

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JUNE 13, 2006

Item 1 Janet Lay Option Agreement/Survey Waiver/Cayo Costa Florida Forever Project

REQUEST: Consideration of (1) an option agreement to acquire 0.30 acre within the Cayo Costa Florida Forever project from Janet Lay; and (2) the authority to waive the survey requirement.

COUNTY: Lee

LOCATION: Section 07, Township 44 South, Range 21 East

CONSIDERATION: \$350,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (05/10/05)	APPROVED <u>VALUE</u>	SELLER'S <u>PURCHASE PRICE</u>	TRUSTEES' <u>PURCHASE PRICE</u>	OPTION <u>DATE</u>
Lay	0.30	\$350,000	\$350,000	\$52,000*	\$350,000** (100%)	90 days after BOT Approval

* Seller purchased property on May 1, 2000

** Value based on two residential lots

Noted Features of Subject Property:

The Cayo Costa project is an island located west of Pine Island in Lee County.

Zoning for this area is Agricultural 2.

This parcel consists of two vacant lots which total 13,000 square-feet

Legal access is via the platted subdivision; however, physical access to this parcel is by boat through Pelican Bay

The unit of comparison is based on a value per residential lot within a platted subdivision. A boat basin is across an un-improved platted street from the lots.

STAFF REMARKS: The Cayo Costa project is a 90 percent complete project. The project contains 2,090 acres, of which 1,957.66 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 132.04 acres, or 6 percent of the project, will remain to be acquired.

The Cayo Costa land acquisition project was first approved in the 1970s under the Environmentally Endangered Lands Program, Florida's first large-scale conservation land acquisition effort. Consisting of the Islands of Cayo Costa and a portion of North Captiva, the project is located at the mouth of Charlotte Harbor, one of the most productive estuaries in Florida. The primary purpose of the project is to protect the largest barrier islands that remain in a natural condition on the southwest Florida coast. Efforts to acquire the islands have continued under the Conservation and Recreation Lands Program, the Preservation 2000 Program, the Florida Forever Program, and the land acquisition programs of Lee County. Today, Cayo Costa Island State Park contains 2,449.1 acres.

In recent years, the acquisition efforts of the Department of Environmental Protection (DEP), Division of Recreation and Parks (DRP) have focused on the developable lots in the three subdivisions located in the center of Cayo Costa Island: Cayo Costa, La Costa Isles and Island

Item 1, cont.

Grove. Out of the 165 lots, containing 35 acres and representing a combined appraised value of approximately \$10 million, 104 lots remain to be acquired in the three subdivisions.

Requests for Lee County building permits in the subdivisions have increased rapidly in recent years. Building permits have been approved and houses are currently under construction. As more houses are constructed, management and protection of the state park's natural and cultural resources will become more difficult. Destruction of vegetation and wildlife habitat is occurring from the use of ATVs by residents. Residential water wells and septic systems, which are required because no water or sewage disposal service is available, create impacts on the island's shallow freshwater lens.

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

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

A chain of sandy barrier islands, including Cayo Costa and North Captiva, protects the entrance to Charlotte Harbor, one of the largest and most productive estuaries in Florida. Public acquisition of the Cayo Costa Island project will protect the beaches, dunes and hammocks of these islands, the largest barrier island in natural condition in southwest Florida-while giving residents and tourists a beautiful natural shore to enjoy for years to come.

This property will be managed by DEP's DRP as an addition to the Cayo Costa State Park.

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

(See Attachment 1, Pages 1-13)

RECOMMEND APPROVAL

Item 2 TPL Option Agreement/Florida Keys Ecosystem Florida Forever Project

REQUEST: Consideration of an option agreement to acquire 2.34 acres within the Florida Keys Ecosystem Florida Forever project from the Trust for Public Land, Inc.

COUNTY: Monroe

LOCATION: Section 22, Township 67 South, Range 27 East

CONSIDERATION: \$1,300,000

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY:</u>		<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>OPTION DATE</u>
		<u>Marr (03/15/05)</u>	<u>Johnston (02/17/05)</u>				
Sammy	2.34	\$1,300,000	\$1,200,000	\$1,300,000	\$ 1,300,000*	\$1,300,000** (100%)	120 days after BOT approval

* Ms. Joan Sammy, who purchased the property prior to 1968, is selling to the Trust for Public Land, who is in turn selling to the state.

