

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MAY 31, 2006
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2nd Substitute Item 1 Jacksonville Port Authority Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a 25-year sovereignty submerged lands lease containing 9.05 acres, more or less; (2) a letter of consent for the dredging of a public channel; (3) authorization for the severance of 1.5 million cubic yards, more or less, of sovereignty submerged lands; (4) a letter of consent for the placement of a 700-foot-long riprap revetment along the shoreline; and (5) acceptance of a donation of 1.25 acres of submerged land created from excavation of the upland property along the shoreline for the purpose of constructing and operating the Jacksonville Port Authority Dames Point Container Terminal, a public port facility.

COUNTY: Duval
 Lease No. 160339472
 Application No. 16-259637-001-EI

APPLICANT: Jacksonville Port Authority

LOCATION: Sections 42 and 23, 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, 300-foot slow speed, channel exempt

CONSIDERATION: The applicant qualifies for a waiver of lease fees pursuant to section 253.77(4), F.S., and section 18-21.011(1)(b)(7), F.A.C. The applicant qualifies for a waiver of severance fees pursuant to section 253.03(10), F.S., and section 18-21.011(3)(c), 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 activities, 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, a public port facility as listed in section 403.021(9)(b), F.S., manages and oversees the operations, upkeep, improvement, and expansion of Jacksonville Port Authority

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facilities and coordinates their use by private companies. The applicant's existing facilities include the Blount Island Marine Terminal, the Ed Austin Cruise Ship Terminal, and the Talleyrand Marine Terminal. These facilities include docks and wharves, cranes, a passenger cruise terminal, warehouses, paved open storage areas, and road connections to the public highway system. Various types of vessels, such as cruise ships and container ships, utilize the applicant's existing facilities, which during 2005 handled 1,635 vessels and 8,448,655 tons of cargo.

The applicant is proposing to build a new cargo terminal on 162 acres of the Dames Point peninsula along the St. Johns River. This project, known as the Dames Point Container Terminal Project, would provide employment and economic opportunities associated with the shipping market, including an estimated 5,700 new employment opportunities, and an increased tax base for the Jacksonville area. The applicant and Mitsui O.S.K. Lines, a private company who will operate the Dames Point container terminal, have made operational commitments and contractual obligations to begin expansion of the Container Terminal in the summer of 2006. In light of the potential community benefit of the project, DEP has worked closely with the applicant over the last eight months in order to develop a tight, complete application package which could withstand an expedited but thorough review while ensuring that impacts to natural resources, including the exclusive use of sovereignty submerged lands attributable to this project were minimized to the greatest extent practicable.

The Dames Point peninsula is located along the banks of the St. Johns River approximately 10.5 miles from the mouth of the St. Johns River. The peninsula is drained by Wynn's Creek in the northwest, Nichol's Creek to the east, and the St. Johns River to the south. Present land use within the vicinity of the project is predominantly port related, low-density industrial, or undeveloped land. There are some residential and light commercial areas on the eastern side of State Road 9A. A small fringe of salt marsh is located along the St. Johns River bank and a 30-acre freshwater marsh is located in the northern portion of the project site. The St. Johns River is currently classified as a Class III water pursuant to rule 62-302, F.A.C.

The plan for the new Dames Point container terminal consists of the construction of a two-berth marine container terminal on approximately 162 acres of undeveloped land on the western side of Dames Point. The proposed project includes construction of berthing areas, the container yard, new access roadway and existing roadway improvements, installation of utilities, storm water treatment facilities, various buildings to support the operations of the terminal, dredging of the St. Johns River from a new bulkhead out to the limits of the federally-maintained navigational channel, and the placement of dredged material in the Bartram Island confined disposal facility (CDF) and as fill on the land to be used for the container facility. The proposed project design will be able to accommodate two Panamax-class container ships. Specific components of the proposed project include:

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1. construction of a 3,000-foot-long steel sheetpile bulkhead, a utility trench, and pile-supported crane rails to provide two 1,200-foot-long berths for containerized cargo ships;
2. installation of six container cranes;
3. construction of a container yard that provides approximately 158 acres of paved surfaces for the loading, offloading, and storage of containers and trailer chassis;
4. construction of an on-site access road and the appropriate improvements to off-site roads to provide safe ingress/egress for trucks and other vehicles traveling to and from the container yard;
5. construction/installation of the necessary infrastructure and utilities for a fully operational container yard that can accommodate a planned throughput of approximately 800,000 container units per year;
6. construction of various buildings and structures to include an administration building, maintenance and repair building, yard operations building, crane repair building, other ancillary operations structures; dredging of the St. Johns River to -42 feet mean low water from the new bulkhead line to the limits of the federally-maintained navigation channel. Approximately 1.5 million cubic yards of material will be removed from the river bottom, and placement will be divided between Dames Point and an existing or newly constructed cell at the Bartram Island CDF. The surface area for project dredging is approximately 48 acres with existing depths ranging from -3.5 to -45 feet mean low water; and
7. closure and abandonment of approximately 52 septic tanks; installation of sewage collection lines, and a stormwater system retrofit.

As required by the National Environmental Policy Act (NEPA) and in consideration of the Port's application for federal authorizations, the applicant developed and evaluated alternatives to the proposed project to ensure that every attempt had been made to avoid and/or minimize environmental impacts. DEP reviewed the developed alternatives, including the applicant's preferred alternative, with the applicant in a similar effort to minimize impacts. The applicant's initial preferred alternative included filling approximately 11 acres of the St. Johns River. This design was originally contemplated by the applicant as it provided the preferred upland configuration for cargo container storage and maneuvering of trucks and cranes handling cargo. DEP expressed concern over the dramatic loss of 11 acres of sovereignty submerged lands and requested that the applicant either provide a more specific explanation as to the necessity of the preferred design and why an alternate design would not be practical or that the applicant elect an alternate design. The applicant elected to reduce the filling of sovereignty submerged lands from 11 acres to 1.06 acres by straightening the shoreline to achieve the desired shoreline configuration to allow cargo vessels to approach and moor. This straightening of the shoreline further results in the excavation of 1.25 acres of upland property, which the applicant proposes to convey to the Board of Trustees upon approval of its request.

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The sheetpile bulkhead will be placed along the existing shoreline of the 162-acre site proposed for the terminal. Approximately 3,000 feet of currently meandering shoreline will be straightened with the installation of the bulkhead in order to provide for two berthing areas for vessels. The straightening of the shoreline will involve filling 1.06 acres of sovereignty submerged lands located along a 1,500-foot-long stretch of the project site shoreline. The area of sovereignty submerged lands to be filled is identified as parcel C on the applicant's surveys. In addition, the applicant will excavate parcel B, a 0.06-acre portion of upland, and parcel D, a 1.19-acre portion of upland, both surveyed and identified. The applicant proposes to convey parcels B and D to the Board of Trustees. Parcel A includes those portions of parcels B and D which will be included within the lease area. Therefore, if the applicant's request is approved, the lease area shall include the bulkhead and parcels A and C. Installation of the bulkhead will permanently eliminate 0.35 acre of salt marsh located along the shoreline. The applicant will mitigate for the loss of function by creating 0.8 acre of salt marsh from an existing upland plant community located on Reed Island, a former spoil disposal site utilized by the applicant and the city of Jacksonville. The 0.8 acre salt marsh creation area shall be placed within a perpetual conservation easement granted to the Board of Trustees. The applicant will also install a 700-foot-long riprap revetment located between an existing riprap revetment and the location of the proposed bulkhead in order to protect this portion of shoreline from erosion attributable to construction and subsequent operation activities. This revetment will extend 10 feet waterward of the mean high water line and otherwise qualifies for a letter of consent pursuant to section 18-21.005(1)(c)(6), F.A.C.

