

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
DECEMBER 6, 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 Harborwalk, LLC Recommended Consolidated Intent/Lease Renewal/Modification

WITHDRAWN FROM THE NOVEMBER 15, 2011 AGENDA

REQUEST: Consideration of a renewal and modification of a five-year sovereignty submerged lands lease to increase the preempted area from 143,866 square feet to 148,769 square feet, more or less, for a mixed use docking facility.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Harborwalk, LLC

(d/b/a Harborwalk, Inc., East Pass Investors, Inc., Pelican Point Harbor, Inc., and Kelly Boat Services, LLC)

Lease No. 460002031

Application No. 46-0195322-008-EI

LOCATION: 76 Harbor Boulevard, Destin

Destin Harbor (a/k/a Old Pass Lagoon), Okaloosa County

CONSIDERATION: \$22,572.42, representing: \$23,300.61 as the initial annual lease fee computed at the base rate of \$0.156623 per square foot; and \$191.97 as the one-time 25 percent surcharge payment for the additional area; less \$920.16 as the payment made in association with the Temporary Use Agreement (TUA). 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 shall be adjusted based on six percent of the annual income if it proves to be greater than the fee computed at the base rate, 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.

The project is required to demonstrate that it is "not contrary to the public interest," pursuant to rule 18-21.004(1)(a), F.A.C. The applicant has provided reasonable assurance that the proposal will maintain essentially natural conditions; will not significantly impact fish and wildlife and other natural resources, including public recreation and navigation; is consistent with the goals and objectives of the "Conceptual State Lands Management Plan"; is consistent with the local government's comprehensive plan; and will not interfere with the riparian rights of adjacent property owners. Therefore, the Department of Environmental Protection (DEP) is of the opinion that the proposal is "not contrary to the public interest" and otherwise meets all applicable requirements for a proprietary authorization to use sovereignty submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, chapter 253, F.S., associated rule 18-21, F.A.C., and the direction of the Board of Trustees.

Substitute Item 1, cont.

Background

On December 18, 2007, the Board of Trustees approved the previous sovereignty submerged lands lease modification for Harborwalk, Inc., which contained a special lease condition requiring any changes or modifications of the lease to come before the Board of Trustees for approval. Therefore, the proposed modification has been placed on the agenda for consideration.

On May 2, 2011, DEP documented boats mooring waterward of the existing lease area. A Consent Order and TUA were executed on June 29, 2011, to expire on June 29, 2012, for the additional preempted area. The applicant has paid all fees in accordance with the terms of the TUA.

Project Detail

The proposed project consists of expanding the existing 100-slip docking facility, by adding 10 transient slips and reconfiguring 2 existing slips, thereby creating a 110-slip facility for vessels ranging in lengths from 7 to 83 feet. The expansion will also increase the current preempted area of 143,866 square feet by 4,903 square feet, for a new total of 148,769 square feet. The facility is used in conjunction with a non-water dependent restaurant, an upland mixed use development consisting of a 292-unit condominium complex, and a 199,999-square-foot commercial shopping center.

The modifications include the addition of 10 transient boat slips south of the existing lease boundary, which will primarily be used for the staging of pontoon boats up to 24 feet in length with drafts of 1.5 feet, and the reconfiguration of 2 existing slips, which will house an 83-foot-long pirate ship with a draft of 6 feet. The project is adjacent to a federal navigation channel that is maintained at -12 feet mean low water (MLW). The depths within the additional ten slips are at least -4 feet MLW. The depths within the reconfigured slips are at least -7 feet MLW. The pirate ship will offer cruises of Destin Harbor, the Gulf of Mexico, and the Choctawhatchee Bay.

The Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section indicated that it had no objection to the project.

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 1980s. 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 has agreed to make a one-time payment of \$4,200 to the City of Destin Stormwater Management Fund. This amount is based on a contribution of \$420 per slip for the 10 additional boat slips. This is consistent with previous Board of Trustees' actions, and payment of the NPEB has been added as a special approval condition.

Substitute Item 1, cont.

Noticing/Interested Parties

The lease modification request was not required to be noticed pursuant to section 253.115(5)(i), F.S., however the applicant did notice all property owners within a 500-foot radius of the project. Twelve property owners and interested parties were specifically noticed and no objections were received during the noticing period.

(See Attachment 1, Pages 1-38)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITION, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$22,572.42**

**Item 2 Wex-Tex Industries, Inc. (Wex-Tex Holdings, Inc./Treasure Island Marina, Inc.)
Recommended Consolidated Intent/Lease Renewal/Modification**

REQUEST: Consideration of an application for renewal and modification of a ten-year sovereignty submerged lands lease to increase the preempted area from 101,119 square feet to 136,261 square feet, more or less, for an existing commercial marina.