** \$555,556 per acre

Noted Features of Subject Property

- Property is ocean front with a single family residence on it and frontage on Sugarloaf Creek.
- Dwelling was in poor condition at the time of the appraisal inspection.
- Property has a small boat ramp.
- Property has 1.01 acres of scarified uplands and the remaining area is mangrove and transitional wetlands.
- Zoning is consistent with the rural residential neighborhood.
- Highest and best use is to remove the older residence and improve the property with a modern beach-front home.
- The value is based on an ocean front lot with an existing development right for one single family dwelling.

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Full Fee Project Interim List approved by the Board of Trustees on February 14, 2006. The project contains 11,854 acres, of which 5,030.67 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 6,820.99 acres, or 58 percent of the project, will remain to be acquired.

All mortgages and liens will be satisfied at the time of closing. Improvements on the property consist of a single-family home, septic system, concrete seawall, carport/storage area, boat ramp, and fence. The improvements have suffered damage from recent hurricanes and do not contribute to the final approved value. The managing agency has been notified of the improvements and is willing to manage the property with the improvements. The acquisition of this property will provide housing, after renovation, for a Florida Fish and Wildlife Conservation Commission (FWC) employee and storage for large equipment on land that is already scarified.

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. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and, therefore, DEP staff will review, evaluate, and implement an appropriate resolution for these and any other title issues that may arise prior to closing.

Item 2, cont.

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

The unique pine rocklands and hardwood hammocks of the Florida Keys, forest of West Indian plants that shelter several extremely rare animals, are being lost to the rapid development of the islands. Public acquisition of the Florida Keys Ecosystem project will protect all the significant unprotected hardwood hammocks left in the Keys and many rare plants and animals, including the Lower Keys marsh rabbit and Key deer. It will also help protect the Outstanding Florida Waters of the Keys, the recreational and commercial fisheries, and the reefs around the islands, and give residents and visitors more areas for enjoying the natural beauty of the Keys.

The property will be managed by FWC as part of the Florida Keys Wildlife and Environmental Area and DEP's Office of Greenways and Trails (OGT), as a cooperating agency for public access to the Florida Keys Overseas Heritage Trail and the Florida Circumnavigational Saltwater Paddling Trail as well as a trailhead and a canoe/kayak launch. The design and implementation of appropriate access facilities will be incorporated into the land management plan, developed by FWC in coordination with OGT.

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

(See Attachment 2, Pages 1-39)

RECOMMEND APPROVAL

Item 3 Miami-Dade County Sale and Purchase Contract

REQUEST: Consideration of a contract to sell six parcels of non-conservation, state-owned land totaling 42.5 acres, more or less, pursuant to section 253.034, F.S., to Miami-Dade County, a political subdivision of the State of Florida.

COUNTY: Miami-Dade

APPLICANT: Miami-Dade County (County)

LOCATION: Section 15, Township 53 South, Range 39 East

CONSIDERATION: \$425,000

Item 3, cont.

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>PURCHASE PRICE</u>	<u>CLOSING DATE</u>
		<u>Sutte (10/14/03)</u>	<u>Parker (10/12//03)</u>			
Miami-Dade	42.5*	\$2,025,000*	\$1,145,000*	\$425,000**	\$425,000	120 days after BOT approval

* Original appraisal was for a total of 202.5 acres as part of an exchange with Florida Rock Industries.

** Approved value reflects appraised value for parcels totaling 42.5 acres without deed restriction and reverter.

STAFF REMARKS: On November 25, 2003, the Board of Trustees approved an exchange agreement in which the Board of Trustees would convey 238.70 acres of state-owned land for 202.5 acres of land owned by Florida Rock Industries, Inc. At that time it was addressed that the Department of Environmental Protection (DEP), Division of State Lands' intent would be to then sell to Miami-Dade County six parcels totaling 42.5 acres, more or less, that were received in the exchange and that are located in the county wellfield.

These parcels are within the boundaries of the Miami-Dade County Lake Belt Area established by section 373.4149, F.S. In 1992, the Florida Legislature created the Miami-Dade County Lake Belt Implementation Committee (Committee), which was directed by the Legislature to develop a plan for the Lake Belt Area that: "(a) enhances the water supply for the county and the Everglades; (b) maximizes efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment; and (c) educates various groups and the general public of the benefits of the plan." The Legislature subsequently approved and adopted the recommendations in the Miami-Dade County Lake Belt Plan, as submitted by the Committee. These parcels have been designated in the plan as appropriate for wellfield protection. The county passed a resolution on June 6, 2000, asking the County Manager to acquire lands, both private and state-owned, located in Sections 02, 03, 10, 11, 15, 22 and 23, Township 53 South, Range 39 East. Section 15 is the only section that contains state-owned lands. The county intends to acquire such lands in order to buffer this wellfield area to prevent the designation of Under the Direct Influence of Surface Water by the U.S. Environmental Protection Agency and to avoid the cost of water plant upgrades. County ownership of these lands would be beneficial to the water supply by preventing contamination that could occur through land development. This intended land sale would be consistent with a previous surplus land sale that was approved by the Board of Trustees on May 13, 2003.

