

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MARCH 3, 2006

Item 1 Tri Delta Corrective Quitclaim Deed/Modification of Deed Restrictions

REQUEST: Approval of (1) a corrective quitclaim deed from the Board of Trustees to Delta Delta Delta National House Corporation-University of Florida (Alpha Psi), a Texas non-profit corporation, (Tri Delta); (2) modification of paragraph 2. of the deed restriction to change Board of Regents to President of the University of Florida for purposes of approving plans and specifications for the construction of the sorority house; and (3) modification of paragraph 2.b. of the deed restriction to allow for up to 73 residents (72 student residents and one director resident).

COUNTY: Alachua County

APPLICANT: Tri Delta

LOCATION: Section 08, Township 10 South, Range 20 East

STAFF REMARKS: In 1954, the State Board of Education (BOE) authorized the issuance of revenue certificates in the approximate amount of \$1,000,000 in accordance with terms of a loan agreement between the Board of Control and the United States of America, Housing and Home Finance Agency. The purpose was to obtain financing for the construction of small fraternity and sorority houses on the campus of the University of Florida (UF). The organizations that took advantage of this opportunity entered into leases with options to purchase with the BOE (Lease/Option). In 1959, a Lease/Option was entered into between BOE, (the predecessor in title to the Board of Trustees), in conjunction with the Board of Control, and Alpha Psi House Corporation of Delta Delta Delta. Paragraph XXIV 2.b. of the Lease/Option provided that upon payment of the total purchase price, the BOE would convey the property to Tri Delta with a deed containing various covenants and restrictions, among which was a limitation that "[T]he housing facility constructed on said property shall be of such size as to comfortably accommodate not less than twenty-five, nor more than fifty, students living on the premises."

In 1993, an "Amendment to Lease with Option to Purchase" (1993 Amendment) was granted by the Board of Trustees (successor in title to the Board of Education/Board of Control) to Alpha Psi Chapter House Delta Delta Delta, Inc., as successor entity to Alpha Psi House Corporation of Delta Delta Delta. The sole modification was to change the above-quoted restriction in the 1959 Lease/Option to allow a maximum of 65 student residents. Simultaneously, the rights under the 1959 Lease/Option were assigned by the local Tri Delta chapter to Tri Delta.

Correspondence in 1994 from UF to Board of Trustees' staff advised that the fraternities and sororities had satisfied their obligations under their purchase contracts, i.e. Lease/Option, and requested that the Board of Trustees prepare deeds conveying the land. Subsequently, on March 28, 1996, the Board of Trustees approved a quitclaim deed that incorrectly identified

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the grantee as Delta Delta Delta Sorority. The 1996 deed contained a restriction limiting the student residents to 50 instead of 65 as approved in the 1993 amendment.

Tri Delta has been working with UF on plans to build a new sorority house at UF, and these initial plans propose a house design for 73 residents (72 student residents and one director resident). The number of students attending UF continues to increase yearly and, likewise, the demand for student housing continues to increase as well. During design review meetings, Tri Delta was made aware of the restriction in the conveyance deed limiting the number of student residents to 50. As a result, Tri Delta attorneys contacted Board of Trustees' staff for resolution of the issue noting that time is critical since construction bids on the project are close to expiring.

Tri Delta is requesting the Board of Trustees issue a Corrective Deed which identifies Tri Delta as the grantee and modifies the restrictions: (1) to allow 73 residents (72 student residents and one director resident); and (2) to authorize the President of UF to approve plans and specifications for construction of the sorority house. The Board of Regents was abolished effective July 1, 2001, and the UF Board of Trustees assumed its duties and responsibilities with regard to the operations of UF. The UF Board of Trustees has delegated to the UF president the authority to review plans and specifications for the construction of the sorority house. In accordance with section 253.03(3), F.S., the Board of Trustees did not retain oil and mineral interests in the original deed.

A consideration of the status of any local government comprehensive plans was not made for this item. DEP has determined that the transfer of real property is not subject to the local government planning process.

(See Attachment 1, Pages 1-32)

RECOMMEND APPROVAL

Substitute Item 2 Millstone Institute of Preservation, Inc./Jack Hyatt Conrad Option Agreement/Conservation Easement/Millstone Plantation Florida Forever Project

DEFERRED FROM THE JANUARY 31, 2006 AGENDA

REQUEST: Consideration of an option agreement to acquire a perpetual conservation easement over 75.50 acres within the Millstone Plantation Florida Forever project from Millstone Institute of Preservation, Inc., and Jack Hyatt Conrad (Life Tenant).