VOTING REQUIREMENT FOR APPROVAL: Three votes

APPLICANT: Wex-Tex Industries, Inc.
(d/b/a or a/k/a Wex-Tex Holdings, Inc., Treasure Island Marina, Inc.)
Lease No. 030030721
Application No. 03-012897-002-EI

LOCATION: 3605 Thomas Drive, Panama City
Grand Lagoon, Bay County

CONSIDERATION: \$16,315.14, representing (1) \$14,939.13 as the initial annual lease fee computed at the base rate of \$0.156623 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) \$1,376.01 as the one-time 25 percent surcharge payment for the additional 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 shall be adjusted based on six percent of the annual income if it proves to be greater than the fee computed at the base rate, 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

Item 2, cont.

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.

The project is required to demonstrate that it is “not contrary to the public interest,” pursuant to rule 18-21.004(1)(a), F.A.C. The lessee has provided reasonable assurance that the proposal will maintain essentially natural conditions; will not significantly impact fish and wildlife and other natural resources, including public recreation and navigation; is consistent with the goals and objectives of the “Conceptual State Lands Management Plan”; is consistent with the local government’s comprehensive plan; and will not interfere with the riparian rights of adjacent property owners. Therefore, the Department of Environmental Protection (DEP) is of the opinion that that the proposal is not “contrary to the public interest” and otherwise meets all applicable requirements for a proprietary authorization to use sovereignty submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, chapter 253, F.S., associated rule 18-21, F.A.C., and the direction of the Board of Trustees.

Background

A December 29, 2009 site inspection by DEP revealed: (1) vessels mooring outside of the lease area; (2) a jet ski platform located outside of the lease area; and (3) several finger piers had been constructed without authorization. To resolve the non-compliance, DEP and the lessee entered into: (1) a Consent Order (CO) on September 21, 2010; and (2) a Temporary Use Agreement (TUA) on January 3, 2011, to expire on January 3, 2012, for the additional preempted area. The lessee has paid \$1,500 in civil penalties in accordance with the CO. Lease fees in arrears were not assessed under the TUA because six percent of the annual income the lessee reported and paid to DEP for the existing lease area was greater than the fee computed at the base rate for the total proposed lease area. The lessee is in compliance with the terms of the TUA.

Project Detail

The proposed project consists of expanding the existing 119-slip docking facility by adding 21 additional slips, thereby creating a 140-slip facility, as well as, expanding the lease boundary to accommodate those vessels which currently extend beyond the existing boundary. The expansion will increase the current preempted area of 101,119 square feet by 35,142 square feet, for a new total of 136,261 square feet.

The docking facility is used in conjunction with the upland commercial marina, which includes a 408-space dry storage facility. The docking facility accommodates pleasure, charter, and tour boats ranging in length from 10 to 65 feet with drafts up to 5 feet. The project is adjacent to a federal navigation channel that is maintained at -8 feet mean low water.

A minimum of ninety percent of all of the slips will continue to 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.

Item 2, cont.

Noticing/Interested Parties

The lease modification request was noticed to property owners, within a 500-foot radius of the project, and other interested parties, pursuant to rule 18-21.004(1)(m), F.A.C. Seventy-six property owners and interested parties were specifically noticed and no objections were received.

(See Attachment 2, Pages 1-30)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF \$16,315.14

Item 3 The Conservation Fund Option Agreement/Freeman Parcel/Big Bend Wildlife Management Area/Jena Unit/Fish and Wildlife Conservation Commission's Additions and Inholdings Program

WITHDRAWN FROM THE AUGUST 16, 2011 AGENDA

REQUEST: Consideration of (1) an option agreement to acquire 63.58 acres within the Florida Fish and Wildlife Conservation Commission's Big Bend Wildlife Management Area, Jena Unit, Florida Forever Additions and Inholdings project from The Conservation Fund; and (2) authorization to place restrictions on the conveyance document pursuant to the federal grant requirements.

VOTING REQUIREMENT FOR APPROVAL: Two members, one of whom is the Governor, when four members are voting; or any two members, when three members are voting.

COUNTY: Dixie

APPLICANT: Florida Fish and Wildlife Conservation Commission (FWC)

LOCATION: Section 26, Township 09 South, Range 09 East

CONSIDERATION: \$722,500 (If approved, the Board of Trustees' consideration will be reduced by \$397,375 or 55 percent, by the U.S. Fish and Wildlife Service National Coastal Wetlands Conservation Grant. The Board of Trustees' portion, paid from FWC's Florida Forever Trust Fund, would then be \$325,125 or 45 percent.)

| <u>PARCEL</u> | <u>ACRES</u> | <u>APPRAISED BY</u> | | <u>APPROVED VALUE</u> | <u>SELLER'S PURCHASE PRICE</u> | <u>TRUSTEES' PURCHASE PRICE</u> | <u>OPTION DATE</u> |
|---------------|--------------|------------------------|------------------------|-----------------------|--------------------------------|---------------------------------|--------------------------------|
| | | <u>Ryan (12/07/10)</u> | <u>Marr (01/20/11)</u> | | | | |
| Freeman | 63.58* | \$850,000 | \$730,000 | \$850,000 | \$1,055,000** | \$722,500*** (85%) | 120 days after BOT approval |

* The appraisal does not include 159.97 submerged land acres that are included on the tax roll.
 ** Mr. Freeman acquired a portion of the property in 1985 and acquired the remaining amount in 2005.
 *** Price per acre is \$11,364 for 63.58 acres.