DEP staff has determined that the parcels totaling 42.5 acres can be sold to the county if the Board of Trustees makes an affirmative finding, pursuant to section 18-2.018(3)(b)1.c., FAC, that the sale of this land to the county provides a greater benefit to the public than its retention in Board of Trustees' ownership. The property will be conveyed to the county subject to a perpetual restrictive covenant and reverter stating that the property will be maintained in its natural state and not be developed without prior written consent of the Board of Trustees.

(See Attachment 3, Pages 1-42)

RECOMMEND APPROVAL

Substitute Item 4 Health Care District of Palm Beach County Lease/PRIDE Partial Release of Lease Execution/DOC Partial Release of Lease Consent

DEFERRED FROM THE MAY 31, 2006 AGENDA

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.

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). PRIDE has entered into an agreement with the District whereby the District will commit to the purchase of goods and services from PRIDE provided at a competitive price and quality that shall yield a net income of \$750,000 over a 30-year period. The District will get a credit of \$0.18 on each dollar spent under the terms of this agreement. At the end of the 30-year period, the District will be responsible for paying the balance in the event that \$750,000 is not met. DOC must also consent to the Release per a

Substitute Item 4, cont.

special lease condition contained in Lease 4284 which transfers the Parcel back to DOC if the lease is terminated. DOC will consent to waive its interest in the parcel in the event that PRIDE executes a requested release and the Board of Trustees approves the request. However, they made the following recommendations. The first was a recommendation that a buffer zone free of any obstructions or civilian traffic be maintained between the hospital and the correction facility. Also, DOC has recommended that PRIDE use funds received from the agreement for the purpose of starting and operating a replacement correctional work program. However, the agreement was negotiated to compensate for lost revenues from the current sugar cane operation occurring on the lease area .

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 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 4, Pages 1-23)

RECOMMEND APPROVAL

**Substitute Item 5 Multi-Agency Management Lease/Managing Agency Designation/
William Beardall Tosohatchee State Reserve**

REQUEST: Consideration of (1) a 50-year multi-agency management lease for the William Beardall Tosohatchee State Reserve; and (2) designation of Florida Fish and Wildlife Conservation Commission as lead manager on the lease.

COUNTY: Orange

LOCATION: Various sections of Township 22 South, Range 34 East; Township 23 South, Range 34 East; Township 24 South, Range 34 East; and Township 23 South, Range 33 East.

STAFF REMARKS: On April 19, 1977, the Board of Trustees authorized the purchase of 28,000 acres under the Environmentally Endangered Lands (EEL) program and assigned the responsibility for management of the property to the Department of Natural Resources, Division of Recreation and Parks (DRP) as an environmental preserve. Lands were purchased under the EEL program to preserve the ecological and cultural components of an essentially natural area.

Subsequently, on September 20, 1977, the Board of Trustees considered a proposal by the Florida Game and Fresh Water Fish Commission (GFC), at the request of the Attorney General, to allow public hunting on the Tosohatchee Environmental Preserve (Tosohatchee). The Board of Trustees approved the general concept of hunting on the Tosohatchee for the next hunting season, Fall of 1978, subject to conclusion of an in-depth management study to be conducted by the Department of Natural Resources (DNR), the Division of Forestry (DOF), and GFC, to identify particular types of hunting to be allowed, as well as the restrictions to be placed on hunting to ensure the outstanding environmental attributes of the Tosohatchee were protected. The study was to be submitted to the Board of Trustees within six months, and it was completed on April 3, 1977.

On October 18, 1977, the Board of Trustees authorized DRP and DNR's Division of Resource Management (DRM), to enter into an Interagency Agreement, known as Lease No. 3000, for certain specified uses within the Tosohatchee. Lease No. 3000 specified that DRP was the managing agency for park and recreational activities, and they were to provide day-to-day protection and environmental enhancement for the Tosohatchee. Also, the lease further clarified the prior Board of Trustees' action of September 20, 1977, by specifying that DRP and DRM conduct a factual, comprehensive resource management study which would justify the recommended uses of the Tosohatchee. The resource management study would adhere to the primary objective of the EEL program, which was the conservation, preservation, and enhancement of environmentally unique lands.