Development of the 162-acre upland site will require the permanent elimination of 3.05 acres of a 30-acre freshwater marsh located in the northern portion of the project site. DEP and the applicant have substantially reduced the impact to this wetland system with a redesign of the stormwater management system needed for the development of the upland and by identifying an alternate configuration for terminal facilities. The applicant will mitigate for the remaining impacts to this wetland system with the purchase of 6.1 wetland mitigation bank credits at Loblolly Mitigation Bank located within the city of Jacksonville. Loblolly Mitigation Bank is located in western Duval County and has a service area which includes the Dames Point Container Terminal Project site.

A 48.82-acre area of sovereignty submerged lands within the St. Johns River will be dredged to a depth of -42 feet mean low water with 1.5 million cubic yards of material removed. The majority of the dredging will be conducted using a barge mounted rotating cutterhead type hydraulic dredge. Slurry from the dredge will be transported via a submerged pipe to three temporary spoil cells on the applicant's upland property that will eventually become the container expansion area. These three cells will be used in rotation, allowing time for sediment in the slurry, deposited into each cell, to settle before the discharge water is returned to the river. The mud portion of the slurry will be piped to Bartram Island CDF and deposited in an available existing cell or in a new cell which will be authorized in the permit. The remaining sediment will be utilized as fill material on the project site. This method of dredging, and the

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handling of the spoil material, will dramatically limit turbidity generally associated with dredging projects and is consequently a further example of the applicant's efforts to minimize its impact to natural resources. Approximately 8 acres of the dredge area will be located within the proposed lease premises and 40.38 acres of the dredge area will be located outside of the proposed lease premises. That portion of the dredge area located outside of the proposed lease premises qualifies for a letter of consent pursuant to section 18-21.005(1)(c)(10), F.A.C. The applicant is not required to pay severance fees pursuant to section 253.03(10), F.S., and section 18-21.011(3)(c), F.A.C.

In 2003 the applicant identified two bands of submerged aquatic vegetation (SAV) along the Dames Point peninsula and along the southern edge of Bartram Island. A more recent survey of the project site in September 2005 only identified small, sparse, and noncontiguous patches of SAV. This absence of SAV from previous surveys is presumably the result of higher than normal turbidity, currents, and rainfall in the river due to the past two years' hurricane seasons.

The construction and operation of the Dames Point Container Terminal, including the associated use of sovereignty submerged lands, is expected to have minimal impacts on recreation and other traditional uses on sovereignty submerged lands within the project site and vicinity. Construction and operation of the container terminal would have no impacts to surrounding local, state, and federally-managed lands, including parks, and there would otherwise be no loss of frequently used recreational lands outside of the lease area. Dredging is not expected to conflict with boating and other traditional uses in the area. Commercial and recreational boaters will have the ability to navigate around dredging operations. Increased boat traffic to and from the container terminal during operations should have minimal impacts to recreation since there would only be two Panamax vessels per week during the initial year of operation and no more than four vessels per week after the first year.

An archeological investigation, conducted by the applicant, of the Dames Point Container Terminal site revealed four sites of interest. A preliminary investigation found that three of these sites required no further detailed investigation and will not be affected by the proposed project. A detailed investigation of the fourth site failed to document extensive intact cultural features or other significant deposits. In a letter dated March 17, 2006 the Department of State, Division of Historical Resources, concurred with the applicant's findings and does not object to the project as proposed.

In the fall of 2005, a contractor for the Port failed to take proper precautions when using the Port's Bartram Island spoil site for maintenance dredge spoils. His actions caused a berm breach and solids spilled out covering 3.28 acres of wetlands and into open water. This violation had to be addressed, and in the meantime there was a dramatic loss of spoil disposal capacity, impacting Port activity, as many ships couldn't make it to their berths without the necessary maintenance dredging. Impact studies had to be completed before corrective action

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could be developed for a resolution Consent Order. All were completed expeditiously and to the satisfaction of both state and federal scientists. While the berm breach was clearly the fault of the errant subcontractor, the Port was ultimately accountable and readily took responsibility. These fines were established pursuant to section 403.121., F.S. The U. S. Army Corps of Engineers agreed to defer enforcement to DEP, and have accepted DEP's resolution to cover its enforcement needs.

In both the enforcement action for the berm breach and the permit action for the container expansion (which includes dredging and spoil disposal), we took the opportunity to analyze the spoil disposal cell design and operational protocols that existed prior to rules. Working with the Army Corps Of Engineer's design manuals, field operators, Dam Safety and Berm Specialists from DEP's Bureau of Mine Reclamation, and hydrology experts from DEP's Division of Water Resource Management, DEP encoded design and operational requirements believed to be a good structure for reviewing new spoil disposal options in the future. Such design and operational requirements have been included as specific regulatory conditions in the permit.

Access to the container terminal is proposed via a driveway to tie into New Berlin Road. The applicant completed a traffic study and determined that the increased traffic attributable to the container terminal would exceed the acceptable capacity for New Berlin Road. The applicant will coordinate with the city of Jacksonville to affect the necessary road improvements. Noise from construction would affect ambient noise levels in the Dames Point area and within the project vicinity of the St. Johns River. The applicant conducted a study to identify a noise impact zone. No noise-sensitive areas such as residences, hospitals, or schools, fall within the noise impact zone.

A stated reason for the size of the requested area to be dredged, approximately 40 acres beyond the 8 acres of dredged preemption area leased for berthing, is the need for maneuvering from the navigation channel to the preemptive, berthing areas, and in particular, for a turning radius. However, the requested dredge area and depth may be insufficient at certain tide cycles for some deeper draft vessels.

The United States Coast Guard, in a letter dated April 17, 2006, concurred with the Jacksonville Marine Transportation Exchange (JMTX), Harbor Safety Committee, Navigation Safety Sub-Committee opinions and recommendations made in its April 10, 2006 letter. JMTX, who represents the interests of local tugboat operators, expressed safety concerns regarding turning radius accommodation. They recommended additional dredging to address this, however provided alternative recommendations that pertain to operational procedures which could be adopted by the applicant instead, but which would limit some operations by tide cycle. The applicant has agreed to these operational options, and this has been encoded in a specific permit condition.

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While at this time the applicant intends to address this safe turning radius area issue with the operational controls of timing turning on favorable tides, the applicant may elect at a future date to apply for a modification to its permit to include dredging the southwest side of the navigation channel for a total of 1,400 feet from the bulkhead and extending a length of 2,500 feet centered on the berth. This would require a major modification to the permit as well a modification to the sovereignty submerged lands authorizations requested for any sovereignty submerged lands affected. Such a modification will require submission and review of a new application. The applicant owns the majority of the submerged lands that are likely to be impacted by any modification. To the extent sovereignty submerged lands are impacted by a proposed modification, final agency action is delegated to DEP unless deemed heightened public concern.

The Florida Fish and Wildlife Conservation Commission (FWC) reviewed the proposed project and provided its comments and recommendations in a letter dated April 21, 2006. According to the letter the proposed project is located in an area with an existing 300-foot slow speed shoreline buffer for manatee protection. In addition, the project is located within Boat Facility Siting Zone 4 of the Duval County Manatee Protection Plan and is designated as a preferred area for future marina, port, and boat ramp development. FWC recommended the inclusion of conditions provided in its letter which will satisfy the requirements of section 373.414(1)(a)2, Florida Statutes and these conditions have been included in the permit.

There are no adjacent properties within a 500-foot radius of the proposed lease area and therefore no noticing, pursuant to section 253.115, F.S., was required. However, DEP did require that the applicant publish a Notice of Application in a newspaper of local circulation. On February 8, 2006, the applicant published such notice in the Florida Times Union. No comments or objections have been received to date.

