

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
AUGUST 23, 2005

Item 1 2005 Florida Forever Interim Report/Interim Priority List

REQUEST: Consideration of (1) the 2005 Florida Forever Interim Report of the Acquisition and Restoration Council; and (2) the 2005 Florida Forever Interim Priority List.

STAFF REMARKS: The 2005 Florida Forever Interim Report 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 11, April 22, and June 3, 2005, ARC added 1 project, removed 2 projects, and amended the boundaries of 5 projects on the Florida Forever Priority List. ARC also moved 1 project from Group A to Group B, and moved another 4 projects from Group B to Group A. The Interim Report includes the 2005 Florida Forever Interim Priority List of acquisition projects approved by ARC on June 3, 2005 and proposed for adoption by the Board of Trustees. The report also includes the descriptions of the projects that were added to the Priority List and amendments to projects on the previous priority list.

<u>Projects Added To List</u>	<u>Reason</u>	<u>County</u>
Battle of Wahoo Swamp	Project removed in error	Sumter

<u>Projects Removed From List</u>	<u>Reason</u>	<u>County</u>
St. Joseph Bay Buffers	90% Complete	Gulf
Nokuse Plantation*	parcel acquired	Walton

<u>Projects with Boundary Amendments</u>	<u>Acres</u>	<u>County</u>
Atlantic Ridge Ecosystem	304	Martin
Coupon Bight/Key Deer	±376	Monroe
Florida Keys Ecosystem	±3,695	Monroe
Indian River Lagoon Blueway	±297	Indian River
North Key Largo Hammocks	±535	Monroe

<u>Projects Moved From Group A to Group B</u>	<u>Reason</u>	<u>County</u>
Bear Creek Forest	Acquired by 3 rd party	Bay, Calhoun, Gulf

<u>Projects Moved From Group B to Group A</u>	<u>Reason</u>	<u>County</u>
Charlotte Harbor Estuary	To complete final acquisitions	Charlotte, Lee, Sarasota
Esterio Bay	To complete final acquisitions	Lee
Mill Creek	Owner's strong interest & Springs Initiative	Marion
St. Johns River Blueway	Increased County interest & willing sellers	St. Johns

* During its January 25, 2005, meeting ARC recommended that this project and

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the Harris School project be removed from the list after the Board of Trustees considers a contract to acquire these one-owner projects. If the Board of Trustees approved the contract, it would be a 100 percent completed project; while if the Board of Trustees rejected the contract, it would be unnecessary to keep it on the acquisition list. The contract to acquire Nokuse Plantation was approved on February 1, 2005, and the acquisition closed on April 8, 2005. The contract to acquire the Harris School is scheduled to be considered by the Board of Trustees on this agenda, but the Department of Environmental Protection, Division of State Lands, recommends it be retained on the list until after the acquisition closes, or until after the Board of Trustees disapproves the contract and recommends its removal from the list, but not before such time.

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

The Florida Forever Tool for Efficient Resource Acquisition and Conservation (F-TRAC) and Single Resource Ranking are analyses produced every six months by the Florida Natural Areas Inventory (FNAI) to provide scientific support to ARC in advance of its biannual vote on Florida Forever land acquisition projects. The analyses provide a concise overview of the natural resource values of each existing and proposed Florida Forever project. A Single Resource Ranking is provided for 10 resource types outlined in the Florida Forever Act. The F-TRAC 2010 Scenarios show which projects offer the greatest return in resource protection given the estimated acreage likely to be acquired using Florida Forever funds. Complete documentation for the F-TRAC and Single Resource Ranking analyses may be downloaded from the FNAI website (www.fnai.org).

The F-TRAC and Single Resource Ranking analyses evaluate projects only according to natural resource values. Other considerations such as willing sellers, active negotiations, completing projects, management feasibility, development threat, etc., are always part of any decision regarding project status. The information provided in these analyses is not intended to substitute for the informed judgment of expert decision makers. The analyses are a tool to guide decision-making, not a final conservation plan that must be followed. Nevertheless, the F-TRAC and Single Resource Ranking provide sound direction for Florida Forever, and decisions made to the contrary should be justifiable.