On May 16, 1978, the Board of Trustees approved DRM and DRP's recommendation for adoption of the resource management study as the approved management plan for the Tosohatchee which included a prohibition on hunting. The Governor clarified the motion by mandating that the GFC conduct studies regarding the location of hunting areas within the

Substitute Item 5, cont.

Tosohatchee and to make a recommendation to DNR to bring back to the Board of Trustees for consideration. The Plan included a prohibition on hunting, which stated, "The Game and Fresh Water Fish Commission shall conduct game population studies to monitor the animal population; should it become desirable to de-populate, due to overpopulation of deer or other species, damage to Tosohatchee plant life or other adverse effect, the Game and Fresh Water Fish Commission shall hold public hearings and make a recommendation to DNR as to wildlife management within the Tosohatchee area including, if desirable, limited hunting."

Subsequently, a public hearing was held in Orlando on October 8, 1980, to receive public comments and input on the GFC study and recommendations. There were numerous speakers both for and against hunting and other related issues.

On December 2, 1980, the Board of Trustees considered the GFC report entitled, "White-tailed Deer Investigations Tosohatchee State Preserve, September 1978 – August 1980". In the report, GFC recommended that limited either-sex deer hunting be authorized for the Tosohatchee. The Board of Trustees approved a motion that the GFC (n/k/a Florida Game and Fresh Water Fish Commission) be delegated the responsibility for wildlife management of the Tosohatchee provided that no hunting was to be permitted on any portion of the area except as authorized by rules and regulations adopted by the Florida Game and Fresh Water Fish Commission (FWC) in official session, and such adoption shall be predicated and supported by current scientific and biological studies and management plans for wildlife species in the area which would include ample input from public hearings.

The Board of Trustees further stated that if hunting was permitted, the following conditions would apply: (1) in no case would hunting be allowed for more than 18 days per year, which should be consecutive, unless specifically authorized by the Governor and Cabinet; (2) all hunting would be prohibited within environmentally sensitive areas of the Tosohatchee as determined by the Executive Directors of DNR and FWC; (3) all hunting would be prohibited on recognized archaeological sites; (4) the designation of specific hunting areas would not preclude the use of other areas of the Tosohatchee by the general public for other recreational activities during the hunting period; and (5) all hunting activities would be in accordance with specific FWC regulations for the Tosohatchee area (enter at 5:00 am and exit by 8:00 pm with no overnight camping or campfires permitted).

On May 19, 1981, the Board of Trustees considered an amended management plan prepared by the Tosohatchee Interagency Task Force. As part of the Task Force's review of the existing management plan, they requested written and verbal input from eight statewide organizations and held five meetings, one of which was the October 8, 1980, public hearing in Orlando previously mentioned. The five-year management plan was submitted as a multiple-use plan consistent with chapter 259, F.S., and section 253.034, F.S. This final management plan was adopted by the Board of Trustees on May 19, 1981.

Substitute Item 5, cont.

In December 1983, the Board of Trustees entered into a 20-year multiple agency management lease (Lease No. 3565) for the Tosohatchee. The lessees were DRP, DOF, FWC, Department of State (DOS) and the St. Johns River Water Management District (SJRWMD). DRP was directed to be the primary managing agency. Lease No. 3565 was amended in March 1990 to include lands east of the St. Johns River. Lease No. 3565 expired in December 2003. A renewal lease was prepared and routed to the lessees for signature. During this time, DRP expressed a desire to release its leasehold interest, and the renewal lease was not fully executed.

The lands east of the St. Johns River have been released from Lease No. 3565 and are being managed by SJRWMD under a 25-year use agreement with the Board of Trustees. Hunting is prohibited within this area, and the majority of the land is jointly owned by the Board of Trustees and SJRWMD. The balance is owned 100 percent by SJRWMD.

Due to heightened public concern for maintaining current balance of public use on Tosohatchee and DRP's desire to release their leasehold interest, the Board of Trustees is being asked to approve a 50-year multi-agency management lease for the lands west of the St. Johns River and to designate FWC as lead manager for these lands.