The applicant has requested an extended term lease given that its use of sovereignty submerged lands and the associated proposed structures on sovereignty submerged lands will extend beyond a standard lease term of 5 years. In addition, the applicant is considered to be a governmental entity and therefore qualifies for an extended term lease pursuant to section 18-21.008(2)(a)2., F.A.C. Furthermore: (1) the applicant has provided sufficient mitigation to off-set impacts to natural resources as a result of this project and has minimized adverse impacts to sovereignty submerged lands from their original proposal; (2) the applicant has demonstrated compliance with all provisions of rule 18-21, F.A.C., and all other rules of the Department and; (3) the applicant has agreed to comply with all the terms and conditions applicable to an extended term lease and the associated permit.

The Department of Community Affairs (DCA) in a letter dated February 7, 2006 has stated that they are working closely with the City of Jacksonville and the applicant on updating the port master plan. While a Development of Regional Impact (DRI) review would be required for like projects not in an existing port master plan, DCA will not require the applicant to commence with such review as the modification of the port master plan is anticipated to be

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complete later this fall negating the necessity for a DRI, and DCA has stated in a February 7, 2006 letter that they have no issues of concern regarding this permit application. The proposed action is consistent with the Conservation/Coastal Management Element of the local government comprehensive plan according to a letter received from the city of Jacksonville on March 29, 2006.

(See Attachment 1, Pages 1-46)

RECOMMEND APPROVAL OF A 25-YEAR LEASE SUBJECT TO THE SPECIAL LEASE CONDITION

Substitute Item 2 City of Marathon Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a 10-year sovereignty submerged lands lease containing 3,472,488 square feet (80 acres), more or less, for a managed municipal mooring field and anchorage; and (2) waiver of lease fees.

COUNTY: Monroe
 Lease No. 440222445
 Application No. 44-0164121-001

APPLICANT: City of Marathon (City)

LOCATION: Sections 10 and 15, Township 66 South, Range 32 East, in Boot Key Harbor, Class III Waters, within the local jurisdiction of the City of Marathon
 Aquatic Preserve: No
 Outstanding Florida Waters: Yes
 Designated Manatee County: No
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes, idle speed-no wake zone

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

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a

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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 the "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 City is proposing to create: (1) a 2,710,322-square-foot (62-acre) mooring field (the City of Marathon Boot Key Harbor Municipal Mooring Field and Anchorage) consisting of two lease areas (Mooring Area 1 with 739,225 square feet and Mooring Area 2 with 1,971,097 square feet); and (2) a 762,166-square-foot (18-acre) anchorage area. Mooring Area 1 will provide mooring buoys for 61 vessels up to 50 feet long. Mooring Area 2 will provide 13 mooring buoys for vessels up to 60 feet long, and 90 mooring buoys for vessels up to 50 feet long. Mooring Area 2 will also include a proposed multi-slip commercial docking facility. That docking facility will provide temporary mooring for transient vessels and for up to 125 dinghies associated with boats moored in the mooring field and anchorage area. The number of vessels at the proposed docking facility will vary depending on the size of vessels moored at any given time. However, the City anticipates that transient vessels will moor primarily on the east side of the proposed 170-foot-long dock, and will likely include vessels up to 40 feet long, for up to four vessels. Because of some technical survey deficiencies pertaining to the docking facility, a special approval condition requires submission of an acceptable survey and legal description to correct these deficiencies. The number of vessels using the anchorage area will vary depending on the length of vessels anchored on any given day. However, the City anticipates the average maximum number of vessels in the anchorage area to be 45. The mooring field and anchorage area will be open to the public on a first-come, first-serve (not-for-profit) basis. Although vessel traffic in the mooring field and anchorage area is anticipated to be by patrons of those areas, navigation through those areas by non-patrons will not be prohibited. These facilities will be in addition to an existing mooring field on submerged lands owned by the City. The City's submerged lands ownership includes a 38.7-acre parcel on the south side of the Harbor and a 5.1-acre parcel on the north side (Board of Trustees' deed nos. 20979, 21568, 21650 and 21697).

Historical unregulated mooring in Boot Key Harbor (Harbor) entailed a number of problems including: (1) damage to submerged resources, particularly seagrass beds; (2) navigational hazards from vessels at anchor colliding with one another; (3) abandoned and derelict vessels; and (4) uncontrolled discharge of waste. These problems, which also reduced water quality in the Harbor, were exacerbated in the late 1990s as the number of moored vessels increased dramatically. This increase was due in part to the rapid rise in real estate values in the Florida

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Keys, which made living aboard vessels the only economically viable housing alternative for some residents. Some 310 vessels were counted last year during peak season within the Harbor that is located entirely within the City's political jurisdiction.

Efforts by the City and the Monroe County Board of County Commissioners (County) to address this historically unregulated mooring in the Harbor began in the late 1990s. In 2000, the County installed seven informational signs around seagrass areas in the Harbor (file no. 44-0164121-002). DEP issued the County a letter confirming that those signs qualified as an exempt activity. DEP's letter also authorized the use sovereignty submerged lands for the signs. In 2001, DEP issued an environmental resource permit (no. 44-0164121-003) authorizing the County to install 25 mooring anchors on City-owned submerged lands in the Harbor. Those moorings were subsequently installed. DEP authorized the transfer of that permit from the County to the newly incorporated City in 2001 (permit modification no. 44-0164121-005). In 2003, DEP issued a modified permit (no. 44-0164121-004) authorizing an additional 39 mooring anchors on City-owned submerged lands in the Harbor, which were subsequently installed. The City presently operates a 64-slip mooring field on City-owned submerged lands.

The existing mooring field on City-owned submerged lands has demonstrated a number of benefits, including: (1) protection of adjacent resources (i.e. adjacent seagrass beds); (2) providing services to improve water quality such as sewage pumpout facilities, shower facilities, garbage collection, recycling, removing derelict vessels and preventing new derelict vessels, boater education, quicker/more effective fuel spill response, and hazardous waste collection; (3) enhanced enforcement presence through the enforcement provisions of the Harbormaster in conjunction with the Monroe County Sheriff's Office; and (4) improved navigation within the harbor, i.e. creating a buffer between the navigation channel and the mooring field and creating secondary navigation channels. The proposed mooring field and anchorage area on sovereignty submerged lands is anticipated to further facilitate these improvements.

The proposed mooring field on sovereignty submerged lands will contain 164 mooring spaces, each with anchors, cables and buoys, and designed to accommodate recreational vessels up to 60 feet in length. The proposed anchorage area will contain approximately 45 anchorage spaces, with the number depending upon the season and the length of vessels. The anchorage area is intended to provide overnight anchorage for transient vessels staying less than 30 days. The City will not charge a fee for vessels to anchor in the anchorage area, but will charge fees for City services used by vessel occupants (sewage pumpout, dinghy mooring, laundry, etc.).

Vessels using the mooring field and anchorage area will be primarily liveaboard vessels. Authorization of liveaboards will be in accordance with the following standard lease condition:

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“29. LIVEABOARDS: The term “liveaboard” is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized in paragraph one (1) of this lease, in no event shall “liveaboard” status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.”

The City understands this requirement and has agreed to comply.

The City’s nearby upland marina is located on City-owned uplands. The City marina will provide harbormaster facilities/amenities for patrons of the mooring field and anchorage area, which include: convenient sewage pumpout facilities, waste receptacles, laundry facilities, restrooms and shower facilities. A man-made canal on City-owned submerged lands adjacent to the marina provides mooring for liveaboard vessel dinghies, two City-owned sewage pumpout vessels, and law enforcement vessels. The City is confident that these amenities, an orderly mooring/anchorage system, and water quality benefits will encourage boaters to use the proposed mooring field and anchorage area on sovereignty submerged lands similar to ongoing use of the mooring field on City-owned submerged lands. The City will collect a rental fee from mooring field patrons and will use the revenue solely for the purposes of operation and maintenance of the mooring field and anchorage area.