Since 1999, the state's land acquisition programs have been extremely successful as evidenced by the protection of: over 420,000 acres of Strategic Habitat Conservation Areas (Florida Wildlife Conservation Commission); almost 800,000 acres of habitat conservation areas (FNAI), and over 780 listed species locations of 255 different species, 121 of which are state-listed as endangered, 49 state-listed threatened, and 22 species of special concern; over 600,000 acres of ecological greenways (Office of Greenways & Trails); over 100,000 acres of

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under-represented natural communities; almost 110,000 acres of natural floodplains; over 1,000,000 acres important to significant water bodies; nearly 27,000 acres of fragile coastline; over 540,000 acres of functional wetlands; over 160,000 acres of significant groundwater recharge areas; over 230,000 acres of land to support priority recreational trails; and almost 380,000 acres of sustainable forest land. Also, almost 5,000 acres of archaeological and historic sites have been protected, over 197,477 acres have been added to state parks and over 39,401 acres have been added to buffer preserves. Note: these acreages were derived from recently updated Florida Forever data layers, which were substantially 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 Board of Trustees has protected over 1 million acres of land under the Florida Forever program since 1999.

The 2005 Florida Forever Interim Priority List is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

The Florida Forever Interim Report is being submitted in digital format.

(See Attachment 1, Page 1)

RECOMMEND ACCEPTANCE OF THE 2005 FLORIDA FOREVER INTERIM REPORT AND APPROVAL OF THE 2005 FLORIDA FOREVER INTERIM PRIORITY LIST

Item 2 LaBelle Ranch, Incorporated Conservation Easement Amendment/ Caloosahatchee Ecoscape Florida Forever Project

REQUEST: Consideration of authorization to amend the original terms of a conservation easement in Caloosahatchee Ecoscape Florida Forever Project.

COUNTY: Hendry

LOCATION: Sections 34 and 35, Township 43 South, Range 29 East; and Sections 02 and 03, Township 44 South, Range 29 East

STAFF REMARKS: On March 26, 2002, pursuant to action by the Board of Trustees, a conservation easement was approved. On October 22, 2002, the conservation easement was granted by LaBelle Ranch, Incorporated to the Board of Trustees. Grantor's reserved rights stipulated the right to continue to use, maintain, repair, and reconstruct, but not to relocate, all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches and such other facilities on the property as depicted in the Baseline Documentation. If any of the

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now existing facilities on the property requires reconstruction or replacement due to depreciation, obsolescence, destruction or severe damage, the replacement structures may be increased in size no larger that 125 percent of the size of the original structure it replaces as such size is documented in the Baseline Documentation and shall be situated as the same site. Any such restoration or replacement shall conform to all then applicable rules and regulations of governmental entities with jurisdiction.

The single residence currently on the property is 1,640 square feet in size. The owner wishes to expand the residence to include a 174-square-foot bedroom and a 65-square-foot porch. He also wants to build a 864-square-foot detached garage with a 175-square-foot covered walkway from the porch to the garage. The conservation easement, as written, does not contemplate new outbuildings at the existing residence, and the combined square footage of the garage and the other proposed additions totals 2,918 square feet, more than 25 percent of the existing size. The easement allows four new residences, not to exceed 10,000 square feet each including outbuildings. It is proposed to amend the provision to allow expansion of the existing residence with outbuildings to a maximum of 3,000 square feet, significantly smaller than the size of new residences allowed by the easement.

The grantor's reserved rights will be amended to the right to continue to use, maintain, repair, and reconstruct, but not to relocate, all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches and such other facilities on the property as depicted in the Baseline Documentation. If any of the now existing facilities on the property requires reconstruction or replacement due to depreciation, obsolescence, destruction or severe damage, the replacement structures may be increased in size no larger than 125 percent of the size of the original structure it replaces as such size is documented in the Baseline Documentation and shall be situated on the same site. Provided, however, notwithstanding the limitation of 125 percent, the existing residence and its associated outbuildings may be expanded to 3,000 square feet, including associated outbuildings. The total impact of the expanded residence, including associated outbuildings and access driveways, shall be limited to 2.5 contiguous acres. Any restoration or replacement allowed in this paragraph shall conform to all then applicable rules and regulation of governmental entities with jurisdiction.

The Division of State Lands (DSL), Office of Environmental Services, has reviewed and approved this amendment. DSL's Bureau of Appraisal has indicated that there will be no impact on the value of the conservation easement.

(See Attachment 2, Pages 1-46)

RECOMMEND APPROVAL

Item 3 J. A. Tierney Purchase Agreement/Survey Requirement Waiver/Coupon Bight/Key Deer Florida Forever Project

REQUEST: Consideration of (1) a purchase agreement to acquire 0.88 acre within the Coupon Bight/Key Deer Florida Forever project from J.A. Tierney; and (2) the authority to waive the survey requirement.