FWC will continue to manage the Tosohatchee under the current management plan, which expires in 2013, with no diminishment in the quality and availability of recreational opportunities. In 2013, FWC will provide stakeholders the opportunity to provide input on future management of the Tosohatchee, and they will coordinate with the other lessees (DOF, SJRWMD, and DOS) to assure the resources are being protected. FWC maintains a current hunting season of 46 days, which is consistent with its existing wildlife management areas. FWC is already an active participant in management of the Tosohatchee and is responsible for the Great Florida Birding Trail, which includes many miles of hiking and bird watching opportunities throughout the Tosohatchee.

Additionally, the 50-year multi-agency management lease will contain several special lease conditions which are detailed as follows: (1) FWC will enforce a hunting season of no more than 46 days per year; and (2) FWC shall manage the property in accordance with the existing management plan for Tosohatchee until expiration of the plan in 2013. Any substantive modification to the management of the property will require FWC to: (a) provide adequate public notice and opportunity to comment; (b) present the modification to the Acquisition and Restoration Council (ARC) for its consideration and recommendation to the Board of Trustees; and (c) obtain approval from the Board of Trustees.

The proposed change of lead manager to FWC was presented to ARC for discussion at its April 21, 2006, Council meeting.

Substitute Item 5, cont.

This transfer of management authority would clarify Tosohatchee's position in the mosaic of state-owned lands and will support DRP's efforts to focus their resources on their core recreation mission. In general, hunting is inconsistent with DRP's philosophy of non-consumptive use. This transfer will remove Tosohatchee from the state reserve designation. It will further clarify its alignment with FWC's wildlife management area system, where the wilderness-like character of Tosohatchee is typical. FWC's extensive resource management expertise will allow them to continue the sound management practices and balance of public use found at Tosohatchee today as well as enhance the opportunities for wildlife viewing and nature study.

Thus, the proposed transfer of management authority seeks to enable a seamless transition from the DRP to the FWC effective July 1, 2006. FWC and DRP staff has collaborated to develop a transition plan that will maintain the balance of recreation opportunities within the established thresholds for uses, including hunting, now allowed on Tosohatchee.

The proposed action is consistent with chapter 187, F.S., and a consideration of the status of local government comprehensive plans was not made for this item.

(See Attachment 5, Pages 1-70)

RECOMMEND APPROVAL OF THE 50-YEAR MULTI-AGENCY LEASE SUBJECT TO THE SPECIAL LEASE CONDITIONS

Substitute Item 6 RSBC Real Estate Company, LLLP (Rybovich) Recommended Consolidated Intent

DEFERRED FROM THE MAY 31, 2006 AGENDA

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 liveboards 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; (3) authorize the severance of approximately 80,000 cubic yards of sovereignty material; and (4) revoke an existing Board of Trustees' permit (#1478-50-253.12), issued on January 2, 1975.

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

Substitute Item 6, cont.

APPLICANT: RSBC Real Estate Company, LLLP

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
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 liveboards be authorized in the lease modification.

Substitute Item 6, cont.

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.

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 wet slips will occur within the privately-owned submerged lands, leaving 134 wet slips 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".

Substitute Item 6, cont.

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 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, liveboards, and 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, 17.80-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) the installation of 1,500 linear feet of riprap breakwater to allow for seagrass recruitment; (3) restoration of 5.3 acres of denuded areas by relocating seagrasses from the impact site and transplanting seagrasses from adjacent seagrass beds within the seagrass restoration area; and (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.

The lessee has proposed to place the entire 17.80-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 lands at this site. The parcel

Substitute Item 6, cont.

contains a deed and a disclaimer, the permit is for the deeded submerged lands. 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 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 7.5 acres of the 17.80-acre parcel to the Board of Trustees within five years of the execution of the lease modification.

DEP recommends, and the applicant has agreed, that the Board of Trustees revoke the above referenced permit to fill 15.114 acres of sovereignty submerged lands, issued on January 2, 1975, to Luther M. Taylor, based on the transfer of title and failure to use diligence in obtaining the required governmental authorization in accordance with condition #15 of the permit.

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 (FWCC) 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 FWCC.

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.

Substitute Item 6, cont.

(See Attachment 6, Pages 1-49)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
THE SPECIAL LEASE CONDITION, AND PAYMENT OF
\$111,210.50**

Substitute Item 7 Ecoventure Wiggins Pass Ltd. Recommended Consolidated Intent

REQUEST: Consideration of an application for: (1) modification of an existing five-year sovereignty submerged lands lease to: (a) change the use of the docking facility from a commercial facility to a private yacht club docking facility; (b) decrease the preempted area from 20,604 square feet to 12,200 square feet, more or less; (c) remove the existing bulkhead; and (d) replace the existing docking facility with a new docking facility in a new configuration providing 10 boat slips, in conjunction with the upland condominium and ship's store; (2) a 10-year sovereignty submerged lands private easement containing 6,850 square feet, more or less, for a navigation channel; and (3) authorization to dredge 400 cubic yards of sovereignty material.