Section 18-21.011(1) (b) 7, F.A.C., states in pertinent part that lease fees may be waived under the following circumstances: “a) Any revenues collected from the activity or use of sovereign submerged lands are used solely for the purposes of operation and maintenance of the structure; and b) The activity or use of sovereign submerged lands is consistent with the public purposes of the City organization and is not an adjunct to a commercial endeavor.” Based upon the merits of the proposed project and information provided to DEP by the City indicating that fees will be assessed and profits shall be used to offset costs and construction, operations, and maintenance of the mooring field, DEP is of the opinion that the proposed activity meets the rule requirement. Therefore, DEP recommends that the lease fee be waived. A special lease condition will require the City to provide annual accounting data demonstrating whether the mooring field and anchorage area are revenue-generating activities. Should the accounting data demonstrate that the mooring field and anchorage areas are revenue generating activities, the special lease condition will require the City to submit lease fees for the use of sovereignty submerged land, pursuant to section 18-21.011, F.A.C.

The City has submitted a Harbor Management Plan (Plan) that provides background information, design, operational rules and procedures, and objectives for the City’s oversight and management of the entire mooring field and anchorage area via the City’s harbormaster. A special lease condition will incorporate the Plan into the lease.

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The Plan will require the City to: (1) enforce the provisions of the sovereignty submerged lands lease and any permits granted; (2) provide administration for the operation, maintenance, and security of the mooring field and anchorage area and shoreside amenities (harbormaster facilities); (3) assign moorings; (4) prepare records and reports as they relate to management of the mooring field and anchorage area; (5) maintain the mooring field and anchorage area and harbormaster facilities; and (6) ensure that all mooring field and anchorage area patrons execute a mooring license agreement during normal business hours, or for those vessels arriving after normal business hours, at the start of business the following day. This license agreement will bind the users to the rules and regulations as provided in the Plan. Only authorized and operational vessels, those capable of maneuvering under their own power, and those in compliance with the United States Coast Guard regulations and safety standards will be allowed within the mooring field and anchorage area. Daily patrols and a daily vessel inventory by City marina staff and City law enforcement officers will assist in ensuring compliance with the Plan.

Any vessel within the boundaries of the mooring field and anchorage area at the time of adoption of the Plan shall be required to meet all applicable rules and regulations of the Plan or the vessels will be required to vacate the mooring field and anchorage area. The City does not currently prohibit mooring in the Harbor outside of the mooring field and anchorage area. However, the City is developing an ordinance that will prohibit Harbor mooring and anchoring on sovereignty submerged lands outside of the lease. This will eliminate random mooring outside of the lease, thus alleviating unmonitored discharge of sewage and gray water, as well as, unregulated mooring over submerged resources in the area. DEP will work with the City to ensure that the ordinance provides consideration for anchoring outside of the lease area during storm events. A special approval condition requires the City to adopt the ordinance prior to issuance of the lease. Once the ordinance is adopted, City law enforcement officers will provide enforcement of the ordinance.

Upon entering the mooring field and anchorage area, all vessel operators will be required to empty their sewage holding tanks into the sewage pumpout facility located at the City marina or into the City's sewage pumpout vessel and all Y-valves shall be locked and sealed in the non-overboard position. No pumping of sewage in any area within the mooring field and anchorage area will be allowed, except at the City's sewage pumpout facility at the City Marina or into the City's sewage pumpout vessels. Major repairs or refitting of vessels, including any activity that could result in a deposition of materials into the waterway or within the mooring field and anchorage area, will be strictly prohibited.

As a result of the restrictions placed on the mooring field and anchorage area through the specific permit conditions and the Plan, the mooring field and anchorage area are anticipated to help alleviate random mooring of boats and the discharge of sewage in Boot Key Harbor, thereby protecting sovereignty submerged land resources in the area.

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On January 31, 2000, the Florida Fish and Wildlife Conservation Commission (FFWCC) recommended approval of the City's mooring field and anchorage area if the City: (1) complies with the standard manatee protection construction conditions for all in-water construction; and (2) installs and maintains a manatee educational program, which shall include at a minimum, permanent signs and kiosks, speed zone booklets, and manatee educational brochures and pamphlets, in accordance with FFWCC requirements. On April 25, 2006, FFWCC confirmed the applicability of its original comments. These recommendations are incorporated into DEP's environmental resource permit.

Pursuant to section 253.115, F.S., the proposed project was specifically noticed to property owners within 500 feet of the proposed project area. Approximately 200 notices were sent via certified mail, and the City posted a public notice at the City's marina to make the public aware of the mooring field and anchorage area. Three objections were received in response to the noticing. The objections pertain to the following: (1) potential adverse affects to the real property, riparian and other existing property rights; (2) the cost of the project to City taxpayers; (3) the number of mooring buoys to be used by permanent liveaboards; and (4) the mooring buoys' impact to visual aesthetics in the harbor; and (5) the mooring buoys' impact on navigation in the harbor.

DEP is of the opinion that the City has addressed these objections as follows: (1) section 18-21.004(3)(b), F.A.C., states in pertinent part that "satisfactory evidence of sufficient upland interest is not required for activities on sovereignty submerged lands that are not riparian to uplands, or when a governmental entity conducts restoration and enhancement activities, provided that such activities do not unreasonably infringe on riparian rights." Based on a review of historical aerial photographs, and survey and bathymetric data, the mooring field and anchorage area will be situated waterward compared to some of the historical mooring locations of vessels and does not appear to adversely affect the riparian rights of waterfront property owners. The City states that during peak season more than 300 boats may anchor in the harbor. The proposed project may decrease the number of vessels in the harbor by providing an organized system of mooring buoys, which will prevent overcrowding and unsafe anchoring. Additionally, the mooring field and anchorage area are located so that ingress and egress through the harbor will not be hindered, including access to adjacent residential canals. The City further believes the mooring systems will eliminate unsafe and overcrowded mooring; (2) the proposed project is anticipated to become self-sustaining through collection of mooring fees and fees for other City services; (3) while the number of mooring buoys will increase, the number of vessels in the harbor will decrease through the organized system of mooring buoys, and permanent liveaboards will be prohibited from the mooring field and anchorage area unless specifically authorized by the Board of Trustees; (4) the number of vessels in the harbor may decrease through the organized system of mooring buoys, thereby improving aesthetics; and (5) sufficient navigation channels/corridors around the mooring field and anchorage area will remain, and elimination of haphazard mooring should improve navigation in the harbor.

Substitute Item 2, cont.

DEP's environmental resource permit will authorize liveaboards, will require sewage pumpout facilities, and will prohibit fueling of vessels in the City-owned man-made canal.

Because the proposed mooring field provides more than 150 wet slips, the Department of Community Affairs (DCA) determined that the proposed project constitutes a Development of Regional Impact (DRI) pursuant to chapter 380, F.S. The statute provides that marina developments are exempt from the DRI review process if the local government has adopted a Marina Siting Plan acceptable to DCA. The City developed such a plan, and DCA determined the plan to be acceptable on April 10, 2006. The City incorporated the plan into its local government comprehensive plan on February 13, 2006.

The marginal dock in the landward portion of Mooring Area 2 will be located within the 25-foot setback area from the adjacent riparian line on the west side of the project. The City has obtained a letter of concurrence from the affected adjacent property owner.

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 the City.

(See Attachment 2, Pages 1-77)

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

Substitute Item 3 Cineret, LLC (The Jockey Club) Lease Modification

REQUEST: Consideration of an application for a modification of an existing ten-year sovereignty submerged lands lease to (1) allow liveaboards at the facility, not to exceed six months, due to the nature of the vessels (megayachts requiring crews) to be moored at the facility; and (2) remove special lease condition 31.E.

COUNTY: Miami-Dade
 Lease No. 130123536
 File No. 13-0181543-003

APPLICANT: Cineret, LLC., a Florida limited liability company
 (a/k/a Jockey Club)

Substitute Item 3, cont.

