

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
APRIL 5, 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 BOT Delegations Additions/Revisions/Chapter 18-21, F.A.C., Rule Development/Delegation of Authority

REQUEST: Consideration of (1) revisions and an addition to delegations granted by the Board of Trustees; and (2) a request to enter into rule development for rule 18-21.0051, F.A.C., regarding delegation of authority for the use of sovereignty submerged lands.

VOTING REQUIREMENT FOR APPROVAL: Three votes

LOCATION: Statewide

STAFF REMARKS: On January 31, 2006, the Board of Trustees approved additions and revisions to delegations granted by the Board of Trustees to the Department of Environmental Protection (DEP). DEP has conducted a review of its business processes and requests modifications to the existing delegations, where necessary, to address changes in the day-to-day operations of the Board of Trustees and to improve DEP's ability to streamline its internal processes to operate more efficiently and effectively. Issues involving heightened public concern will continue to come before the Board of Trustees. DEP recommends revising three existing delegations, adding a delegation, and entering into rule development.

DELEGATION REVISIONS

Division of State Lands - DSL-2

Proposal: Revise this delegation for approval, execution, and modification of private upland easements by (1) eliminating the size threshold for uplands not managed for conservation purposes; (2) increasing the size threshold and adding a value threshold for conservation lands; and (3) eliminating the required 10-day notice via negative response memo for private upland easements between 0.25 acre and 5 acres in size. This delegation would be revised to read, "Approve, execute, and modify private upland easements, with the concurrence of the managing agency, on (1) uplands not managed for conservation purposes; (2) conservation lands when the easements do not exceed 50 acres in size or \$500,000 in value (pursuant to chapter 18-2, F.A.C.); and (3) easements being granted or modified as part of the acquisition of a parcel of land to formalize a pre-existing use."

Potential Benefit: If this delegation is revised, as requested, the timeframe for processing a majority of private upland easements would be reduced by approximately 45 days, expediting and streamlining the process for the public and eliminating the cost of taking non-controversial easements to the Board of Trustees.

Rationale: In the past 4 years, 22 private upland easements have been issued under the current delegation of authority, of these, 5 were handled via negative response memo in which none were requested by the Board of Trustees to come as a formal agenda item. Additionally, 5 projects required formal Board of Trustees' approval as the easements were over 5 acres in size (all 5 easements were approved). If the delegation was revised, then 2 of the 5 easements would have required Board of Trustees' approval.

Substitute Item 1, cont.

Division of State Lands - DSL-6

Proposal: Revise this delegation to include the authority to declare surplus and eliminate the size threshold for uplands not managed for conservation purposes and Murphy Act parcels and declare surplus and increase the value for the disposition of uplands not managed for conservation purposes. This delegation would be revised to read, "Subject to compliance with sections 253.034(6)(f), 253.034(15), and 253.111, F.S., (1) declare surplus and approve the exchange, conveyance, and/or sale of uplands not managed for conservation purposes with a value (pursuant to chapter 18-2, F.A.C.) of \$100,000 or less; (2) declare surplus and approve the exchange, conveyance, and/or sale of uplands not managed for conservation purposes with a value (pursuant to chapter 18-2, F.A.C.) over \$100,000 and under \$500,000 that are being conveyed at a price equal to or exceeding the value (pursuant to chapter 18-2, F.A.C.); and (3) declare surplus and approve the exchange, conveyance, and/or sale of any and all lands acquired through the Murphy Act."

Potential Benefit: If this delegation is revised as requested, it will save approximately 45 days of processing time for each item. Expediting the process of the disposition of surplus lands increases efficiencies and results in a reduction of staff time and costs which is in line with the objectives of DEP. It also follows the direction of the Florida Legislature, as provided in section 216.0153, F.S.

Rationale: In the past 4 years, 9 contracts for the sale or exchange of uplands not managed for conservation purposes were required to go to the Board of Trustees for approval (all 9 contracts were approved). If this delegation was increased to \$500,000 and the acreage threshold eliminated, 4 of the 9 contracts could have been handled under delegation. Currently, there are 6 potential sales in process that could be handled under delegation if this delegation is revised as proposed.