COUNTY: Collier
 BOT Lease No. 111979199
 Easement No. 40741 (110231635)
 Application No. 11-0206964-002

APPLICANT: Ecoventure Wiggins Pass Ltd.

LOCATION: Section 17, Township 48 South, Range 25 East, in the Cocohatchee River,
 Class II Outstanding Florida Waters, 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: \$29,810.00, representing (1) \$1,677.50 as the initial lease fee computed at the rate of \$0.1375 per square foot; (2) \$24,341.52 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C.; (3) \$22,200 for the easement, including 10 percent of the enhanced value; and (4) \$900 for the severance of 400 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.

Substitute Item 7, cont.

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 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 requesting authorization to modify an existing five-year sovereignty submerged lands lease by: (1) removing an existing bulkhead and 51-slip commercial docking facility; (2) constructing a new 10-slip private docking facility; and (3) reducing the lease from 20,604 square feet to 12,200 square feet. Eight 50-foot-long slips and two 40-foot-long slips will accommodate private recreational vessels.

The original docking facility, Wiggins Pass Marina, was registered with the former Department of Natural Resources (DNR) as a grandfathered structure (GSR No. 110001) in 1986. The marina had operated at the site since at least the 1950s. By the 1980s the marina provided approximately 450 dry storage spaces and 51 wet slips primarily consisting of rental boats and temporary mooring for fueling, vessel servicing, dry storage ingress and egress, and obtaining supplies from the upland ships store. On September 16, 1992, DNR issued a five-year lease containing 1,072 square feet for a travel lift that was constructed pursuant to a wetland resource permit (no. 111979199) issued by the former Department of Environmental Regulation on July 20, 1992. The registered grandfathered docking facility was not brought under lease at that time since the travel lift expanded the original docking facility by less than 50 percent (section 18-21.00405(1)(b), F.A.C.). On August 20, 1997, DEP renewed and modified the lease pursuant to a delegation of authority. The renewed/modified lease contained 20,604 square feet, including the registered grandfathered docking facility pursuant to section 18-21.00405(1), F.A.C. On September 16, 2002, DEP renewed the lease pursuant to a delegation of authority. On June 30, 2005, DEP modified the lease to reflect a change in upland ownership to the present lessee pursuant to a delegation of authority. The lease expires on September 15, 2007.

The lessee's proposed development will include up to 80 residential condominium units in two 12-story towers, six cabana units, seven cottage units, and a 19-slip private docking facility to be installed in the proposed marina basin to be dredged from a portion of the lessee's uplands. The right to use boat slips in the marina basin and on sovereignty submerged lands will be sold to entities that may or may not be purchasing a residential condominium unit in the proposed development on the lessee's uplands (Aqua at Pelican Isle Yacht Club). The lessee has not

Substitute Item 7, cont.

provided DEP the sales prices for slips on sovereignty submerged lands. The lessee is entering into contracts for condominium units (approximately \$85 million to date) but is awaiting Board of Trustees' action on the lease modification and easement request before making any commitments regarding use of boat slips on sovereignty submerged lands. Therefore, the lessee has informed DEP that no deposits have been collected for any boat slips on sovereignty submerged lands.

To assist the lessee in maintaining appropriate financial records pertaining to income associated with the docking facility on sovereignty submerged lands and to avoid confusion on behalf of the lessee regarding slip income and associated accounting and reporting practices, 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 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), F.A.C., 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 lessee and shall be maintained and available for examination by DEP pursuant to the terms of the lease.

The proposed lease will also contain the following new standard lease condition that will apply to any slip that is completely or partially located on sovereignty submerged lands:

“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

Substitute Item 7, cont.

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.”