LOCATION: Section 32, Township 52 South, Range 42 East, in Biscayne Bay, Class III waters, within the local jurisdiction of the city of Miami
Aquatic Preserve: Yes, Biscayne Bay
Outstanding Florida Waters: Yes
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: Yes
Manatee Protection Speed Zone: Yes (Slow speed year-round)

STAFF REMARKS: The lessee has applied for a lease modification to: (1) allow liveaboards at the facility due to the nature of the vessels (megayachts requiring crews) to be moored at the facility; and (2) remove special lease condition 31.E., which requires that a minimum of 90 percent of the slips at the facility be made available for rent to the public on a “first-come, first-served” basis.

The existing 38-slip facility was constructed in 1968, and was never registered as a grandfathered facility. Therefore, on February 17, 1987, the Board of Trustees approved an after-the-fact five-year sovereignty submerged lands lease containing 230,270 square feet for the existing 38-slip yacht club docking facility. The facility was to be utilized, exclusively, by members of the Jockey Club, which included all upland condominium owners, as well as, approximately 3,000 non-resident club members. On April 12, 1988, the Board of Trustees approved a lease modification to extend the lease term to 15 years, with an expiration date of 2003.

In 2000, the lease was modified by DEP, under delegation of authority, to reflect a change in ownership. It was at this time, based upon information provided to DEP, that the 90 percent open to the public on a first-come, first-served special lease condition was added to the lease, and the prior lessee was given a 30 percent discount pursuant to section 18-21.011(1)(b)2, F.A.C. In 2003, when the lease was renewed by DEP, under delegation of authority, it was issued as a standard 10-year lease (expiration 2013) with the 30 percent discount, due to the representation that the facility was 90 percent open to the public, and the preempted area was reduced from 230,270 square feet to 215,399 square feet. The lease was again modified in 2003 by DEP, under delegation of authority, to reflect a change in ownership. The modified lease contained the 90 percent special lease condition and provided for the 30 percent discount.

In 2005, the lease was modified by DEP, under delegation of authority, to reflect a change in ownership to the current lessee. The existing lease also contains the 90 percent special lease condition and provides for the 30 percent discount.

There are currently no vessels moored at the facility, since the facility was damaged by Hurricane Wilma. The lessee is currently repairing the facility as it existed prior to the hurricane. Because it is a preexisting facility and the applicant is not proposing to expand the lease boundary or the footprint of the structures, the extreme hardship provision of section 18-18, F.A.C., does not apply. Prior to the hurricane, the lessee operated the facility as a private yacht club. Since the lessee proposes to continue to operate the facility as a private yacht club,

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Substitute Item 3, cont.

the lessee does not qualify for the standard 10-year lease or the 30 percent discount. Because the lessee operated this facility as a private yacht club, the lessee paid DEP \$18,882.14 as back fees, with interest, for the discount received from the time of ownership (2005) to present.

Authorization of liveaboards at the facility will be in accordance with the following standard lease condition:

“29. LIVEABOARDS: The term “liveaboard” is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized in paragraph one (1) of this lease, in no event shall “liveaboard” status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.”

(See Attachment 3, Pages 1-2)

**RECOMMEND APPROVAL OF A FIVE-YEAR LEASE AUTHORIZING
LIVEABOARDS**

**Substitute Item 4 RSBC Real Estate Company, LLP (Rybovich) Recommended
Consolidated Intent**

REQUEST: Consideration of an application for a modification of a 25-year sovereignty submerged lands lease to (1) increase the preempted area from 240,158 square feet to 772,305 square feet, more or less, to be used in conjunction with an upland, yacht repair/yacht building facility and commercial/retail facilities; (2) allow liveaboards at the facility, not to exceed six months, due to the nature of the vessels (mega-yachts requiring crews) to be moored at the facility; and (3) authorize the severance of approximately 80,000 cubic yards of sovereignty material.

COUNTY: Palm Beach
 Lease No. 500007116
 Application No. 50-0162161-006

APPLICANT: RSBC Real Estate Company, LLP

LOCATION: Sections 3, 4, and 10, Township 43 South, Range 43 East, in Lake Worth,
 Class III Waters, within the local jurisdiction of the city of West Palm Beach.
 Aquatic Preserve: No

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Substitute Item 4, cont.

Outstanding Florida Waters: No
Designated Manatee County: Yes, without an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$111,210.50, representing (1) \$92,626.91 as the initial lease fee computed at the base rate of \$0.1375 per square foot, discounted 30 percent because 90 percent of the slips are open to the public on first-come, first-served basis, and including the 25 percent surcharge payment for the additional area; and (2) \$18,583.59 as the annual lease fee for extended term lease calculated as the annual lease fee times .25 pursuant to section 18-21.011(1)(a)1, 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 rental value pursuant to section 18-21.011(1)(a)1, F.A.C. The project qualifies for a waiver of the severance fee pursuant to section 18-21.011(3)(c), 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 sovereign 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 lessee is proposing to remove all existing structures and install approximately 99,360 square feet of floating docks and fixed piers. The reconfiguration of the existing 293-slip (wet and dry) commercial docking facility, presently used in conjunction with the upland commercial yacht repair/yacht building facility and commercial/retail facilities, consists of eliminating 21 slips, thereby creating a 272-slip facility. There are currently 106 wet slips and 187 dry storage slips for a total of 293 slips. The reconfiguration will accommodate 147 wet slips and 125 dry storage slips for a net decrease of 21 slips. The facility will accommodate vessels ranging up to 250 feet in length with drafts up to 11 feet. Due to the nature of the vessels (megayachts requiring crews) to be moored at the facility, the lessee requests that liveaboards be authorized in the lease modification.

In addition, the lessee is proposing to install: (1) a wave attenuator at the north and south ends of the marina; (2) 2,925 linear feet of new seawall; (3) two new travel lifts; (4) a new fueling facility; and (5) stormceptor runoff control devices which will help to mitigate the current water quality conditions.

Substitute Item 4, cont.

The existing sovereignty submerged lands lease authorizes the preemption of 240,158 square feet of sovereignty submerged lands. The proposed addition is 532,147 square feet, for a total preempted area of 772,305 square feet. There are three Board of Trustees' Deeds within the existing marina: #24221, consisting of 0.94 acres (40,946.4 square feet), #24220, consisting of 1.176 acres (51,226.6 square feet), and #21845, consisting of 0.182 acres (7,927.9 square feet). In addition, there are two disclaimers within the existing marina: #30101, consisting of 0.2034 acres (8,860.1 square feet), and #27834, consisting of 0.299 acres (13,024.4 square feet). Approximately 13 of the 147 proposed wetlands will occur within the privately-owned submerged lands, leaving 134 wetlands on sovereignty submerged lands.

The applicant is also proposing to dredge 80,000 cubic yards of sovereignty material (156,000 cubic yards total) to a depth of -10 to -12 feet mean low water in order to obtain adequate depths for navigation of the larger vessels proposed to use the facility. Approximately 3.02 acres of sparse, patchy seagrasses will be directly impacted due to the proposed dredging. The spoil from the existing marina basin was tested and deemed unsuitable for commercial/industrial or residential placement and will be disposed of in an approved landfill. The spoil material from Lake Worth was deemed suitable for placement within a dredge hole within Lake Worth Lagoon. The spoil will be used to fill the dredge hole so that it may be suitable habitat for seagrass recruitment. The project qualifies for a waiver of the severance fee pursuant to section 18-21.011(3)(c)1, F.A.C., for the dredged material that will be used for public lands and public purpose (filling the dredge hole), and section 18-21.011(3)(c)2, F.A.C., for the dredged material that must be disposed of at a landfill.

A minimum of 90 percent of all of the slips will continue to be maintained on an open to the public, first-come, first-served basis, which is a special condition of the existing lease and will remain in the proposed lease modification. The slip rental terms will be for no longer than one year.