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COUNTY: Leon

LOCATION: Section 21, Township 02 North, Range 01 East

CONSIDERATION: \$4,000,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY:</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>TRUSTEES'</u> <u>PURCHASE</u> <u>PRICE</u>	<u>OPTION</u> <u>DATE</u>
		<u>Rogers</u> <u>(07/28/05)</u>	<u>Candler</u> <u>(07/28/05)</u>				
Institute	75.50	\$4,850,000	\$5,011,000	\$5,011,000*	**	\$4,000,000*** (80%)	120 days after BOT approval

* Conservation Easement Approved Value

** Purchased as part of a larger tract by the Conrad family in the early 1930s.

*** Price per acre is \$52,980; Fee Value is \$5,263,000. Conservation Easement purchase price is 76% of fee value.
Conservation Easement Approved Value is 95% of the Fee Value.

Noted Features of Subject Property:

The property includes a portion of Lake McBride in northern Leon County, which enhances the value of the subject's lakefront uplands.

The property consists of 75.5 acres total, of which 33.45 acres are submerged in Lake McBride, 30.87 acres are uplands fronting Lake McBride and the remaining 11.18 acres are interior uplands that are non-contiguous to the lakefront acreage.

The Conservation Easement does not allow for any subdivision of the lake front acreage or any residential, industrial or commercial building construction anywhere on the property.

The Conservation Easement precludes up to ten (10) residential dwelling units that would otherwise be eligible to be permitted.

The Conservation Easement will be enforceable to and granted by the joint ownership by Millstone Institute of Preservation, Inc., joined by Jack H. Conrad, Life tenant.

The acquisition property is neighbored by upscale residences on acreage tracts, and in the direct line of growth and development, which is expanding northerly from Tallahassee out US 319 (Thomasville Road).

STAFF REMARKS: The Millstone Plantation project is a "B" group project on the Florida Forever Full Fee Project Interim List approved by the Board of Trustees on August 23, 2005. At the February 16, 2005, Cabinet meeting, the Board of Trustees unanimously approved language directing staff to use discretion rather than limit negotiations to the next six months to secure acquisition of projects moved from the "A" to the "B" list", including Millstone Plantation. Active negotiations have been underway on this project since the list was approved. The project contains 168.50 acres, of which 93 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, this project will be complete.

In 2002, the Department of Environmental Protection, Division of State Lands (DSL) investigated whether or not Jessie Conrad's Last Will and Testament or Millstone Institute of Preservation, Inc.'s (Institute) articles of incorporation prevented the development of the property and required the seller to provide DSL with evidence that the property was not encumbered by any such use restrictions. As a result, the seller provided DSL with a title commitment that reflected the property was clear of any such restrictions. Therefore, the property was appraised with its full development rights.

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There is an out parcel, within the lakefront section of the property that contains the Institute's historical buildings. This parcel was excluded from the easement because it will be the location of any future construction of buildings related to the Institute. Any new construction on the out parcel would be for facilities intended to further the Institute's goals and objectives. The Institute is home to many educational activities that include the public, students, and historical organizations.

A very limited agricultural operation, centered mostly on educational pursuits associated with the Institute's programs, has helped to maintain the pastoral and scenic nature of the property. It is eligible for listing on the National Register of Historic Places and the nomination process for that listing is almost complete. Among its historical attributes are evidence of Paleo-Indian occupation, the old mill site, constructed on the creek by Colonel Robert Butler (Andrew Jackson's Surveyor General), and two historic structures. The Native American Ecology Program, conducted by the Center for Aquatic Research and Resource Management at Florida State University, is hosted by the Institute each summer, and an annual Farm Friends Day is held in concert with the Leon County Farm Bureau and Leon County schools. The Dorothy Burt Johnson Antique Lectures and Workshops are also held at the Institute, focusing on early American farming and restoration.

Under the proposed conservation easement, the property will be restricted in perpetuity by the provisions of the easement, a summary of which includes, but is not limited to, the following prohibited uses:

- No new construction of or the placing of new buildings, roads, billboards, third-party advertising signs, or other structures on or above the ground;
- No transfer of any development rights or density credits from the easement property to any other property anywhere;
- No dumping or placing of contaminated soil, trash, liquid or solid waste, or unsightly, offensive, or hazardous materials, wastes, or other pollutants;
- No planting of any nuisance exotic plant as listed by the Exotic Pest Plant Council, except pasture grasses approved for domestic use;
- Only pesticides and herbicides approved by the United States Department of Agriculture may be used;
- Only fertilizers approved by the Leon County, Florida, Agricultural Extension Agent and used in accordance with recommendations of the Institute of Food and Agricultural Science at the University of Florida may be used on the easement property;
- No exploration for or extraction of oil or gas, mining, or removal of sand, loam, peat, gravel, rock, soil, or other inorganic material, except in connection with the activities otherwise expressly listed in the easement;
- Both the grantor and the grantee agree that the designated Special Management Areas

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(SMA) do not show substantial disturbance and have maintained their basic ecological integrity. SMA shall be left intact and non-disturbed, and shall not be subject to the rights reserved to the grantor and the life tenant except as described in the easement; and

- No commercial sale of water extracted from the easement property. No disruption, alteration, pollution, or depletion of existing surface or subsurface water flow or natural water sources, fresh water lakes, or any other water bodies on the easement property or activities on the easement property that would be detrimental to water purity or that could alter natural water level or flow in or over the property.

