.

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 chapters 253 and 258, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

Background

The project area is currently being used as an ad hoc, unregulated anchoring area by the public due to its close proximity to Intracoastal Waterway (ICW) and convenient upland facilities located along the Jensen Beach Causeway (Causeway).

The Causeway is currently open to the public and offers two boat ramps with fish cleaning stations, 140 car parking spaces, 58 car/trailer parking spaces, picnic shelters, a fishing pier, a wooden viewing platform, and two restroom facilities. Laundry, shower, and additional restroom facilities will be added to the existing Causeway facilities for use by the mooring field patrons.

Project Detail

The County is proposing to construct and operate a 51-slip mooring field and an 18-slip dinghy dock. The mooring field will provide mooring buoys for vessels up to 60 feet long. The dinghy dock will facilitate the temporary mooring of vessels for use of the upland amenities.

Substitute Item 3, cont.

The mooring field will be open to the public on a first-come, first-served basis as defined in rule 18-21.003(27), F.A.C. Although vessel traffic in the mooring field is anticipated to be primarily by mooring field occupants, passage within and through the mooring area will be open to the general public, and passage by non-mooring field occupants will not be prohibited or restricted.

The County will install in-water uniform waterway markers to demarcate the mooring field. The signage will conform to the Florida Fish and Wildlife Conservation Commission's (FWC) uniform marker requirements pursuant to rule 68D-23, F.A.C.

Seagrass Areas

On July 21 through 24 and July 30 through 31, 2009, Coastal Systems International, Inc. performed a quantitative biological assessment of the submerged lands. The Department of Environmental Protection (DEP) confirmed the resource survey on July 6, 2010.

Within the footprint of the proposed mooring field Paddle Grass (*Halophila decipiens*) was observed. The proposed mooring field design avoids all seagrass areas except for an area in the southwest quadrant where coverage of 1 percent, or less, was observed.

The dinghy dock traverses a small sparse area (< 20 percent) of seagrass consisting of Manatee Grass (*Syringodium filiforme*), Shoal Grass (*Halodule beaudettei*), and Paddle Grass (*Halophila decipiens*). The dinghy dock has been designed so that the terminal platform and associated temporary mooring area are located in an area devoid of seagrass.

Public Interest

The proposed project is located within the Jensen Beach to Jupiter Inlet Aquatic Preserve (Aquatic Preserve). Since the project is located in the aquatic preserve, it must be in the public interest pursuant to rule 18-20.004(1)(b), F.A.C. DEP is of the opinion that the proposed project is in the public interest for the following reasons:

- (1) the project will manage moored vessels which currently displace, scour and shade seagrass beds in the area;
- (2) the project will require that all vessels using the facility utilize marine sanitation devices that meet federal and state standards, which will improve water quality within the Indian River;
- (3) the project will provide regularly scheduled visits by the Martin Ship Pump Out Operation Program vessel;
- (4) the project will increase the public's access to upland facilities via the construction of an 18 slip dinghy dock;
- (5) the project will improve public conveniences onshore by adding shower and laundry facilities; and
- (6) the County removed 5 derelict vessels from the Aquatic Preserve which were located in the proposed mooring field area.

Substitute Item 3, cont.

Mooring Field Management Plan (Plan)

The County has submitted a Plan that provides background information, design, operational rules and procedures, and objectives for the County's oversight and management of the entire mooring field via the County's harbormaster located on the Causeway.

(See Attachment 3, Pages 1-43)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION
AND THE SPECIAL LEASE CONDITIONS**

**Item 4 Blue Water VI, LLC (Gateway Daytona) Recommended Consolidated Intent/
Lease Modification**

WITHDRAWN FROM THE JANUARY 19, 2011 AGENDA

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 FOR APPROVAL: Three 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: \$55,650.05 representing (1) \$26,047.99 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) \$6,484.55 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.

Item 4, cont.

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.