The original lease for Spencer Boat Company (d/b/a Rybovich Spencer) was approved by the former Department of Natural Resources on October 24, 1978, and authorized the preemption of 7,536 square feet. On November 7, 1996, the Board of Trustees approved a lease modification to extend the lease term to 25 years and to increase the preempted area to 149,216 square feet, with a special lease condition stating, "approval of a lease modification by the Board of Trustees will be required in the event the operation of this facility is changed to be primarily a slip rental facility".

In June of 2000, the Spencer Boat Company applied to modify its lease area after purchasing the adjacent marina (Fisher Marina) to incorporate the Fisher Marina structures and submerged bottoms, which were not previously under lease, into its lease area. The lease modification was issued on March 15, 2001 by DEP, under delegation of authority, and consisted of expanding the existing 114,693 square feet of preempted area to 240,158 square

Substitute Item 4, cont.

feet, as well as incorporating the additional 55 slips for a total of 106 wet slips. On May 27, 2004, the lease was modified by DEP, under delegation of authority, to reflect a change in ownership to the current lessee.

On June 22, 2005, the lessee received a permit from DEP's stormwater section for the upland redevelopment, which includes relocating the existing boatyard to the northern portion of the property to allow for construction of residential, commercial/retail facilities, and additional parking on the southern portion of the property. There will be a level of the proposed parking garage designated for use by the public to access the marina. Signage will be posted notifying the public of the available parking, within the garage, for the marina.

The southern boundary of the proposed project is located within the 25-foot setback area and a letter of concurrence has been obtained from the property owner(s). All structures on the northern boundary are setback 25 feet from the riparian line. The proposed project is in compliance with section 18-21.004(3)(d), F.A.C.

DEP's environmental resource permit (50-0162161-006) authorizes sewage pumpout facilities, prohibits liveaboards, and authorizes a fueling facility. Mitigation for impacts to approximately 3.02 acres of sparse, patchy seagrasses has been addressed in the environmental resource permit.

On-site mitigation will be conducted through the installation of stormceptor devices, which will collect and treat stormwater runoff prior to entering Lake Worth Lagoon to improve ambient water quality. Seagrass monitoring will be conducted over a period of five years to record any natural recruitment within the project area anticipated as a result of the improved water quality. In addition, the lessee has purchased a privately-owned, partially submerged, 15.114-acre parcel of land known as Little Munyon Island, within the Lake Worth Lagoon. The off-site mitigation to be conducted at Little Munyon Island consists of: (1) preservation of existing seagrasses through a conservation easement; (2) restoration of the currently denuded areas by the installation of 1,500 linear feet of riprap breakwater to allow for seagrass recruitment; (3) relocating seagrasses from the impact site and transplanting seagrasses from adjacent seagrass beds within the seagrass restoration area; (4) restoration of 2.9 acres of adjacent borrow dredge holes for seagrass recruitment by placing sediments into the borrow hole to raise the submerged bottoms to elevations that are suitable for seagrass growth; and (5) restoration of the upland spoil island by removing invasive exotic species, debris, and other waste material, and planting mangroves, native upland, facultative wetland, and other obligate wetland vegetation.

The lessee has proposed to place the entire 15.114-acre parcel under conservation easement to prevent any future development on this island. In 1975, the Board of Trustees issued a permit to Luther M. Taylor, Trustee, to fill 15.114 acres of submerged land at this site. The project was never completed but the permit is still valid. The conservation easement over this parcel is very important to the preservation of this island and surrounding seagrass habitat. The conservation easement is required as proprietary mitigation for the proposed project due to the

Substitute Item 4, cont.

significant amount of dredged material and the impact to 3.02 acres of sparse, patchy seagrasses. There will be a special lease condition requiring the lessee to deed the entire 15.114-acre parcel to the Board of Trustees within five years of the execution of the lease modification.

Authorization of liveaboards at the facility will be in accordance with the following standard lease condition:

“29. LIVEABOARDS: The term “liveaboard” is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized in paragraph one (1) of this lease, in no event shall “liveaboard” status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.”

The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. Palm Beach County is a designated manatee county without an approved manatee protection plan, but deemed to be making significant progress by FFWCC.

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.

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 in compliance. The proposed action is consistent with the adopted plan, as amended, according to a letter received from the City on June 29, 2005.

(See Attachment 4, Pages 1-44)

RECOMMEND DEFERRAL

Substitute Item 5 BOT/FWC/DACS/Lee County/MSKP III, Inc./Purchase Agreement Amendment

REQUEST: Consideration of an amendment to the purchase agreement between the Board of Trustees, the Florida Fish and Wildlife Conservation Commission, the Florida Department of Agriculture and Consumer Services, Lee County, Florida, and MSKP III, Inc.

Substitute Item 5, cont.

COUNTIES: Charlotte and Lee

LOCATION: Sections 01 through 36, Township 41 South, Range 26 East; Sections 01 through 36, Township 42 South, Range 26 East; Sections 01 through 07, 09, and 12, Township 43 South, Range 26 East; Sections 19 through 36, Township 41 South, Range 27 East; Sections 01 through 36, Township 42 South, Range 27 East; and Sections 04 through 09, 17 and 18, Township 43 South, Range 27 East

STAFF REMARKS: On November 22, 2005, the Board of Trustees approved the purchase of approximately 73,476.5 acres (Ranch) within the Babcock Ranch Florida Forever project from MSKP III, Inc. Subsequent to the Board of Trustees' approval, several changes affecting the terms and conditions of the purchase agreement (Agreement) have occurred, necessitating an amendment to the approved Agreement.

The proposed amendment will amend the original Agreement to update the following particulars: (1) a change in the legal description of the Ranch to account for a less out of a 300-foot-wide right-of-way along Highway 31 and the readjustment of the Ranch boundary; (2) provision for an adjustment in the purchase price as may be required due to the change in the legal description; (3) Lee County's purchase price ceiling of \$40,000,000 is removed and Lee County shall pay all of the purchase price attributed to the property situated in Lee County; (4) Lee County will be responsible for compliance with federal acquisition procedures, including, but not limited to, the payment of documentary stamp taxes and for compliance with other matters arising from the federal grant; (5) revisions to the management agreement, which is an exhibit to the purchase agreement, to conform to that which was approved by Lee County on November 29, 2005; (6) In accordance with House Bill 1347 (2006), references to each state agency's contribution to the purchase price will be combined and replaced with "State's Purchase Price"; (7) clarification that the road allowed by the conservation easement includes utilities, and is the transportation corridor addressed by the Charlotte County Comprehensive Plan; (8) a waiver of the requirement that easements be proposed at least 90-days prior to closing; and (9) clarification that the management plan will not be developed until after closing.

The boundary of the Ranch has been changed to reflect a less out of a 300-foot-wide right-of-way along the western boundary. This area is being given to the Florida Department of Transportation as additional right-of-way for State Road (SR) 31. Additionally, the boundary of the area retained by MSKP III, Inc. has changed, to reflect both the loss of acreage from the SR 31 right-of-way, and the re-drawing of boundary lines on the eastern side of the seller's retained property. These boundary lines were re-drawn to simplify the survey process and provide greater connectivity to the Fred C. Babcock - Cecil M. Webb Wildlife Management Area.

Substitute Item 5, cont.

The completion of the final survey revealed a reduction in the project acreage. The acreage has changed from 91,362.3 acres to 91,356 acres, a reduction of 6.3 acres.

A total of 512.8 acres is being removed from the Ranch for SR 31 right-of-way. The purchase area for the state and Lee County has changed from 73,476.5 acres in the original estimate to 73,235.4 acres, a reduction of 241.1 acres. The area retained by the seller has changed from 17,885.8 acres to 17,607.9 acres, a reduction of 277.9 acres. The purchase price may be adjusted as a result of these boundary changes, but will in no circumstance exceed the approved contract purchase price of \$350,000,000.