The proposed conservation easement will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- The right for the grantor and the life tenant to sell the property pursuant to the terms of the easement. No conveyance or transfer of the easement property shall modify or terminate the provisions of the easement. Any sale or conveyance will be in accordance with the grantees right to be noticed as specified in the easement;
- The right to use the property for occasional, temporary vehicular parking and the placement of temporary sanitary facilities;
- The right to continue to use, maintain, and repair any permitted structures on the property;
- The right to use property for grazing and livestock as permitted in the easement along with necessary fences, and pens. The right to construct one 1,000 square foot barn;
- The right to conduct archaeological surveying, investigations, and subsurface investigations;
- The right to all water and water-well rights and the right to apply for and construct and continue operation of water wells on the property in accordance with all applicable federal and state laws (no commercial sale of water extracted);
- The right to retain and maintain existing roads and nature trails; the right to construct and maintain additional walking and nature trails; the right to construct and maintain access roads and utilities to serve all the grantor's and life tenant's structures on the easement property; and the right to construct and maintain new and additional roads and utilities, provided that they are placed within the corridors identified in the baseline documentation;
- The right to engage in management and ecological restoration activities to foster, preserve, protect, and restore the natural, ecological, scenic, historical, archaeological, wildlife, and plant life features and values of the property;
- The right to conduct reasonable, managed, select, and sustainable silviculture practices and timber harvesting and replanting on the portions of the easement outside any herbaceous or forested wetland area or open water area as delineated in the baseline documentation. Harvesting of cypress trees is prohibited;
- The right to conduct vegetable, fruit, nut, grain, flower, and culinary and medicinal

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herb cultivation and harvesting within those areas of the easement identified in the easement;

- Retention of fishing rights and the right to control all nuisance fish on the easement property;
- The right to utilize the property for all resource-based recreational activities, including hunting, fishing, nature parks, boating, horseback riding, swimming, hiking, and other related activities; and
- The right to quiet enjoyment.

The proposed conservation easement grants certain rights to the grantee. The summary of grantee's rights includes, but is not limited to, the following:

- The right to monitor compliance with the terms and conditions of the easement; and
- If the grantor intends to sell any of the interest in the easement property, the grantor shall deliver a notice of such intent, and shall, in good faith, afford the grantee an opportunity to negotiate the acquisition of the easement property pursuant to the easement.

All mortgages and liens will be satisfied or subordinated at the time of closing. There is a 20-foot-wide easement along the south line of the lake front parcel in favor of Southeastern Telephone Company. The appraisers considered this easement in their final reconciliation of value. 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 this and any other title issues that arise prior to closing.

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

The property includes significant shoreline on Lake McBride, which has low nutrient and pollutant levels and a nesting pair of bald eagles. Lake McBride is the headwaters of the Lake Lafayette watershed. According to The Nature Conservancy, the lakes of Leon County comprise one of the most important groups of solution lakes in the northern hemisphere. Most of these lakes hold sinkholes that breach the Floridan aquifer so it is important that they are afforded some protection from runoff. The property is a critical recharge area for the Floridan aquifer.

The property also consists of a mosaic of vegetated communities, a deeply incised Seepage Stream, and some open pasture. It falls within the "Red Hills" physiographic region, which consists of pine-dominated uplands of numerous karst sinkholes and lakes. The elevation of

LOCATION: Section 24, Township 01 South, Range 27 East, in the St. Johns River, Class III Waters, within the local jurisdiction of the city of Jacksonville
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Yes, Slow Speed Minimum Wake within 300 feet of shore, Channel Exempt

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CONSIDERATION: \$17,322.67 as the initial lease fee computed at the base rate of \$0.1342 per square foot. Sales tax will be assessed pursuant to section 212.031, F.S. Lease fees may be adjusted based on six percent of the annual 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."

On November 16, 2000, the Board of Trustees approved a sovereignty submerged lands lease (No. 162245689) for Hawkins Avenue Corporation (Hawkins Avenue) containing 129,084 square feet, more or less, for a proposed six-slip commercial/industrial docking facility to be used in conjunction with a proposed upland marine contracting company on the adjacent 84 acres of uplands. Activities on sovereignty submerged lands included the construction of 495 linear feet of bulkhead at the approximate mean high water line, the dredging of 2.53 acres of river bottom, and the installation of a 350-foot-long by 75-foot-wide concrete dock. The dock was designed to moor six vessels consisting of tugboats and barges. The activities were also permitted under a wetland resource permit (DEP Permit No. 162245689) issued on June 30, 1994 and extended twice. The current expiration date is June 30, 2006.