The lessee has submitted to DEP unrecorded Declaration of Condominium documents for the proposed development. Pursuant to section 718.502, F.S., those documents are required to be filed with the Department of Business and Professional Regulation (DBPR). The condominium documents exclude the privately-owned marina basin and the boat slips on sovereignty submerged lands from the condominium. The lessee proposes to create a non-profit corporation, Aqua Pelican Isle Marina Club, Inc., to own and operate all of the boat slips. Aqua Pelican Isle Marina Club, Inc., will offer equity memberships to initial purchasers and owners of residences in the Aqua Pelican Isle condominium and to persons who do not own residences in the condominium. Each equity marina slip membership will entitle the member to the exclusive use of a designated marina slip upon payment of the required dues and fees and complying with the bylaws and general marina rules. These and other memberships will provide members an opportunity to become members of the Pelican Isle Yacht Club (lease no. 110011635/Pelican Isle Yacht Club Membership, Inc.) located across the river from the project site. The president of that corporation (and the signatory on that lease) is a director of Ecoventure Wiggins Pass, Inc., the General Partner of Ecoventure Wiggins Pass, Ltd. A recent site inspection of that leased facility by DEP confirmed that vessels were being moored within the approved lease boundary. However, because technical modifications to that lease are required, a special approval condition will require the lessee to obtain a modified lease to reflect the required modifications. Another special approval condition will require the lessee to adequately document that all revenue from the use of boat slips on sovereignty submerged lands at that facility has been reported to DEP. Another special approval condition will require: (1) the lessee to provide to DEP a complete copy of the recorded condominium documents for the upland project to confirm that they are consistent with the unrecorded and draft copies that the lessee has previously submitted to DEP; and (2) that if 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 and draft documents that have been submitted, such changes shall be submitted for Board of Trustees’ consideration as a request for a lease

Substitute Item 7, cont.

modification. This is consistent with previous Board of Trustees' actions. Another special approval condition will require DEP approval of the wet slip sales agreement that references the requirements of the lease and the environmental resource permit.

The lessee is marketing the boat slips as an integral aspect of the condominium development and thus primarily to prospective condominium unit purchasers. Therefore, it is reasonable to anticipate that the right to use the boat slips will be purchased primarily by condominium unit purchasers. As such, the proposed docking facility on sovereignty submerged lands is a private residential multi-slip docking facility subject to the rule criteria for such facilities pursuant to sections 18-21.003(42) and 18-21.004(4), F.A.C. Section 18-21.004(4)(a), F.A.C., limits the area of sovereignty submerged lands leased for the docking facility to a square footage amounting to 40 times the lessee's riparian waterfront footage (the 40:1 rule). Since the lessee has 305 linear feet of riparian shoreline, the proposed docking facility may only preempt 12,200 square feet. The total area preempted by the proposed docking facility is 12,200 square feet. Therefore, the proposed preempted area is consistent with the rule.

Section 18-21.004(4)(g), F.A.C., requires the lessee to record a conservation easement along the riparian shoreline to prohibit future construction or expansion of the facility in excess of the 40:1 preempted area to shoreline ratio. This has been included as a special approval condition.

A standard lease condition prohibits the lessee 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. A similar condition will be included in the channel easement as a special easement condition.

As part of the Planned Unit Development (PUD) approved by the Collier County Board of County Commissioners (County) for the proposed project, the County required the lessee to provide the following to the County: (1) fee simple title to a 13,306-square-foot parcel of uplands within the PUD. The parcel will be used for additional parking for the County's existing public boat ramp park located immediately south of the project site. Prior to the conveyance, the PUD requires the lessee to bear all financial costs and pursue all required permitting to construct up to 20 public parking spaces and redesign the boat ramp park's parking and traffic flow patterns to increase public boat trailer parking by up to 29 spaces. The lessee will reserve 10 parking spaces in the parcel for the proposed ships store, boat slips and other marina functions in the PUD; (2) up to \$1,000,000 for construction of a docking facility in the County's Barefoot Beach Preserve Park to be used as a landing facility for the public transported via ferry to the Preserve. The County will be responsible for obtaining all required permits for this structure; and (3) \$1,000,000 to the County to purchase land to enhance public access to the water in the general vicinity of the project site. The lessee is of the opinion that these County requirements offset the loss of public boating access from the requested conversion in use of the docking facility. Since specific locations and project

Substitute Item 7, cont.

parameters have not been identified for items (2) and (3), DEP is unable to determine whether those projects would qualify for an environmental resource permit and an authorization to use sovereignty submerged lands. A special lease condition requires the lessee to document that these donations have been made to the County prior to occupancy of any boat slips on sovereignty submerged lands. Another special lease condition requires the lessee to provide DEP an annual status report for all environmental resource permit applications for these water access facilities proposed to be constructed by Lessee or the County pursuant to the requirements of the PUD.