Lee County has agreed to contribute more than the \$40,000,000 ceiling that was agreed upon in the original agreement. Initial data has indicated that the value of the Lee County portion of the property will be higher than originally thought. Therefore, Lee County has decided to contribute the additional amount required to allow them to purchase the entire Lee County portion of the acquisition. Lee County's contribution is estimated at \$41,533,600, but will be adjusted at closing based on the final survey.

The Department of Environmental Protection has applied for a federal grant from the National Oceanic and Atmospheric Administration on behalf of Lee County, in order to aid or help reimburse Lee County's purchase price. Therefore, Lee County will be responsible for compliance with Federal Acquisition Procedures pursuant to 49 CFR Subpart B. The procedures include, but are not limited to, the payment of documentary stamp taxes within the area covered by the grant.

At Lee County's request, two changes were made to the management agreement: (1) the management decisions relating to Lee County's portion of the property must be approved in writing by Lee County; and (2) the management plan or business plan will not be deemed final or sent to the Board of Trustees for approval until written approval is given by Lee County relative to its portion of the property.

House Bill 1347 (2006), to be codified at section 259.1052, F.S., authorizes distribution of an additional \$310 million from the Florida Forever Trust Fund. This is the fund from which the Florida Fish and Wildlife Conservation Commission (FWC), the Florida Department of Agriculture and Consumer Services (DACS), and the Board of Trustees were each to fund their separate portions of the purchase price. Therefore, all references in the Agreement to "FWC' purchase price", "DACS' purchase price", and "Board of Trustees' purchase price" will be changed to read "State's purchase price". Liability for payment will rest with the Board of Trustees.

The conservation easement included in the Agreement has been further clarified. It is specifically noted that, as provided by law, the seller has the right to place utilities along the road within the easement area required by the Charlotte County Comprehensive Plan.

Substitute Item 5, cont.

The Agreement contained a provision that the form of easements must be agreed upon at least 90-days prior to closing, unless the parties agreed to waive the provision in writing. This amendment waives the 90-day provision.

The management plan required by the Agreement is the one that must be approved by the Board of Trustees. Such plans are routinely prepared after the Board of Trustees acquires the property. This amendment clarifies the practice surrounding the preparation of management plans and documents it for readers unfamiliar with the practice.

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreation Lands section of the State Comprehensive Plan.

(See Attachment 5, Pages 1-111)

RECOMMEND APPROVAL

**Substitute Item 6 Health Care District of Palm Beach County Lease/PRIDE Partial
Release of Lease Execution/DOC Partial Release of Lease Consent**

REQUEST: Consideration of (1) execution of a partial release of Lease 4284 for 50 acres, more or less, by Prison Rehabilitative Industries and Diversified Enterprises, Inc.; (2) consent by the Department of Corrections to a partial release of Lease 4284 for 50 acres, more or less; and (3) issuance of a 50-year lease for 50 acres, more or less, to the Health Care District of Palm Beach County for a public, nonprofit hospital.

COUNTY: Palm Beach

APPLICANT: Health Care District of Palm Beach County (District)

LOCATION: Section 19, Township 43 South, Range 37 East

STAFF REMARKS: The District has submitted a request to the Board of Trustees to lease a 50-acre parcel (Parcel) of land near the City of Belle Glade in Palm Beach County for construction of a public, nonprofit hospital. The Parcel is within Board of Trustees' Lease 4284 with Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Originally, the Parcel was part of Board of Trustees' Lease 2671 to the Department of Corrections (DOC).

The 1999 Legislature passed CS/SB 1604 which directed the Board of Trustees to enter into leases with the corporation that was set up to operate correctional work programs (i.e. PRIDE). In following this legislative mandate, the Parcel was released from Lease 2671, and a 50-year lease from the Board of Trustees to PRIDE was issued in 2002.

Substitute Item 6, cont.

Additionally, the Parcel is subject to the Everglades Protection Act under section 373.4592(5)(f), F.S., which states, "The corporation conducting correctional work programs under part II of chapter 946 shall be entitled to renew, for a period of 20 years, its lease with the Department of Corrections which expires June 30, 1998, which includes the utilization of land for the production of sugar cane, and which is identified as lease number 2671 with the board of trustees." Even though the statute specifically identifies lease number 2671, the intent was to make sure PRIDE continued to lease the lands.

In order for the Board of Trustees to lease the Parcel to the District, PRIDE must execute a partial release of lease (Release). DOC must also consent to the Release per a special lease condition contained in Lease 4284 which transfers the Parcel back to DOC if the lease is terminated.

The decision to authorize the use of Board of Trustees-owned uplands requires a determination that such use is not contrary to the public interest. There is an urgent need for a hospital in this area as evidenced by the numerous support letters submitted with the District's application for lease, notably the Palm Beach County Legislative Delegation, the City of Pahokee, the City of South Bay, the City of Belle Glade, the Village of Royal Palm Beach, various civic groups, churches, businesses, area physicians, and residents. The Florida Department of Health also strongly supports the construction of the hospital. To date, over two hundred letters of support and over five hundred petition signatures have been received in support of the hospital.

The closest hospital is Glades General Hospital which is located in downtown Belle Glade on a 14.3-acre parcel with no room for expansion in any direction. In May 2004, Glades General was at risk of closure. In an effort to stabilize the hospital and the area's health care delivery system, the District acquired the hospital from its private owner. Glades General was built in 1944 and renovated in 1965, making even the renovated facility over 40 years old. Its age combined with the amount of hurricane damage it has received over the last two years has necessitated the need for a replacement structure. Glades General is currently the only full-service hospital in the region and serves the 52,000 residents living around Lake Okeechobee.

The District is requesting 50 acres for the new hospital, to allow for appropriate drainage and future flexibility for expansion. The District engaged the services of TriBrook Healthcare Consultants to provide advice on a target location for the hospital. The Parcel was found to be ideal as it would place the hospital in close proximity to the CL Brumback Center, a Federally Qualified Health Center. Also, the Parcel is central to the region's population centers and provides easy access via State Road 80 and US 441.

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. A compliance agreement between DCA and the local government

Substitute Item 6, cont.

has been finalized. The proposed action is consistent with the adopted plan according to a letter received from Palm Beach County's Department of Planning, Zoning and Building, dated March 24, 2006.

(See Attachment 6, Pages 1-23)

RECOMMEND APPROVAL

Substitute Item 7 Palm Beach County School Board Deed Restriction Modification

REQUEST: Consideration of a request to modify a deed restriction approved by the Board of Trustees of the Internal Improvement Trust Fund in the conveyance of 19.77 acres, more or less, of state-owned land to the Board of Public Instruction of Palm Beach County. The modification will only apply to approximately 7.38 acres of the original conveyance of 19.77 acres, more or less.

COUNTY: Palm Beach
Deed No. 18599

APPLICANT: Palm Beach County School Board (School Board)

LOCATION: Section 31, Township 43 South, Range 37 East

STAFF REMARKS: On January 21, 1941, the Board of Trustees approved the conveyance of 19.77 acres, more or less, of state-owned land (the "Property") to the Board of Public Instruction of Palm Beach County, now the School Board, with the following restrictions: (1) the Property be used solely for public school purposes, (2) no mortgages or any liens placed on Property, and (3) a reversion clause for any violation. Lakeshore Middle School was subsequently built on the property.

Initial Modification of Restrictions

In January 2001, the City of Belle Glade (City) was designated by the Governor as an area of critical economic concern. On May 21, 2002, the Board of Trustees approved a Modification of Restrictions that provides for public recreation, health, and education and other community purposes which promote the public health, safety and welfare of the inhabitants of the City and may include leasing the Property to non-profit organizations and non-profit corporations for the purposes mentioned.