Hawkins Avenue proposed to dredge 17,205 cubic yards of sovereignty material to create water depths sufficient for mooring tugboats and barges. The dredging operation commenced in June 2004 and approximately 5,129 cubic yards of material was removed from a 420-foot-long by 60-foot-wide nearshore area. The average depth of the dredged area is 7 to 9 feet below mean low water. Hawkins Avenue has stated that the dredging was performed in order to provide sufficient water depths to moor construction barges for the initial groundwork of the industrial project. No further dredging was done and the bulkhead and industrial dock have not been constructed.

In an effort to explore alternative options for the upland development, Hawkins Avenue applied to the City of Jacksonville for a change in Land Use Designation for the 84 acres of upland property from Water Dependent/Water Related to Low Density Residential and a zoning change from Industrial Waterfront to a Planned Unit Development (PUD) named Nichols Creek. Nichols Creek was to consist of 468 units of multiple alternative residential densities including townhomes, condominiums, duplexes/paired villas and single-family homes

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with an amenity center and related docks. The Jacksonville City Council, under Ordinance 2004-313-E, approved the PUD on May 11, 2004.

On December 13, 2004, Hawkins Avenue and DEP conducted a preapplication meeting to discuss a proposed modification to the wetland resource permit to change the industrial dock to a multi-family dock. It was determined that the proposed project was beyond the scope of a permit modification and that an application for an environmental resource permit would be required.

On January 3, 2005, Hawkins Avenue applied to DEP for an environmental resource permit (ERP) to construct: (1) a 68-slip private residential multi-family docking facility; (2) a boat ramp; and (3) 470 linear feet of bulkhead with riprap, to be used exclusively by the residents of the Nichols Creek Subdivision. No additional dredging was proposed. Concurrently, Hawkins Avenue applied for a modification to the sovereignty submerged lands lease to change the use from a commercial/industrial docking facility to a private residential multi-family docking facility with a boat ramp.

An agenda item for the proposed project was prepared and placed on the June 16, 2005 Board of Trustees' Agenda. Nichols Creek Development, LLC (Nichols Creek Development) purchased the property on May 3, 2005 and applied to DEP to have the existing lease reassigned. Because of the change in ownership of the uplands and possible project modifications, the item was withdrawn from the June 16, 2005 Board of Trustees' Agenda. DEP, under delegation of authority, subsequently renewed the lease for a five-year term and modified the lease to reflect the change in upland ownership. The new lease term runs from May 3, 2005 to November 16, 2010. The ERP application remains active pursuant to a waiver of the 90-day time limit under sections 120.569, 120.57, Part IV, 373, and 403.0876, F.S.

On May 26, 2005, Nichols Creek Development received a modification to the PUD from the City of Jacksonville to allow only single-family residences throughout the development as opposed to mixed multi-family and single-family residences. The modification reduces the total of 468 dwelling units with a gross density of 5.5 dwelling units per acre to 140 dwelling units with a gross density of 1.66 dwelling units per acre.

On July 29, 2005, Nichols Creek Development proposed further modifications to the project. Nichols Creek Development now proposes to allocate 595 linear feet of shoreline, out of the 940 linear feet of the subdivision shoreline, to serve as upland interest for a private yacht club. A 595-foot-long by 10-foot-wide strip of the upland riparian shoreline will remain in the ownership of Nichols Creek Development, apart and separate from the subdivision. Nichols Creek Development also proposes to: (1) construct the proposed dock and boat ramp adjoining the 595-foot-long by 10-foot-wide strip of land; (2) reconfigure the existing lease boundaries; (3) change the proposed use of the docking facility and boat ramp from a private residential

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multi-family docking facility to a private yacht club; and (4) construct 575 linear feet of bulkhead with riprap at the approximate mean high water line.

The strip of land to be allocated for the yacht club will be bordered on its landward side by a parking lot and amenity center that will eventually be conveyed to a homeowners association (HOA) for the subdivision. The parking lot was designed to comply with the City of Jacksonville Municipal Code for marinas. Based on 68 boat slips, the code requires a minimum of 45 parking spaces. The parking lot will provide 46 parking spaces, plus 5 additional extended length parking spaces to accommodate trailers, for a total of 51 parking spaces. The HOA will be obligated to provide access and use of the parking lot and may provide access and use of the amenity center to the users of the yacht club docking facility. The yacht club docking facility will be available on a fee basis to both the residents of the adjacent community, as well as, non-residents from outside the community. The yacht club docking facility will be owned and operated by the lessee or its successors and/or assigns.