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 St. Johns River Water Management District (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 4, Pages 1-77)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$55,650.05**

Substitute Item 5 HCI Marina, LLC (Bridge Harbor) Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for a ten-year sovereignty submerged lands lease containing 369,902 square feet, more or less, for a proposed 174-slip commercial marina.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: HCI Marina, LLC (HCI) (a/k/a Bridge Harbor)
Lease No. 030345531
Application No. 03-0297763-003-DF

LOCATION: 7222 Boatrace Road, Callaway
Callaway Bayou and Osprey Inlet, Bay County

CONSIDERATION: \$49,611.59, representing (1) \$39,689.27 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; and (2) \$9,922.32 as the 25 percent surcharge payment for the initial area. 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.

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 which require authorization to use sovereignty submerged lands.

Background

On October 2, 2009, HCI submitted an application for a proposed 232-slip commercial marina. The Department Environmental Protection (DEP) expressed concerns about the size and configuration of the proposed marina. The Florida Fish and Wildlife Conservation Commission (FWC) expressed concerns about potential shoreline erosion and hazards to navigation. On January 22, 2010, HCI withdrew its application for the 232-slip commercial marina.

On April 19, 2010, HCI submitted an application for a 194-slip commercial marina and subsequently modified the application to reduce the number of slips to 174. HCI addressed both DEP's and FWC's concerns related to size and configuration of the previously proposed marina and potential shoreline erosion and navigation hazards.

Project Details

HCI is proposing to construct a 174-slip (167 permanent and 7 temporary) commercial marina to be used in conjunction with an 18,000-square-foot commercial development consisting of stores, a restaurant, a marina rental office, and associated parking. The marina will accommodate recreational vessels ranging from 20 to 50 feet in length with drafts of up to 5 feet.

Substitute Item 5, cont.

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.

Noticing/Interested Parties

The project was noticed as required pursuant to section 253.115, F.S., and rule 18-21.005(3), F.A.C. Twenty-seven property owners were specifically noticed and 12 objection letters were received. Also, the project was noticed as required pursuant to section 403.815, F.S., and rule 62-103.150, F.A.C., and 28 objection letters were received. The objectors raised the following concerns:

- (1) potential noise, lighting, traffic, and upland property zoning;
- (2) increased boat traffic and potential navigation hazards;
- (3) impacts to water quality; and
- (4) impacts to native fauna.

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

- (1) noise, lighting, traffic, and upland property zoning are not within DEP's regulatory authority to consider. DEP coordinated with the city of Callaway (City) to ensure that the project is consistent with the local government comprehensive plan. The City provided a letter indicating that local building codes and setback requirements would be addressed in its authorization prior to construction of the marina;
- (2) DEP coordinated with FWC to ensure that its concerns about hazards to navigation were addressed. In addition, the U. S. Coast Guard provided a memo, dated February 25, 2010, indicating it had no comments or objections related to waterway safety;
- (3) all water quality parameters tested were in compliance with state standards. DEP's hydrographic engineering section stated no objection to the project on May 19, 2010; and
- (4) DEP coordinated with FWC to ensure that it had no comments or concerns related to potential impacts to fish, birds, and other animals.

A public meeting, facilitated by DEP, was held on June 24, 2010 at the Callaway Arts and Conference Center. Approximately 100 local residents attended. DEP has also sent each objector a letter responding to their specific concerns.

The Bay County Board of County Commission (County Commission), in a letter dated November 3, 2010, requested assurance that the concerns expressed by Bay County residents, located across the bayou from the proposed marina, be addressed during the review process of this project. In a November 17, 2010 letter, the County Commission advised that it was aware that the concerns expressed in its November 3, 2010 letter had been resolved. The County Commission wished to make it clear that it has not taken any position with regard to the proposed marina application.

Substitute Item 5, cont.

(See Attachment 5, Pages 1-151)

RECOMMEND DEFERRAL