COUNTY: Monroe

LOCATION: Section 26, Township 66 South, Range 29 East

CONSIDERATION: \$362,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Johnston (03/18/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Tierney	0.88	\$288,000	\$288,000	\$25*	\$360,000** (125%)	120 days after BOT approval
2 lots below the mean high water line					\$ 2,000	
				\$25	\$362,000	

* Seller purchased property on 3/25/46.

** \$409,090 per acre or \$36,000 per ROGO allocation, plus 25% incentive (8 ROGO allocations). This purchase amount contains two parcels below MHWL.

Noted Features of Subject Property:

- Waterfront, unplatted residential site.
- Adjacent to federal and state-owned land on Big Pine Key.

STAFF REMARKS: The Coupon Bight/Key Deer project is an "A" group project on the Florida Forever Small Holdings Project List approved by the Board of Trustees on February 16, 2005. The project contains 3,638 acres, of which 1,500.36 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 2,136.76 acres, or 59 percent of the project, will remain to be acquired.

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 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 staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

The purchase price is based on the February 16, 2005 agenda item, that allows (1) extending offers and approving any contract for the sale and purchase of land pursuant to section 259.041(1), F.S., at \$7,000 over, or up to 125 percent, per parcel of the current appraised value, whichever is greater, when the purchase price per parcel does not exceed \$100,000; (2) recognizing and appraising as Rate of Growth Ordinance parcels those parcels that previously qualified for Rate of Growth Ordinance designation; and (3) allowing payments in lieu of

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litigation to settle claims by private landowners to lands that appear to be sovereignty lands, such payments not to exceed \$1,000 per parcel.

A title insurance policy and an environmental site evaluation will be provided by the purchaser prior to closing. It is the opinion of the Bureau of Survey and Mapping that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to its cost; therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C.

The subtropical pine forests of rapidly developing Big Pine Key and the islands around it are the home of the endangered Key deer and many Caribbean plants found nowhere else in the country. Rich coral reefs and other hardbottom communities flourish in shallow water around the islands. The Coupon Bight/Key Deer project will protect the remaining underdeveloped land on Big Pine and No Name Keys (without which the Key deer will not survive), protect water quality of the Coupon Bight Aquatic Preserve and the other waters surrounding the islands, and provide the public an area to appreciate the unique natural world of this part of Florida.

The property will be managed by United States Fish and Wildlife Service as an addition to the National Key Deer Refuge.

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 1-28)

RECOMMEND APPROVAL

Item 4 Board of Public Instruction of Monroe County, Florida, Option Agreement/Managing Agency Designation/Management Policy Statement Confirmation/Harris School Florida Forever Project

DEFERRED FROM THE AUGUST 9, 2005 AGENDA

REQUEST: Consideration of (1) an option agreement to acquire 1.96 acres within the Harris School Florida Forever project from the Board of Public Instruction of Monroe County, Florida; (2) designation of Studio Key West, Inc., as the managing agency; and (3) confirmation of the management policy statement.

COUNTY: Monroe

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LOCATION: Section 05, Township 68 South, Range 29 East

CONSIDERATION: \$5,412,000

PARCEL	ACRES	APPRAISED BY		APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
		Catlett (08/18/04)	Pallardy (08/18/04)				
Harris School	1.96	\$6,600,000	\$6,400,000	\$6,600,000	\$3,900*	\$5,412,000** (82%)	150 days after BOT approval

* Seller purchased the property in 1905

** \$2,761,224.49 per acre

Noted Features Of Subject Property:

- Historic two-story concrete school dedicated in 1909, contains approximately 17,600 square feet.
- Six ancillary one-story school buildings, built from 1957 through 1977.
- Located in historic Old Town Key West.
- Potential site for 31 residential units, which would entail renovation of the historic school and additional new construction.
- Zoning and land use (same designation in Key West) are Historic Neighborhood Commercial and Historic High Density Residential.

STAFF REMARKS: The Harris School Project was an "A" group project on the Florida Forever Full Fee Project List when negotiations began October 2004. The seller accepted the price offer in December 2004 and, in anticipation of a mutual agreement to purchase, at the January 25, 2005 Acquisition and Restoration Council Ranking Meeting the project was moved to the "B" group on the 2005 Annual Florida Forever Priority List with the contingency that it would be removed completely from the list once the Board of Trustees approved this contract. The list was approved by the Board of Trustees on February 16, 2005. The project contains 1.96 acres, of which these are the only to be acquired. After the Board of Trustees approves this agreement, the project will be complete.