Nichols Creek Development will ensure that the members and users of the docking facility will have a continuous right to access and use the parking lot owned by the HOA of the Nichols Creek Subdivision. Nichols Creek Development will not provide any right or privilege to rent or reserve a boat slip to the property owners within the Nichols Creek Subdivision greater than that provided the general public. These requirements will be included as special lease conditions and will be incorporated into the by-laws of the HOA.

The existing lease prohibits fueling facilities and liveaboards but authorizes a sewage pumpout facility. The original wetland resource permit requires that a sewage pumpout facility be installed prior to operating the industrial docking facility. Nichols Creek Development does not propose fueling facilities, liveaboards, or a sewage pumpout facility for the yacht club docking facility; therefore, the ERP and modified lease will not require a sewage pumpout facility. The modified lease will continue to prohibit liveaboards and fueling facilities.

Special Lease Condition No. 31 of the existing lease contains six requirements that specifically apply to the use of the lease as an industrial facility and do not apply to the use as a private yacht club. DEP staff recommends that Specific Condition No. 31 be deleted.

The recommendations of Florida Fish and Wildlife Conservation Commission (FWC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. In addition, Duval County has adopted and implemented a manatee protection plan that has been approved by FWC. The FWC has determined that the proposed project complies with the requirements of the plan.

The 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.

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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 Ordinance 2004-313-E of the Jacksonville City Council.

RECOMMEND WITHDRAWAL

Substitute Item 4 Destin West Marina, LLC Recommended Consolidated Intent

REQUEST: Consideration of an application for a five-year sovereignty submerged lands lease containing approximately 348,637 square feet, more or less, for a commercial, open to the public, marina.

COUNTY: Okaloosa
 Lease No. 460339001
 Application No. 46-0196257-002-DF

APPLICANT: Destin West Marina, LLC (d/b/a in conjunction with Destin West Beach and Bay Resort-Bayside, A Condominium)

LOCATION: Section 00, Township 02 South, Range 24 West, in Choctawhatchee Bay, Class III Waters, Prohibited Shellfish Harvesting Area, within the local jurisdiction of Okaloosa County
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: No
 Manatee Aggregation Area: No
 Manatee Protection Speeding Zone: No

CONSIDERATION: \$58,468.60, representing the initial lease fee computed at the base rate of \$0.1342 per square foot, including the initial 25 percent surcharge payment. 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 annual 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., 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

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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. 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."

The applicant is proposing to construct a new 89-slip commercial marina with transient mooring for an additional 10 to 13 vessels, located adjacent to a 186-unit upland condominium complex. The applicant is proposing to lease 45-slips to the general public with one-year contracts and 44-slips to the general public with longer-term leases of five years. The transient slips will be available to the general public on a daily basis. The dock will be entirely open to the public, but does not meet the rule definition for "first-come, first-served" as 44 slips have longer than one-year term rentals and therefore does not qualify for a 30 percent discount.

The nearshore area is very shallow with water depths ranging from +1 feet mean low water (MLW) to -4 feet MLW. As a result, the mooring areas for the dock have been moved approximately 422 feet waterward of the mean high water line (MHWL). No submerged aquatic vegetation has been found in the area where the dock or the slips are proposed to be located. No dredging is proposed at the site since the project will be located in water depths ranging from -6 to -14 feet MLW. The western lot currently contains two existing docks, which will be removed prior to issuance of the lease. The removal of the two docks has been addressed as a special approval condition.

Tolbert Bayside Development Company (Tolbert) has granted a marina easement agreement to Destin West Marina, LLC, for a 581-foot-long by 10-foot-wide section of the shoreline riparian to the MHWL, in order to construct, operate, repair, and maintain the marina. The marina easement agreement states that the marina will be commercial. The document has been recorded with the Clerk of the Court. The condominium complex will consist of four condominium buildings, comprising 186 units, all of which will be located on the north side of Highway 98. The condominiums will be operated collectively under the name of Destin West Beach and Bay Resort-Bayside, A Condominium. Tolbert has already constructed two condominium buildings (Building II, Sandpiper, and Building III, Pelican) with 48 condo units in each building, which are located adjacent to Highway 98. Two other condominium buildings (Building I, Osprey, and Building IV, Heron) are under construction, and are located adjacent to the marina easement along Choctawhatchee Bay. Each of the four condominiums will be a separate condominium association, surrounded by common property. The Destin West Marina, LLC is a member of the Destin West Beach and Bay Resort-Bayside Property Owners Association, Inc. (Master Association) and is governed by the Master Association