Division of State Lands - DSL-16(c)

Proposal: Revise this delegation to increase the purchase price threshold for the purchase of conservation parcels and/or conservation easements, still within the statute's threshold, for conservation lands and delete the 10-day notice via negative response memo requirement. This delegation would be revised to read, "Unless the acquisition is the initial purchase within a project, approve contracts for purchases of conservation parcels and/or conservation easements having (1) a purchase price of up to \$250,000, unless the purchase price agreed to by the seller exceeds the value established by the rules of the BOT; and (2) a purchase price between \$250,000 and \$500,000 provided the purchase price is 90% or less of the value established by the rules of the BOT."

Potential Benefit: If this delegation is revised as requested, it will expedite the acquisition process by approximately 45 days and eliminate the cost of taking items to the Board of Trustees.

Rationale: Over the past 4 years, DEP has processed 528 contracts for acquisition: 449 contracts were handled under the current delegation of authority, of these, 88 were handled via negative

Substitute Item 1, cont.

response memo in which none were requested by the Board of Trustees to come as a formal agenda item; and 79 contracts were required to go to the Board of Trustees for approval (all 79 contracts were approved). If this delegation was revised, 75 would have required Board of Trustees' approval. Currently, there are 33 potential acquisitions in the appraisal or negotiation phase. If this delegation is revised, 20 would be handled under delegation, and 13 would require Board of Trustees' approval.

DELEGATION ADDITION

Proposal: Add financial criteria to be considered in the exercise of DEP's delegations to grant land use authorizations. This delegation would read, "DEP's exercise of a delegation to grant a sovereignty submerged lands authorization or an authorization to use state-owned uplands shall take into consideration to the extent DEP is able to determine, whether the applicant is the subject of a pending bankruptcy proceeding, has any unsatisfied judgments entered against it, has satisfied all state and local taxes for which it is responsible, or has any other matters pending or threatened against or affecting it or, in the case of a sovereignty submerged lands lease, the applicant's interest in the riparian upland property, that might impair the applicant's financial ability to undertake and operate the project for which authorization is sought."

Potential Benefit: If this delegation is added, it will better assure payment to the state for use of its lands, as well as, demonstrate the applicant's financial ability to undertake and operate the project.

RULE DEVELOPMENT

Amend rule 18-21.0051, F.A.C., to delete (2)(a) slip threshold and amend (2)(b) to increase the preempted area threshold from 50,000 square feet to 150,000 square feet and eliminate the 10 percent incremental increase.

Potential Benefit: If the rule is amended, as requested, the timeframe for processing sovereignty submerged lands leases would be reduced by approximately 45 days, expediting and streamlining the process for the public and eliminating the cost of taking non-controversial leases to the Board of Trustees. The controversial (heightened public concern) projects would still go to the Board of Trustees regardless of their size.

Rationale: In the past 4 years, 48 projects were considered by the Board of Trustees (48 of the projects were approved by the Board of Trustees of which 3 were approved with amendments). If this delegation was revised to 150,000 square feet, with no slip threshold, 25 would have required Board of Trustees' approval. After analysis of these 48 projects, it has been determined that the amount of area preempted was more of a factor than the amount of slips proposed, thereby eliminating the need for a slip threshold.

If this rule is amended, as requested, the corresponding delegation, Directors of District Management-1 (DDM-1), will be amended to reflect the rule changes.

(See Attachment 1, Pages 1-3)

RECOMMEND APPROVAL

Substitute Item 2 Babcock Ranch Preserve Management Agreement Revision/Restatement

REQUEST: Revision and Restatement of the Babcock Ranch Preserve Management Agreement.

VOTING REQUIREMENT FOR APPROVAL: Three votes

COUNTIES: Charlotte and Lee

STAFF REMARKS: This 73,239-acre property is located in southern Charlotte and northern Lee Counties. Ownership of the Babcock Ranch Preserve (Preserve) is held by the Board of Trustees, as to the portion of the property located in Charlotte County, and by the Lee County Board of County Commissioners (Lee County), as to the portion of the property located in Lee County.

Babcock Ranch Management, LLC (Preserve Manager), a for-profit limited liability company, is managing the Preserve for a term of up to ten years under the provisions of a Management Agreement approved by the Board of Trustees on November 22, 2005. The Management Agreement began on July 31, 2006 for ten years with a cancellation clause that could be exercised by the Preserve Manager after the first five years. The Preserve Manager has advised the Department of Environmental Protection that they intend to continue managing the ranch under the Management Agreement for the next five years, and have prepared suggested modifications to the Management Agreement that they believe to be mutually beneficial to the Preserve Manager and the State.