The existing lease prohibits liveaboards and authorizes fueling facilities and sewage pumpout facilities. The modified lease will continue to prohibit liveaboards. A fueling facility will be placed on the lessee's uplands to fuel vessels via the privately-owned marina basin and one boat slip on sovereignty submerged lands. Therefore, the modified lease will authorize fueling on sovereignty submerged lands. A sewage pumpout facility will also be placed on the lessee's uplands to service vessels via the privately-owned marina basin and one boat slip on sovereignty submerged lands. Hard-piped sewage pumpout connections will also be provided to each boat slip on sovereignty submerged lands. Therefore, the modified lease will authorize sewage pumpout facilities on sovereignty submerged lands. DEP's environmental resource permit will prohibit liveaboards and authorize a fueling facility and require a sewage pumpout facility. The permit will require that the fueling facility and sewage pumpout facility be available to the public on a first-come, first-served basis. Provision of fueling for the public will augment the fueling currently available to the general public at the County boat ramp park adjacent to the project site. Additionally, a special approval condition and the permit will require the lessee to: (1) record an easement on a portion of the lessee's privately-owned marina basin that will provide public access to those facilities; and (2) modify the easement to name the Board of Trustees as a party to the easement.

The lessee is also requesting a 10-year sovereignty submerged lands private easement containing 6,850 square feet to create an entrance channel on sovereignty submerged lands for the marina basin. The channel will entail dredging of 400 cubic yards of sovereignty material to provide adequate water depth (approximately -5.77 feet mean low water) for the vessels proposed to be moored in the marina basin. 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 lessee 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 will require the lessee to pay dredge fees to DEP prior to receipt of a fully executed easement and modified lease.

DEP's Bureau of Appraisal hired an independent appraiser to conduct an appraisal to determine the value of the easement and the enhanced value of the easement. The lessee paid for the appraisal. DEP's Bureau of Appraisal accepted the conclusion of \$11,200 for the easement value with \$110,000 as the enhanced value. The Board of Trustees typically assesses

Substitute Item 7, cont.

10 to 25 percent of the enhanced value of the easement, depending on the degree of preemption by the proposed project. In this case, the preemption will be minimal since the dredged area may still be used for navigation by the public that use the proposed fueling facility and sewage pumpout facility in the lessee's proposed marina basin. Therefore, DEP recommends that the Board of Trustees assess 10 percent of the enhanced value. This is consistent with previous Board of Trustees' actions.

The proposed new marina basin will create new surface waters that must meet state water quality standards or result in a net improvement to surface waters. Although the lessee has not conclusively demonstrated that the proposed marina basin will meet state water quality standards, water quality data provided by the lessee has demonstrated that the marina basin's design will provide adequate flushing between it and the Cocohatchee River. Additionally, water quality testing data provided by the lessee shows that the portion of the river adjacent to the project site meets state water quality standards. As a means to provide a net improvement to surface waters, the project includes several design features and operational controls to reduce nutrient loading and mitigate for potential adverse resource impacts that are addressed in the draft environmental resource permit. These include, but are not limited to: creation and implementation of a marina operations plan for the docking facility; and providing stormwater treatment for the upland development to standards for Outstanding Florida Waters. As a result, DEP is of the opinion that long-term secondary and cumulative impacts from this project are anticipated to be improved as compared to historic conditions at the site, and that the proposed project will provide a net improvement to water quality in the river, thereby qualifying for issuance of an environmental resource permit.

The proposed lease modification was not noticed because of the exemption from noticing requirements for lease modifications pursuant to section 253.115(5)(i), F.S. However, the closure of the former commercial marina and dry storage facility generated significant heightened public concern in the local news media. That concern was based upon the loss of wet slips and dry slips available to the general public at this facility since the 1950s. Therefore, pursuant to section 18-21.0051(4), F.A.C., the lessee's request is being submitted for Board of Trustees' consideration as a project of heightened public concern.

The proposed easement was noticed pursuant to section 253.115, F.S. Five property owners were specifically noticed and no objections were received to date in response to the noticing. The comment period ended on May 22, 2006 and no comments were received.

On December 28, 2005, the Florida Fish and Wildlife Conservation Commission (FFWCC), Imperiled Species Management Section, recommended that the lessee: (1) comply with the standard manatee protection construction conditions for all in-water construction; and (2) install and maintain manatee informational signs and a manatee informational display. These recommendations are addressed as specific conditions in the Environmental Resource Permit.

Substitute Item 7, cont.

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 from Collier County.

(See Attachment 7, Pages 1-57)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, THE
SPECIAL EASEMENT CONDITIONS, AND PAYMENT OF
\$29,810.00**