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Declaration of Condominiums' Restrictive Covenants and Easements for Destin West Beach and Bay Resort-Bayside. The project is not considered to be a phased condominium as defined in section 718.403, F.S., but will be developed in separate construction stages. The upland property is zoned B-3, light commercial and concession area. This type of zoning allows for both commercial and multi-family usage. Tolbert received a Development Order from Okaloosa County for the entire complex on April 23, 2003. The project is also in compliance with the Okaloosa County comprehensive plan, confirmed in a letter dated December 17, 2002. Tolbert has designated sufficient parking for the general public, in the southeastern corner of the property. Overflow parking will be accommodated at a parking garage located across the street from the project site, owned by Tolbert. The project meets all of the County parking requirements for the public, as listed in the Development Order. A special lease condition has been added that requires the applicant to place signs indicating the location of the parking areas that are open to the public. Tolbert has also stated in the condominium documents that access for the public, from the parking lot, across the common property, to the marina easement, has been granted in order to allow the general public the ability to reach the marina. In addition, Tolbert shall provide both pedestrian access and access for light vehicles, such as golf carts, to the marina easement. A special lease condition has been added that requires the applicant to provide access to the public from dawn to dusk (at a minimum) through any proposed gates that are electronically controlled or controlled by a security guard.

A standard condition in sovereignty submerged lands leases clearly states the Board of Trustees' interest in the lands being leased, as follows:

"Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold."

The proposed lease will contain the following standard lease condition:

3. "WET SLIP RENTAL CERTIFICATION/SUPPLEMENTAL PAYMENT:

(A) The Lessee shall provide upon request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(26), Florida Administrative Code, derived directly or indirectly from the use of sovereignty

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submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the leased docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said wet slip be paid to the Lessee who, upon receipt, shall report and transmit said amount to the Lessor. The instrument or agreement used by the Lessee to transfer a wet slip shall also include a provision that clearly notifies the wet slip renter/user/holder that no interest in said wet slip may be further transferred unless a substantially similar provision to the one contained in the preceding sentence is placed in each succeeding instrument or agreement used to transfer said wet slip to each new wet slip renter/user/holder."

DEP is concerned that the condominium owners, prior to the knowledge by the general public that the slips are available for rent, may obtain the majority of the slips. DEP requested that the condominium documents clearly state that the slips were to be open to the public. However, the condominium documents for the individual condominium associations made no commitment to the individual condominium owners with respect to boat slip usage. The documents that have been recorded are unable to be changed without a vote from the unit owners. In addition, the applicant represents the majority of condominium units that are under construction have been sold, and as such, the applicant asserts it is unable to change those condominium documents. However, a special approval condition has been added to amend the Master Association Declaration of Condominiums to clearly reflect that the marina is open to the general public and that condominium owners do not have an inherent right or priority standing to lease a slip. In order to ensure that the public will have an opportunity to rent slips, a special lease condition has been added requiring the applicant to provide on an annual basis, to the Division of State Lands, copies of the rental rate schedule for the slip rentals. In addition, a special lease condition has been added requiring the applicant to advertise in a local paper and to provide to the Division of State Lands, on an annual basis, a copy of the advertisement, and the waiting list, which shows that the slips are open to the public on a rental basis. The Master Boat Slip License indicates that the license of a slip may be acquired by purchase, through foreclosure, sale or by deed. The document needs to be revised to indicate that slips cannot be acquired by purchase, through foreclosure, sale or by deed, and this has been addressed in a special approval condition. A special approval condition has also

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been added that will require the applicant to amend the Master Boat Slip License and the One-year Dockage Lease, to clearly state the Board of Trustees' ownership of the submerged lands at the marina, and that the boat slip renter does not obtain any title to, or interest in, sovereignty submerged lands.

DEP's wetland resource permit prohibits liveaboards and fueling facilities. Two portable sewage pumpouts, as required by the permit, will be provided. The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been included as specific conditions in the wetland resource permit and are included as special lease conditions. According to a letter, dated August 28, 2003, from FFWCC, the proposed project may adversely impact marine turtles. The applicant has agreed to install and operate lighting that is not visible from the beach and will not disorient nesting or hatchling sea turtles. FFWCC's Division of Law Enforcement stated in a letter, dated October 16, 2002, that the proposed marina would not present a hazard to navigation to the Intracoastal Waterway. The Department of Community Affairs (DCA) stated in a letter dated May 6, 2003, that the project was not considered to be a Development of Regional Impact. The Florida Department of Agriculture and Consumer Services, Shellfish Environmental Assessment Section, had no objections to the project on December 5, 2002 as the project is located in Class III Waters of the State, Prohibited for Shellfish Harvesting. The Shellfish Environmental Assessment Section reconfirmed its position of no objection on February 27, 2006. The Florida Department of State, Division of Historical Resources, stated in a letter, dated February 27, 2004, that no significant archaeological or historical sites will be affected by this project.

This project was noticed as required, pursuant to section 253.115, F.S., and no objections were received.

The proposed action is consistent with the Development Order issued on April 23, 2003. A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the DCA determined that the plan was not in compliance. In accordance with the compliance agreement between the 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 Okaloosa County dated December 17, 2002.