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 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 staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

The Board of Public Instruction of Monroe County, Florida; has requested that closing occur 150 days after the Board of Trustees' approval. This will allow time to relocate the Monroe County Association for Retarded Citizens who are currently residing at the Harris School Property.

Due to the proposed renovations being completed over the next three years, and the fact that the Board of Trustees will be taking title to the property which contains hazardous materials, namely lead-based paint, asbestos, and possibly underground fuel storage tanks that were typically used in the early 1900's, both parties have agreed to hold 15 percent of the purchase price in escrow.

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An environmental site assessment has been performed, and the escrowed funds represent approximately three times the estimated clean-up cost of the known hazardous materials located on the property. If for any reason Studio Key West, Inc., does not conduct the clean-up and the Monroe County Board of Public Instruction does not comply with its contractual obligation to clean-up the hazardous materials located on the property, the escrowed funds will be available for the Board of Trustees to conduct the clean-up.

At the seller's request, the option agreement includes a requirement that the deed contain reverter language which shall provide that if (a) Studio Key West, Inc., or some other entity that is not a party to the option agreement does not commence the repair, remodeling, or removal of the buildings located upon the property within one year of the date of closing, and (b) the seller pays to the purchaser a sum equal to the total of the purchase price paid for the property by purchaser and purchaser's closing costs, including specifically, but not by way of limitation, the cost of the environmental site assessment, survey and survey review, and title insurance (including title insurance premium), title shall revert to the seller. If the property has not reverted to the seller within 13 months after the date of closing, the reverter shall expire and terminate.

A title insurance policy, a survey and an environmental site evaluation will be provided by the purchaser prior to closing.

Located in the City of Key West, protection of this site from more intensive development will increase the city's open-space offerings. Acquisition of this site also meets the Florida Forever goal of preserving significant archeological or historic sites. The Harris School was Monroe County's first public high school. It was dedicated in 1909, and is considered the second most significant structure within the Key West Historic District, which is listed on the National Register of Historical Places.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate Studio Key West, Inc., as the managing agency for this site. The site will be managed as an artists community in the spirit of the McDowell Colony and Yaddo and continue the long tradition of art and culture in the Key West community.

Section 259.032(9)(e), F.S., requires that the Board of Trustees, concurrent with its approval of the initial acquisition agreement within a project, "evaluate and amend, as appropriate, the management policy statement for the project as provided by section 259.035, F.S., consistent with the purposes for which the lands are acquired." The management policy statement for this project was included in the 2004 Florida Forever Annual Report adopted by the Board of Trustees on February 26, 2004. Staff recommends that the Board of Trustees confirm the management policy statement as follows:

Located in Monroe County in downtown Key West and consisting of

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approximately 2 acres, the primary concept behind this proposal is to preserve an historic site. Secondly, the applicant proposes that the old school building be restored and used as an educational arts facility and community center.

Studio Key West, Inc., proposes to rehabilitate the building for use as an artists colony and community center. The facility would provide art classes, workshops, lectures, and gallery space for Monroe County teachers and the public. This project's homage to the educational heritage of the site is that some art workshops will be provided free to Monroe County teachers. Residencies will be offered to prominent and promising artists utilizing the 1950's era buildings behind the school as studio/guest quarters. That building also contains a commercial kitchen, which would be used as a permanent internship site for high school students in the culinary arts program. This program, Pro-Start, already has 150 students enrolled, and will provide in-school and job site internships. Additionally, these students would be the in-house caterers for Harris School Activities.

This acquisition is consistent with section 187.201(18), F.S., the Cultural and Historical Resources section of the State Comprehensive Plan.

(See Attachment 4, Pages 1-65)

RECOMMEND APPROVAL

Item 5 **BOT/Tarmac America LLC Exchange Agreement/Authorization to Sell to FWMD/Survey Requirement Waiver/Miami-Dade County Lake Belt Area**

REQUEST: Consideration of (1) an exchange agreement under which the Board of Trustees will convey approximately 277.4 acres of state-owned land in exchange for approximately 320.9 acres owned by Tarmac America LLC; (2) a determination that pursuant to section 18-2.018(3)(b)1.c., F.A.C., the sale of the approximately 320.9 acres to the South Florida Water Management District provides greater benefit to the public than its retention in Board of Trustees' ownership; and (3) the authority to waive the survey requirement, pursuant to section 18-1.005, F.A.C .