The Florida Fish and Wildlife Conservation Commission (FWC) and the Department of Agriculture and Consumer Services, Division of Forestry (DOF) are lead managing agencies acting in a technical advisory role to the Preserve Manager. In addition to being an owner, Lee County is acting in a technical advisory role to the Preserve Manager for its portion of the property. Babcock Ranch, Inc., (BRI) a legislatively created not-for-profit corporation, is an advisor to the Preserve Manager during the term of the Management Agreement. When the Management Agreement terminates, BRI will assume management responsibility for the Preserve. BRI is comprised of a nine-member board of directors including four members appointed by the Board of Trustees, the executive director of FWC, the Commissioner of Agriculture, a representative from the Babcock Florida Company, a representative appointed by the Charlotte County Board of County Commissioners, and a representative appointed by the Lee County Board of County Commissioners.

Revision and Restatement of the Babcock Ranch Preserve Management Agreement

With the adoption of the Management Plan (MP) for the Preserve pursuant to sections 253.034 and 259.032, F.S., and its subsequent approval by the Acquisition and Restoration Council (ARC) and the Board of Trustees, tenant farming and the various uses of the property came to be governed by the provisions in that MP. The Preserve Manager has requested that modifications be made to the Management Agreement to make it consistent with the MP, to clarify certain sections, and to make the document current. The original Management Agreement was approved by the Board of Trustees, Lee County, FWC, DOF and the Preserve Manager. The changes

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currently suggested to the Management Agreement were reviewed by ARC at their February 10, 2011 meeting and BRI approved these changes at their meeting on January 20, 2011. Lee County staff received approval of the changes from the Board of County Commissioners on March 15, 2011.

(See Attachment 2, Pages 1-44)

RECOMMEND WITHDRAWAL

Substitute Item 3 BOT/Watson Island Amended and Restated Partial Modification of Deed Restrictions/City of Miami/Flagstone Island Gardens, LLC

REQUEST: Consideration of a request from the City of Miami for an Amended and Restated Partial Modification of Restrictions Deed No. 19447-F to revise the schedule and structure for payments due to the Board of Trustees and to include Flagstone Island Gardens, LLC, as a party to the amended document.

VOTING REQUIREMENT FOR APPROVAL: Simple Majority

COUNTY: Miami-Dade

APPLICANT: City of Miami (City)

LOCATION: Section 31, Township 53 South, Range 42 East, Biscayne Bay Aquatic Preserve, Class III waters, within the local jurisdiction of the City of Miami

CONSIDERATION: Semi-annual payments of 15 percent of the total preconstruction rents and construction rents from 2010, to be paid by Flagstone Island Gardens, LLC (Flagstone), and semi-annual payments of 15 percent of total base rent beginning on October 1, 2021, or upon the completion of the development, whichever occurs first, with a guaranteed minimum annual payment of \$300,000, to be paid by the City.

MINIMUM ANNUAL PAYMENTS TO BOARD OF TRUSTEES FROM FLAGSTONE AND CITY

<u>Flagstone Payments to Board of Trustees</u>			<u>City Payments to Board of Trustees</u>		
2010	\$45,000	(to be paid in 2011)	2021	\$300,000	*\$321,000
2011	\$75,000		2022	\$300,000	*\$337,500
2012	\$112,500		2023	\$300,000	*\$347,250
2013	\$150,000		2024	\$300,000	*\$347,250
2014	\$150,000		2025	\$300,000	*\$347,250
2015	\$150,000		2026	\$300,000	*\$347,250
2016	\$171,000		2027	\$300,000	*\$347,250
2017	\$197,250		2028	\$300,000	*\$347,250
2018	\$246,000	*\$283,500	2029	\$300,000	*\$347,250
2019	\$246,000	*\$283,500	2030	\$300,000	*\$347,250
2020	\$283,500	*\$321,000			

Substitute Item 3, cont.

*** This amount includes additional payment for extensions if applicable**

Note: These amounts will be divided into semi-annual payments. Board of Trustees would also receive 15% of percentage rents or other rents received by Flagstone and paid to the City in addition to these amounts.

CPI increases will be applicable on the first anniversary of the commencement of the Base Rent for each major project component as set forth in the Ground Lease(s).