(See Attachment 4, Pages 1-37)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$58,468.60**

Substitute Item 5 Back Bay Improvement Group, LLC Recommended Consolidated Intent

REQUEST: Consideration of an application for authorization to: (1) modify an existing ten-year sovereignty submerged lands lease to: (a) reflect a change in upland ownership; (b) decrease the term from ten years to five years; (c) change the use of the docking facility from an open to the public, first-come, first-served facility to a private docking facility; (d) increase the preempted area from 17,468 square feet to 31,887 square feet, more or less; and (e) replace the existing docking facility with a new docking facility in a new configuration providing 39 boat slips, in conjunction with the upland dry storage facility and ship's store; and (2) dredge 908 cubic yards of sovereignty material.

COUNTY: Collier
 Lease No. 110224045
 ERP File No. 11-0068697-002

APPLICANT: Back Bay Improvement Group, LLC

LOCATION: Section 05, Township 48 South, Range 25 East, in Little Hickory Bay, Class II waters not approved for shellfish harvesting, within the local jurisdiction of Collier County
 Aquatic Preserve: No
 Outstanding Florida Waters: Yes
 Designated Manatee County: Yes, with an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes, idle/slow speed zone

CONSIDERATION: \$6,806.00 representing (1) \$4,763.00 as the initial lease fee computed at the rate of \$0.1342 per square foot, and including the initial 25 percent surcharge payment for the additional area; and (2) \$2,043.00 for the severance of 908 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard, pursuant to section 18-21.011(3)(a)2, F.A.C. 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 annual 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 which 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

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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."

The applicant is requesting authorization to modify an existing ten-year sovereignty submerged lands lease by: (1) reflecting a change in upland ownership; (2) decreasing the term from ten years to five years; (3) changing the use of the docking facility from an open to the public, first-come, first-served facility to a private docking facility; (4) increasing the preempted area by an additional 14,419 square feet; and (5) replacing a 27-slip commercial docking facility with a 39-slip private docking facility, in a new configuration, in conjunction with the upland dry storage facility and ship's store. Nineteen slips will accommodate vessels up to 35 feet long. Twenty slips will accommodate vessels up to 30 feet long. Vessel drafts will not exceed three feet. An additional 10 slips will be located on privately-owned submerged lands on the west side of the project site, within Board of Trustees' Disclaimer No. 22461.

On January 25, 2002, DEP issued a ten-year sovereignty submerged lands lease for the former unregistered grandfathered facility to Back Bay Marina of Southwest Florida, LLC, via delegation of authority. The lessee sold the riparian upland property to Back Bay Improvement Group, LLC, on June 4, 2004.

The uplands are presently being redeveloped from a commercial marina providing boat sales, rentals, repairs, and dry storage to a commercial condominium. The commercial condominium will provide a ship's store, 60-unit dry storage building, and vehicle parking. There are no upland dwelling units proposed. The applicant has submitted to DEP unrecorded Declaration of Condominium documents for the upland dry storage slips and unrecorded Declaration of Covenants, Conditions and Restrictions for the wet slips on sovereignty submerged lands and privately-owned submerged lands. Pursuant to section 718.502, F.S., those documents are not required to be filed with the Department of Business and Professional Regulation (DBPR) because the project is a commercial condominium. The condominium documents and boat slip purchase agreement recognize that the portion of the docking facility on sovereignty submerged lands is subject and subordinate to the provisions of the lease.

A special approval condition requires the applicant to provide DEP a complete copy of the recorded documents, whether or not those documents are required to be filed with DBPR, prior to receipt of the lease modification. If DEP determines that any changes to the foregoing documents substantively change the relationship of any pertinent aspects of the condominium to the proposed docking facilities on sovereignty submerged lands from the relationships shown in the unrecorded draft documents that have been submitted, the special approval condition will also require that such changes shall be submitted for Board of Trustees' consideration as a

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request for a lease modification. Another special approval condition will require DEP approval of the wet slip sales agreement referenced in the foregoing documents prior to receipt of the lease modification.

The applicant originally proposed to sell all 39 boat slips on sovereignty submerged lands and all 10 boat slips on privately-owned submerged lands, and all of the 60 dry storage units being built on the applicant's uplands (for a total of 109 wet and dry slips). In light of the heightened public concern associated with the conversion of boat slips from a first-come, first-served rental basis to an ownership basis, DEP suggested that the applicant consider retaining a portion of the boat slips on sovereignty submerged lands on an open to the public on a first-come, first-served rental basis with rental periods not to exceed one year. In response, the applicant proposed two alternatives. The first alternative would keep 4 of the 39 boat slips within the sovereignty submerged lands lease open to the public on a first-come, first-served rental basis. Under this alternative, the applicant would amend the submitted condominium documents to reflect this requirement. The second alternative would allow all 39 boat slips on sovereignty submerged lands and all 10 boat slips on privately-owned submerged lands, and all of the 60 dry storage units being built on the applicant's uplands, to be sold to buyers. The slips would be made available to the public on a first-come, first-served basis if and when such slips are not occupied by the boat slip owner. The applicant predicts that approximately 15 to 20 percent of the future boat slip owners will rent their slips to third parties rather than occupy their slips. The applicant proposes to pursue this second alternative, allowing market forces to determine how many of the sold slips will subsequently be made available to the public on a rental basis.