COUNTY: Miami-Dade

APPLICANT: Tarmac America LLC (Tarmac)

LOCATION: Sections 03 and 08, Township 53 South, Range 39 East

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CONSIDERATION: Parcel 1 for Parcel 2 and cash payment of \$5,113,000 to be deposited in the Internal Improvement Trust Fund.

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>EXCHANGE VALUE</u>	<u>CLOSING DATE</u>
		<u>Newstreet (05/11/05)</u>	<u>Ames (05/13/05)</u>			
(1) Tarmac	320.9	\$3,209,000	\$2,725,000	\$3,209,000	\$3,209,000	90 days after
(2) BOT	277.4	\$8,322,000	\$8,320,000	\$8,322,000	\$8,322,000	BOT approval

STAFF REMARKS: The Department of Environmental Protection, Division of State Lands received a request from Tarmac to exchange 30 tracts totaling approximately 277.4 acres (Parcel 2) owned by the Board of Trustees for one parcel totaling approximately 320.9 acres (Parcel 1) owned by Tarmac.

All of the parcels involved in the proposed exchange are currently vacant, and are within the boundaries of the Miami-Dade County Lake Belt Area established by section 373.4149, F.S. In 1992, the Florida Legislature created the Miami-Dade County Lake Belt Implementation Committee (Committee), which was directed by the Legislature to develop a plan for the Lake Belt Area that: “(a) enhances the water supply for Miami-Dade County (County) and the Everglades; (b) maximizes efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment; and (c) educates various groups and the general public of the benefits of the plan.” The Legislature subsequently approved and adopted the recommendations in the Miami-Dade County Lake Belt Plan, as submitted by the Committee. The state-owned lands proposed for the swap are wetlands that have been heavily infested with melaleuca, and are designated in the Miami-Dade County Lake Belt Plan as appropriate for mining. The Tarmac lands to be acquired (located within the Pennsuco wetlands) are wetlands of greater environmental value that have been designated in the plan as appropriate for preservation/mitigation. The Pennsuco wetlands have been identified in the Lake Belt Plan as the first priority for acquisition, restoration and preservation by the interagency Lake Belt Mitigation Committee, which is responsible for conducting mitigation projects to offset the impacts of mining using a fee collected from mining companies on each ton of limerock mined in the Lake Belt area. Acquisition and restoration of the Pennsuco wetlands is also needed to assist in the implementation of the Comprehensive Everglades Restoration Plan.

After the exchange, the 320.9-acre parcel acquired by the Board of Trustees will be sold to the South Florida Water Management District (SFWMD), which manages the mining mitigation fund for the interagency Lake Belt Mitigation Committee. When funds become available from the Lake Belt Mitigation Trust Fund, the SFWMD will purchase this 320.9-acre parcel at the final approved appraised value for this exchange.

Department of Environmental Protection (DEP) staff has determined that the 320.9-acre parcel can be sold to SFWMD if the Board of Trustees makes an affirmative finding, pursuant to section 18-2.018(3)(b)1.c., F.A.C., that the sale of this land to SFWMD provides a greater benefit to the public than its retention in Board of Trustees’ ownership.

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Tarmac intends to use Parcel 2 for mining purposes only. Tarmac will re-convey Parcel 2 to the Board of Trustees in phases as mining ceases. Tarmac's use and the time of reversion after such use is contingent upon mining permits being granted for Parcel 2. The reversion language from the exchange agreement will be included in the Board of Trustees deed.

Parcel 2 lands were acquired by the Board of Trustees pursuant to chapter 18296, 1937 Laws of Florida, known as the Murphy Act. The act provided for statutory forfeiture of lands for nonpayment of taxes. Tax certificates unredeemed as of June 9, 1939, were automatically converted to fee simple title in the name of the state.

It is the opinion of the Bureau of Survey and Mapping that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to its cost; therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C.

Pursuant to section 253.115, F.S., notification of the exchange request was sent to all property owners within 500 feet and no objections were received.

(See Attachment 5, Pages 1-39)

RECOMMEND APPROVAL

Item 6 Chapter 18-21, F.A.C., Proposed Rule Amendments Adoption/Unit:Slip and 40:1 Dock Criteria for Multi-family Docks

REQUEST: Consideration of adoption of proposed rule amendments to Chapter 18-21, F.A.C., that specify the maximum number of slips and preemption allowed for private residential multi-family docks or piers, including those serving mixed-use upland residential and revenue-generating activities; and encourage construction of a multi-family dock or pier in lieu of several single-family docks or piers.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP)
"Unit:Slip and 40:1" Rule Amendments

STAFF REMARKS: On October 26, 2004, the Board of Trustees approved the proposed rule amendments, which were developed based on six public workshops. The proposed amendments were published in a Notice of Proposed Rulemaking on November 12, 2004. Subsequently, DEP held public hearings on the proposed amendments on December 2 and 9, 2004, March 31, 2005, and July 8, 2005. The amendments proposed for adoption by the

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Board of Trustees as a result of the hearings were published in Notices of Change on May 13 and July 8, 2005.