Item 3, cont.

STAFF REMARKS: This acquisition was negotiated by FWC and is eligible for funding under its Florida Forever Additions and Inholdings Program.

The Conservation Fund (TCF) has entered into an option agreement with Mr. John Freeman to purchase the property. If the Board of Trustees' acquisition is approved, TCF will acquire the property from Mr. Freeman and subsequently convey title to the property to the Board of Trustees.

Project Description

Much of Florida's Gulf coast from Levy County around Apalachee Bay to Franklin County is a wilderness of seagrass beds, salt marshes, oak and palm hammocks, and pine flatwoods that are emblematic of Florida's unique nature coast region. The Big Bend Wildlife Management Area (WMA) conserves miles of coastline, protecting the commercial and recreational fisheries vital to the local and regional economy that depends on healthy coastal habitat within salt marshes, tidal streams and seagrass beds. The region supports populations of wildlife such as Florida black bear, bald eagles, gopher tortoise and West Indian manatee. It also provides outstanding fish and wildlife based public outdoor recreational opportunities with public areas for wildlife viewing, canoeing, kayaking, camping, hiking and hunting, as well as fishing. The Big Bend WMA aids in the protection of the water quality of the adjacent Big Bend Seagrasses Aquatic Preserve as well as helping to protect several archaeological sites that have been found in the area.

Selected by the United States Department of the Interior, Fish and Wildlife Service (USFWS) for a grant through the National Coastal Wetlands Conservation Grant Program (NCWCGP) due to its significant coastal resources, acquisition of the Freeman tract will close an important inholding within the WMA and complete a critical connection at the strategically located confluence of the Steinhatchee River and the Gulf of Mexico. Except for one improvement located on the property, utilizing less than a ¼ of an acre, this tract is composed of intact natural communities that will aid in fulfilling the original goals of the Big Bend Coast project and conserve coastal habitat and resources that are vital to the local and regional economy.

Federal Grant Information

This acquisition was approved for funding through the National Coastal Wetlands Conservation Grant Program, by USFWS, State Grant Award: FL-C-42, on July 1, 2011, and expires on June 30, 2012. The grant amount approved is 55 percent of the purchase price or a maximum of \$1,000,000.

The following language must be inserted on the recorded deed:

This property was acquired (in part) with funds provided by the U. S. Department of Interior, Fish and Wildlife Service, pursuant to the National Coastal Wetlands Conservation Grant Program, covered under grant award FL-C-42 and will be managed for the purpose of this Grant Award, in accordance with applicable federal and State law. Property may not be disposed of in any manner, or used for

Item 3, cont.

purposes inconsistent with the Program for which it was acquired, without the prior written approval of the Regional Director – Southeast Region, U. S. Fish and Wildlife Service.

Other Grant requirements are as follows:

- receipt of an appraisal and review appraisal report by State licensed appraisers;
- the land must be acquired and managed for the purposes identified in the Grant Award;
- the final performance report for acquisitions must include a copy of the recorded deed, title insurance policy and land survey; and
- the property should be identified with appropriate signage (Federal Assistance Logo).

Mortgages and Liens

All mortgages and liens will be satisfied at the time of closing. There is an outstanding undivided one-half interest oil, gas, and mineral reservation in favor of Brooks-Scanlon, Inc. According to the deed document dated October 4, 1951, the reservation shall expire at the end of ten years (October 4, 1961) unless oil or gas is then being produced in commercial quantities in any block of 5,000 acres (more or less). Brooks-Scanlon, Inc. has not been active since 1962 and its agent has not been active since 1973. The vesting deed, dated March 25, 2005, placed a deed restriction on the property for the number of building units allowed. The reservation and deed restriction was considered by the appraisers when determining their final value.

The subject property is improved with a partially completed single family residence. The living area is 1,024 square feet. There are two decks of 790 and 120 square feet, off the living area, and a deck of 1,024 square feet, below the living area. The home is stilt-constructed approximately 20 feet above ground level elevation. The parcel is comprised of 30.11 upland acres, 33.47 jurisdictional wetland acres, upland of the waterline for acquisition, which is at or above the mean high water line.

On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (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 will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing.

Closing Information

A title insurance policy, a survey and an environmental site assessment of the property will be provided by FWC prior to closing.

Management

The parcel will be managed by FWC as an addition to the Big Bend Wildlife Management Area; Jena Tract for the conservation of natural resources, fish and wildlife based public outdoor recreation and potentially a public conservation/nature tourism visitor center. The future plan for the partially completed residence has not been determined. However, FWC is working closely

Item 3, cont.

with Dixie County and other stakeholders in the region to explore the potential for locating a conservation/nature tourism visitor center on the site. FWC is discussing the many possible uses and the costs to implement those uses before making a final determination.

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 3, Pages 1-50)

RECOMMEND APPROVAL