Under either of the applicant's proposed alternatives, the modified facility will not be considered a "first-come, first-served" facility as required by section 18-21.008(2)(a)1, F.A.C. The applicant no longer qualifies for a standard ten-year lease because at least 90 percent of the slips will not be maintained for rent to the public on a first-come, first-served basis as required by section 18-21.008(1), F.A.C. Therefore, the lease term will be reduced from ten years to five years. The applicant also will not qualify for the 30 percent discount of the lease fee. Therefore, existing special lease condition 30 will not be included in the modified lease.

A recent review of the applicant's financial records pertaining to the marina and subsequent discussion with the applicant revealed confusion on behalf of the applicant regarding slip income and associated accounting and reporting practices. Therefore, standard lease condition no. 6 in the proposed lease modification will be modified as follows:

"6. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) the gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived

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from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the entire term of this lease plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

The modified condition will clarify that any income, as defined in section 18-21.003(26), derived either directly or indirectly from the use of sovereignty submerged lands within the lease shall be accounted for separately from other revenues collected by the applicant and shall be maintained and available for examination by DEP pursuant to the terms of the lease.

The proposed lease will contain the following new standard lease condition:

“3. WET SLIP RENTAL CERTIFICATION/SUPPLEMENTAL PAYMENT:
(A) The Lessee shall provide upon request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(26), Florida Administrative Code, derived directly or indirectly from the use of sovereignty submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the leased docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said wet slip be paid to the Lessee who, upon receipt, shall report and transmit said amount to the Lessor. The instrument or agreement used by the Lessee to transfer a wet slip shall also include a provision that clearly notifies the wet slip renter/user/holder that no interest in said wet slip may be further transferred unless a substantially similar provision to the one contained in the preceding sentence is placed in each succeeding instrument or agreement used to transfer said wet slip to each new wet slip renter/user/holder.”

A standard lease condition prohibits the applicant from discriminating with respect to any activity occurring within the lease or upon lands adjacent to and used as an adjunct to the leased facility.

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The applicant proposes to dredge 908 cubic yards of sovereignty material to provide adequate water depth (approximately -5 feet mean low water) for the vessels proposed to be moored at the modified docking facility. The applicant does not qualify for a waiver of the dredge fees, pursuant to section 18-21.011(3)(c), F.A.C.; therefore, a special approval condition requires the applicant to pay dredge fees to DEP prior to receipt of a fully executed modified lease. The material to be dredged consists of sand and silt. There are no significant benthic resources in or adjacent to the area proposed to be dredged. The spoil material will be disposed of at an appropriate self-contained upland site.

The proposed project will be located within the 25-foot setback area from the adjacent riparian line on the east side of the project. The applicant has obtained a letter of concurrence from the affected adjacent property owner.

The proposed lease modification will continue to authorize sewage pumpout facilities and will continue to prohibit overwater fuel tanks and pumps but will authorize overwater fueling. The proposed lease modification will also continue to prohibit liveaboards. DEP's draft environmental resource permit will require that the sewage pumpout facilities and fueling facilities be available for use by the general public on a first-come, first-served basis. The permit will also incorporate several requirements designed to prevent and/or reduce water quality impacts. Therefore, long-term secondary and cumulative impacts from this project are anticipated to be improved as compared to historic conditions at the site.

Recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed as specific conditions in the permit. Additionally, Collier County is a designated manatee county with an adopted and implemented manatee protection plan that has been approved by the FFWCC. Both FFWCC and Collier County have stated that the proposed project appears to be consistent with that plan. Further, a proposed special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between the applicant and the user, stating that the slip user agrees to comply with the speed zones contained in the Collier County Manatee Protection Plan, or any revisions adopted by Collier County and approved by FFWCC, and/or any speed zones established by Collier County and approved by FFWCC.

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. However, DEP received a petition with approximately 41 signatures in opposition to the proposed expansion of the facility. DEP is of the opinion that the concerns raised in the petition have been addressed as follows: (1) the expanded facility will not significantly increase the previously existing number of boat slips at the site; (2) the expanded facility will be within the applicant's riparian rights area and is

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otherwise consistent with chapter 18-21, F.A.C.; and (3) the environmental resource permit for the modified facility will include operational controls to improve water quality at the site.

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 5, Pages 1-43)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$6,806.00**