The rule amendments proposed for adoption will: clarify the definitions of private residential multi-family and single-family docks and piers; replace the graduated unit:slip ratio with a simple 1:1 unit:slip ratio for multi-family docks; retain the existing maximum 40:1 preemption ratio for multi-family docks and piers, but allow the ratio to be exceeded when specified conditions are met; clarify that the multi-family dock and pier criteria apply to the private residential multi-family portions of docks and piers that serve upland mixed-use developments; require Board of Trustees, not staff, approval for any multi-family dock application that includes an exception to the 40:1 preemption ratio; encourage a private residential multi-family dock or pier to be constructed in lieu of several single-family docks or piers; and clarify that a conservation easement is needed when the maximum number of multi-family slips is constructed.

Details of the public testimony presented at the public hearings are included in the hearing summaries. There is a general consensus that construction of one private residential multi-family dock or pier in lieu of multiple single-family docks or piers is desirable. Concerns have been raised that replacing the graduated unit:slip ratio with a 1:1 ratio will result in adverse resource impacts. However, the present and proposed unit:slip ratios only serve to establish a maximum number of slips allowed within the limits of the preempted area ratio. The existing resource protection provisions in the sovereignty submerged lands rules remain in effect and will, where appropriate, limit the number, size, draft, or propulsion method of vessels as required to protect resources, without the necessity of relying on the complicated graduated ratio. With respect to the 40:1 preemption ratio, comments were received suggesting that the 40:1 ratio should not be changed at all; that the ratio should be increased; or that the ratio should be eliminated entirely with only the regulatory permit requirements governing the size of private residential multi-family docks or piers. Staff is recommending that the 40:1 ratio be retained while allowing that ratio to be exceeded, for private purposes, where site conditions are suitable and where there is public benefit, approved by the Board of Trustees, provided to offset the additional preemption.

The complete rule before the Board of Trustees for adoption was published November 12, 2004, and includes the changes published May 13 and July 22, 2005.

(See Attachment 6, Pages 1-23)

RECOMMEND APPROVAL

Item 7 Island Marina Boat Slip Owners Association, Inc., Recommended Consolidated Intent

REQUEST: Consideration of an application for authorization to modify an existing 25-year sovereignty submerged lands lease for an existing commercial docking facility to (1) install 31 floating dock extensions to accommodate the existing vessels; and (2) install 40 structural guide pilings.

COUNTY: Collier
 Lease No. 111000635
 ERP File No. 11-0198304-001

APPLICANT: Island Marina Boat Slip Owners Association, Inc.

LOCATION: Section 17, Township 48 South, Range 25 East, in the Cocohatchee River, Class II waters not approved for shellfish harvesting, within the local jurisdiction of Collier County
Aquatic Preserve: No
Outstanding Florida Waters: Yes, Class II
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Yes, idle/slow speed zone

CONSIDERATION: \$19,827.47, representing: (1) \$10,614.15 as the initial lease fee computed at the base rate of \$0.1342 per square foot; (2) \$1,197.07 as lease fees in arrears for the unauthorized use of sovereignty submerged lands, which has been paid; (3) \$6,516.25 as payment for the 30 percent discount inadvertently received on the annual lease fee for the 2003/2004 and 2004/2005 lease years, which has been paid; (4) \$250 for Consent Order preparation costs for the unauthorized use of sovereignty submerged lands, which has been paid; and (5) \$1,250 as an administrative fine for the unauthorized use of sovereignty submerged lands, which has been paid. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the gross rental income pursuant to section 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. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

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The lessee is requesting authorization to modify an existing 25-year sovereignty submerged lands lease by: (1) installing 31, ten-foot-long by 4-foot-wide, floating dock extensions to accommodate the existing vessels; and (2) installing 40 structural guide pilings. Thirty-one of the pilings will be installed near the waterward end of the proposed dock extensions; the remaining nine pilings will be installed near the waterward end of the existing finger piers that will not be extended. The pilings are intended to provide additional stability for the floating finger piers. All of the new structures will be within the existing lease area. The modified docking facility will continue to provide 80 wet slips (one slip designated as a sewage pumpout slip) and will continue to be used in conjunction with the upland marina parcel that separates the docking facility from the non-riparian upland condominium. The modified docking facility will continue to provide mooring for private recreational vessels and commercial vessels up to 60 feet long, with a maximum draft of 4.5 feet.