Background

On June 24, 2004, the Board of Trustees approved a Partial Modification of Restrictions Deed No. 19447-F (“Partial Modification”) for a 24.14-acre parcel of non-conservation lands located on and adjacent to Watson Island. This parcel consists of 10.79 acres of uplands and 13.35 acres of submerged lands. This Partial Modification allows the City to lease this parcel to Flagstone for a state-of-the-art mega yacht marina and mixed-use project on Watson Island. In consideration of the Board of Trustees modifying the public purpose restrictions to allow the City to enter into a public-private, profit making partnership with Flagstone, the City agreed to make semi-annual payments to the Board of Trustees based upon 15 percent of the total gross base rental payments received under the Ground Lease but no less than \$300,000 during each 12-month period after the full base rent is due. The City also agreed to guarantee that Flagstone will spend no less than \$1,000,000 to improve an undeveloped, open space area on the southeast side of Watson Island and the Japanese Garden on Watson Island. These improvements will include: a playground, parking area, security cameras, restroom facilities, observation area or platform, underground utilities, fencing, and open air pavilion which was part of the original approval of the partial modification of restrictions. The original Agreement to Enter into Ground Lease executed January 31, 2003, gave Flagstone 48 months to enter into the Ground Lease with the City. The City has provided Flagstone extensions to enter into a ground lease. The City is requesting an Amended and Restated Partial Modification of Restrictions, which supersedes the Partial Modification, to revise the payment schedule to change when these funds will be paid to the Board of Trustees and to add Flagstone as a party to the Amended and Restated Partial Modification of Restrictions because Flagstone is required to make semi-annual payments to the Board of Trustees until the development is completed or October 1, 2021, whichever occurs first.

Current Request

The City is requesting the Partial Modification be amended to include the revised payment schedule and structure as indicated in Exhibit A to the City’s Resolution R-10-0402 dated September 23, 2010. In addition, Flagstone will become a party to the Amended and Restated Partial Modification of Restrictions because it has agreed to pay the Board of Trustees semi-annual payments of 15 percent of the total preconstruction and construction rents paid to the City on January 1 and July 1 of each calendar year until the development is completed or October 1, 2021, whichever occurs first. After this date, the City will begin making payments to the Board of Trustees. The Amended and Restated Partial Modification of Restrictions will provide that if either Flagstone or the City, fails to make payments as required, the Board of Trustees may terminate the Amended and Restated Partial Modification of Restrictions after the cure period specified in the Amended and Restated Partial Modification of Restrictions expires. Flagstone will also certify to certain financial conditions in the Amended and Restated Partial Modification of Restrictions and has executed an affidavit regarding liens, garnishments, judgments and

Substitute Item 3, cont.

litigation. Any breach of a statement in the certifications or affidavit shall constitute a default by Flagstone under the Amended and Restated Partial Modification of Restrictions.

If approved, these revisions will provide additional revenue to the state of approximately \$1,050,750, to be paid directly by Flagstone Island Gardens, LLC, which was not part of the original 2004 Board of Trustees' approval. In addition, this project will create new jobs. The Department of Environmental Protection recommends that the Board of Trustees approve the Amended and Restated Partial Modification of Restrictions to revise the payment schedule to the Board of Trustees and to include Flagstone Island Gardens, LLC, as a party to the Amended and Restated Partial Modification of Restrictions.

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 has determined that the plan is in compliance. The proposed action is consistent with the adopted plan according to a letter received by the City.

(See Attachments 3, Pages 1-45)

RECOMMEND APPROVAL SUBJECT TO (i) THE CITY'S APPROVAL OF THE AMENDED AND RESTATED PARTIAL MODIFICATION OF RESTRICTIONS IN THE SAME FORM APPROVED BY THE BOARD OF TRUSTEES; AND (ii) FLAGSTONE'S DISCHARGE OF ALL OUTSTANDING LIENS, GARNISHMENTS AND JUDGMENTS OR DELIVERY TO THE MIAMI-DADE COUNTY CLERK OF COURTS REGISTRY TO BE HELD IN AN ESCROW ACCOUNT, AN AMOUNT NOT LESS THAN THE TOTAL REMAINING OUTSTANDING BALANCE OF ALL UNDISCHARGED LIENS, GARNISHMENTS AND JUDGMENTS ON OR BEFORE AUGUST 12, 2011.