Substitute Item 7, cont.

Conveyance of 1.95 Acres to the City of Belle Glade

On November 13, 2002, the School Board deeded 1.95 acres of the Property to the City consistent with the modified restrictions. The City subsequently leased 1.142 of the 1.95 acres to Florida Housing Corporation (FHC), a Florida not-for-profit corporation, on December 9, 2003, for the purpose of developing, constructing and operating an affordable assisted living facility and/or senior housing center consistent with the modified restrictions. FHC then assigned the lease to McCurdy Senior Housing Corporation (MSHC), a Florida not-for-profit corporation on April 19, 2004.

Agreement to Convey 5.43 acres for Community-Oriented Housing

On December 20, 2004, the School Board and the City entered into an agreement for sale and purchase that will close on or before June 30, 2006, unless extended by other provisions of the agreement, for an additional 5.43 acres of the Property for the development of a community-oriented housing project. The agreement required the City to secure a separate agreement with MSHC for development of the community-oriented housing project on the 5.43-acre parcel no later than February 18, 2005 which has been executed. Both agreements require the School Board and the City to request a Modification of Restrictions from the Board of Trustees to permit community-oriented housing and to remove the prohibition against the placement of mortgages or liens in connection with development of the community-oriented housing.

Second Modification of Restrictions

On March 17, 2005, the Board of Trustees approved a Modification of Restrictions on the 1.95 -acre parcel and the 5.43 acre parcel (collectively, the Development Property totaling 7.38 acres). The modification allows the Development Property to be used for the development and operation of a 100-bed, more or less, assisted living/senior housing facility for affordable housing and supportive services to residents of the facility and to provide community-based services to the citizenry of the City and surrounding rural areas of Palm Beach County. In order to facilitate the sale or lease of the Development Property, the Board of Trustees also agreed to remove the prohibition against the placement of mortgages or liens on the fee simple title to the Development Property or a leasehold interest therein, in connection with the funding of the development thereof, subject to a right of reversion in Board of Trustees to the Development Property and any improvements thereupon in the event that the Project is not used for public recreation, public health, public education, community-oriented housing and other community purposes which promote the public health, safety and welfare of the inhabitants of City and the citizenry of the surrounding rural community of Palm Beach County, Florida. This March 17, 2005, Modification of Restrictions also requires the City to ensure that any mortgage or lien placed upon the fee simple title to or the leasehold interest in the Development Property is subordinate to the deed restriction and that the deed restriction shall survive any foreclosure of any mortgage or lien upon the fee simple title to or the leasehold interest in the Development Property.

Substitute Item 7, cont.

Current Request

The School Board is now requesting and the Department of Environmental Protection is recommending an additional modification to Deed Number 18599 to allow for the sale of the Development Property to McCurdy Center, Ltd., a “for profit” Florida limited partnership, whose general partners are GMN-McCurdy, Inc., a Florida corporation, and McCurdy Center GP, Inc., a Florida corporation, both of which are “for profit” corporations which are wholly owned subsidiaries of non-profit Section 501(c)(3) corporations; and, to allow the Development Property to be used for “affordable housing,” which shall mean that the housing units therein are rented substantially in accordance with the income and rent restriction requirements of Section 42 of the Internal Revenue Code. The proposed modification of deed restrictions is crucial for the project to move forward in accessing predevelopment and development funds to build the “affordable housing” living facility in Belle Glade. The primary source of funding for the living facility is the award of an allocation of federal low-income housing tax credits (“Credits”) from the Florida Housing Finance Corporation's Housing Credit Program and the award of low-interest mortgage financing from Florida Housing Finance Corporation (FHFC). In order to apply for and be awarded Credits the applicant must be either a limited partnership or a limited liability company.

Substantially all new construction of affordable housing in the United States is financed through the utilization of Credits. Credits provide a dollar for dollar reduction in the federal income tax liability otherwise payable by taxpayers. Non-profit corporations cannot utilize Credits, as they generally do not owe federal income taxes. In the typical “Credit” transaction in which new affordable housing is constructed, a taxable investor (such as Federal National Mortgage Association, banks, utility companies and other corporations owing substantial federal income taxes) acquires a 99.99 percent interest in the partnership, and as such receives an allocation of 99.99 percent of the Credits generated at the partnership level. Credits are allocated annually over a 10 year period, and taxable investors contribute capital to a partnership (currently in an amount between 90 percent and 100 percent of the 10 years of Credits) in exchange for the 99.99 percent interest in the partnership. These equity funds, combined with first mortgage financing, provide the sources for construction of affordable housing. Since (as explained below) the rents which may be charged to tenants of affordable housing are restricted, affordable housing projects are unable to pay substantial debt service; the equity dollars contributed by the investor allows affordable housing to operate without the requirement of payment of substantial debt service.

The McCurdy Center, Ltd. has committed (in its application to FHFC) that, for a period of 50 years, it will set aside 24 percent of the total apartment units to persons earning no more than 30 percent of area median income in Palm Beach County, and will set aside the remaining 76 percent of the apartment units to persons earning no more than 60 percent of area median income in Palm Beach County. In addition, McCurdy Center, Ltd. will be required to comply with all other programmatic requirements of FHFC. FHFC will (at loan closing) require the recordation of a Land Use Restriction Agreement (“LURA”) which will memorialize the foregoing restrictions.

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Substitute Item 7, cont.

The non-profit corporations which are the sole shareholders of the general partners will be granted a right of first refusal to acquire the Development Property (as improved) after 15 years. It is anticipated (although there can be no assurance) that, after 15 years of ownership, the Development Property (and the affordable housing constructed thereon) will be owned by a non-profit corporation.

In the event the proposed additional modification is not granted, the award of Credits and low-interest mortgage financing will be returned to FHFC, and the proposed affordable housing complex will not be constructed utilizing the foregoing awards.

The McCurdy Center affordable living project was granted the distinction as a Florida Coming Home Program demonstration project by the Department of Elder Affairs (DEA). The proposed project meets the high standards set by the Robert Wood Johnson Foundation's National Coming Home Program, DEA and its primary partners, which are the Agency for Health Care Administration and the Florida Housing Finance Corporation.

A consideration of the status of the local government comprehensive plan was not made for this item. DEP has determined that the proposed action is not subject to the local government planning process.

(See Attachment 7, Pages 1-31)

**RECOMMEND APPROVAL CONTINGENT UPON PRIOR APPROVAL BY THE
CITY OF BELLE GLADE**

Good Cause Item 8 Sunland I, LLC/Sunland II, LLC Request to Pay Specific Closing Costs

REQUEST: Consideration of a request to pay specific closing costs in lieu of litigation related to a purchase and sale agreement between the Board of Trustees and Sunland I, LLC, and Sunland II, LLC, for the purchase of a 25.36-acre parcel of state-owned land, more or less, in Tallahassee, Florida.

COUNTY: Leon

APPLICANTS: Sunland I, LLC and Sunland II, LLC

LOCATION: Section 29, Township 01 North, Range 01 East

Good Cause Item 8, cont.

STAFF REMARKS: On January 31, 2006, the Board of Trustees approved a bid offer in the amount of \$5,285,000 submitted by Sunland I, LLC and Sunland II, LLC (Buyer) for the purchase of a 25.36-acre parcel of state-owned land, more or less, in Tallahassee, Florida, and consent to two partial assignments of contract for sale and purchase.

Item 4.c. of the purchase and sale agreement provided that the Buyer shall be responsible for and pay all closing costs associated with the property. In lieu of litigation, the parties have agreed to resolve pending legal concerns with the state paying an amount of \$78,435.08 towards the closing costs so that this transaction can be closed on May 31, 2006, which is the last day for the Buyer to close per the contract.

(See Attachment 8, Pages 1-10)

RECOMMEND APPROVAL