The Board of Trustees originally approved the lease on February 12, 1991. The former Department of Natural Resources modified the lease, via delegation of authority on July 29, 1992, in conjunction with a consent order and permit modification after the facility was found to have been built not in compliance with the permit drawings. The Board of Trustees subsequently modified the lease on December 12, 1995, authorizing the extension of several floating docks and the expansion of the sovereignty submerged lands lease from 52,736 square feet to 79,092 square feet. On December 13, 2001, DEP modified the lease, via a delegation of authority, to reflect a change in upland ownership from Island Marina, Inc., to Island Marina Boat Slip Owners Association, Inc. The lease is scheduled to expire on February 12, 2016.

As part of the 2001 lease modification, DEP erroneously eliminated a special lease condition previously approved by the Board of Trustees requiring the lessee to advertise the docking facility as an open to the public marina. However, the lessee has continued to comply with a special lease condition ensuring that no more than 21 wet slips be used by owners of condominium units at the site consistent with section 18-21.004(4), F.A.C. There are no prerequisites for the right to rent, sublease or purchase the use of any slip, and the lessee is also maintaining on-site signs advertising the availability of boat slips at the docking facility. The lessee has agreed to the eliminated special lease condition being placed back into the modified lease. However, since the docking facility is essentially operating as a private docking facility, advertising slips available for sale/lease/rent may be inappropriate. Therefore, the modified lease will not contain a special lease condition requiring the lessee to advertise boat slips for sale/lease/rent to the general public on a first-come, first-serve basis.

Section 18-21.011(1)(b)2, F.A.C., states that the annual lease fee shall be subject to a 30 percent discount where at least 90 percent of the slips are available for rent to the public on a first-come, first-served rental basis. DEP had been assessing the annual lease fee at the base rate with a 30 percent discount since 2000. However, DEP subsequently discovered that all of the wet slips have been sold and thus are not available for rent or lease by the lessee to the general public on a first-come, first-served basis, as originally envisioned by the Board of

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Trustees. Therefore, the lessee no longer qualifies for the 30 percent discount. DEP billed the lessee for the \$6,516.25 due for the 30 percent discount inadvertently received from 2003 to 2005, and the lessee paid this amount on March 11, 2005.

This is one of a growing number of docking facilities statewide in which boat slips are being sold or subleased without the Board of Trustees receiving six percent of each sale or sublease. To address this issue, on October 28, 2003, the Board of Trustees directed DEP to consider amending chapter 18-21, F.A.C., to among other things, ensure that six percent of the income of any sublease or subsequent sublease of a slip is included in the lease fee calculations due. On October 26, 2004, the Board of Trustees approved DEP's request to publish a Notice of Proposed Rulemaking regarding amendments to chapter 18-21, F.A.C., that adjust some fees associated with the use of sovereignty submerged lands. On May 27, 2005, DEP published a Notice of Change for these rule amendments. Under the proposed rule amendments, gross revenue will include all future payments made for the transfer of the interest in a slip originally obtained from the respective lessee, including transfer of slip rights by slip sublessees, slip "sellers", slip interest transfers, new club memberships, and other similar transactions. Additionally, all leases will require that the lessee include a clause in agreements for the use of a slip providing that six percent of gross income derived from any sub-agreement for the use of a slip shall be paid to the respective lessee, who shall report and transmit such payments to the Board of Trustees upon receipt, and a clause providing that no interest in a slip may be further transferred unless a substantially similar clause is placed in any succeeding document effecting the transfer to each new slip holder.

In meetings with DEP, the lessee has committed to implement mechanisms necessary to collect the required data, and escrow the required fees to comply with the requirement to remit payment of six percent on all future sales or resales as soon as the pending rule amendments take effect and once DEP provides the lessee the basis for calculating the amount due. A special approval condition and special lease condition addresses this issue. Regarding previous sales, the lessee has stated to DEP that it does not have any records of boat slip sales that occurred by the developer (Island Marina, Inc.). Since January 2002, the lessee has not sold any of the boat slips in the lease since the lessee does not own any of these slips.

The lessee currently has an extended term lease with approximately ten years left in the original 25-year term. Section 18-21.008(2)(a), F.A.C., states in part that extended term leases shall be available for existing or proposed facilities or activities where the use of the sovereignty submerged lands and the associated existing or proposed structures on sovereignty submerged lands have or will have an expected life, or amortization period, equal to or greater than the requested lease term and where the applicant has demonstrated that: (1) the facility or activity provides access to public waters and sovereignty submerged lands for the general public on a first-come, first-served basis; (2) the facility is constructed, operated or maintained by government, or funded by government secured bonds with a term greater than or equal to the requested lease term; or (3) the applicant demonstrates that an extended term is necessary to satisfy unique operational constraints. Since the lessee no longer meets any of the above-

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referenced criteria, DEP recommends that the lease be modified to a standard five-year lease.

A November 13, 2002 site inspection by DEP revealed that several vessels were moored partially outside of the lease area. The violations did not entail adverse environmental impacts to sovereignty submerged lands. In an effort to eliminate future non-compliance, the lessee adopted boat mooring rules for the facility to clearly require boat slip users to moor their vessels within the lease. On September 24, 2003, DEP issued Consent Order No. 03-1618-11-DF that required the lessee to pay \$1,197.07 in lease fees in arrears and \$250 for DEP costs, which have been paid. The Consent Order erroneously excluded the \$1,250 administrative fine. Therefore, the lessee has agreed to pay an additional \$1,250 as an administrative fine for the unauthorized mooring area. The \$1,250 administrative fine was paid on August 11, 2005. Lease fees are current through February 2006. A site inspection, performed on May 24, 2004, revealed the facility to be in compliance with the terms and conditions of the lease.

Special lease conditions will require: (1) 58 boat slips to be leased, rented or otherwise used by members of the general public having no ownership interest in any residential condominium units in the upland condominium; (2) DEP's approval of wet slip rental/lease/sales agreements and the collection of revenues due from the rental/lease/sale of such wet slips to ensure compliance with pending revisions to chapter 18-21, F.A.C., regarding fees for the use of sovereignty submerged lands; (3) the boat slip rental agreement between the lessee and boat slip owners/renters to clearly state the Board of Trustees' ownership of the submerged lands at the marina, and that the boat slip owner/renter does not obtain any title to, or interest in, sovereignty submerged lands; (4) the rental/lease/sales agreement for each wet slip to state that use of each slip is subject to renewal of the lease by the Board of Trustees, and if the lease is not renewed, use of the slip terminates.

Section 18-21.0051(2)(b), F.A.C., essentially states that DEP and the water management districts have delegated authority from the Board of Trustees to review and take final agency action on applications to expand existing docking facilities on sovereignty submerged lands except where the size of the proposed additional preempted area exceeds 10 percent of the existing preempted area and the total of existing and proposed additional preempted area exceeds 50,000 square feet. The proposed project will not increase the existing number of slips or total preempted area. Therefore, DEP has delegated authority to take final agency action on the lessee's requested lease modification. However, the requested lease modification would modify an existing 25-year sovereignty submerged lands lease, the facility has a history of non-compliance, and the facility has previously generated extensive discussion by the Board of Trustees. Therefore, DEP is of the opinion that the requested lease modification could reasonably be considered to constitute a project of heightened public concern that justifies Board of Trustees' consideration.

The existing lease prohibits fueling facilities and liveaboards, but authorizes a sewage pumpout facility. DEP's environmental resource permit requires that the existing sewage pumpout facility continue to be maintained and used, prohibits liveaboards, and prohibits fueling

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facilities over sovereignty submerged lands. Therefore, the modified lease will authorize sewage pumpout facilities, but will continue to prohibit liveboards and fueling facilities.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed as specific conditions in the pending Environmental Resource Permit (ERP), no. 11-0198304-001. Additionally, a special lease condition will require the lessee to ensure that the renter of any slip at the docking facility enters into a signed agreement, between the lessee and the renter, stating that the slip renter agrees to comply with all local, state and federal manatee protection speed zones. Collier County is a designated manatee county with an approved manatee protection plan. FFWCC has stated this proposal is consistent with that plan.

The current modified lease request was not required to be noticed due to an exemption for lease modifications, pursuant to section 253.115(5)(i), F.S.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. In accordance with the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. The proposed action is consistent with the adopted plan as amended according to a letter received from Collier County.

(See Attachment 7, Pages 1-31)

RECOMMEND APPROVAL OF A FIVE YEAR LEASE, SUBJECT TO THE SPECIAL APPROVAL CONDITION, THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$10,614.15