

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**DECEMBER 5, 2006**  
**Substitute Page**

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**Substitute Item 1 Florida Yacht Club, Inc. Lease**

**REQUEST:** Consideration of an application for a five-year sovereignty submerged lands lease containing 159,395 square feet, more or less, for the purpose of operating an existing private marina.

**COUNTY:** Duval  
Lease No. 160340292

**APPLICANT:** Florida Yacht Club, Inc.

**LOCATION:** Section 42, Township 03 South, Range 26 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: No

**CONSIDERATION:** \$245,761.30 representing (1) \$21,916.81 as the initial annual lease fee computed at the base rate of \$0.1375 per square foot for the preemption of 159,395 square feet; and (2) \$223,844.49 as lease fees in arrears and associated interest for the preemption of 159,395 square feet from January 1, 1998 to January 1, 2007. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C. Fees may be revised based upon receipt of an acceptable survey.

**STAFF REMARKS:** The Florida Yacht Club is an existing membership club that promotes boating, regattas, social, and entertainment activities. The applicant's facility was established in 1876 with the current club location on the St. Johns River being established in the late 1920s. The applicant's property is located on the southeastern tip of an upland peninsula, which is otherwise a residential neighborhood. Since the late 1920s the applicant has constructed various docking facilities off of the peninsula to provide mooring for club member vessels and sailing fleets to promote sailing and boating recreation and education. The docking facilities have been periodically redesigned to address adverse weather conditions as a result of the existing area geography. The conditions, which primarily need to be accounted for, are wind and waves generated over a 3.5 to 4 mile river fetch to the southeast, east, and south. These typical wind and wave conditions are encountered on a day-to-day basis. The current dock design includes a breakwater system to mitigate the typical day-to-day conditions encountered from 10 to 15 mile per hour winds.

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**Substitute Item 1, cont.**

The existing facility has four separate docking structures. One is a perimeter dock, located on the southern portion of the property, that is 410 feet long extending in southeast direction off of the existing shoreline. A second longer perimeter dock, located on the northern portion of the property, extends off the shoreline in a southeast direction for a distance of 375 feet, then angles, more or less, for a distance of 411 feet. There is a 100-foot-wide opening between the ends of these two perimeter docks that provides access to the interior open waters. A third smaller T-dock, 118 feet long by 6 feet wide with a 147-foot-long by 10-foot-wide terminal platform, is located within the interior waters between the perimeter docks. The fourth area consists of four slips with associated catwalks immediately adjacent to the upland shoreline. These docks provide mooring slips for the club members and its sailing fleet. The club has a total of 69 permanent and transient slips. The slips are for member use only according to the applicant.

The longer perimeter dock, located on the northern portion of the property, was constructed with concrete piles and concrete decking with the slips in the interior waters. It also included a breakwater structure of concrete panels attached to concrete piles. However, over time the fixed breakwater was weakened by years of exposure to the elements and site geography and was partially destroyed during the 2004 hurricane season. The applicant developed a plan to replace the existing dock and breakwater system with a new floating dock and breakwater system. The replacement design will be slightly different but will remain in the same footprint. It will not create additional slips and is exempt from permitting pursuant to section 403.813(2)(d), F.S. The replacement of the dock and breakwater system was determined to be exempt from the need to obtain an environmental resource permit by the DEP. The exemption determination included the required U. S. Army Corps of Engineers federal authorization via the State Programmatic General Permit agreement. If approved, the requested lease will provide authorization for the use of sovereignty submerged lands associated with the repair and replacement activity. A professional engineer registered in the state of Florida performed an analysis and concluded that a modification of the current dock configuration to allow for a more "open" basin area would significantly and adversely affect the use of the marina. Without the current "breakwater" configuration, the basin area would effectively be rendered unusable as a marina.

In typical marina designs and configurations the interior waters would be considered part of the marina basin and would be occupied by docking structures and finger piers for boat mooring. The dock design and layout would incorporate adequate fairways between structures so that vessels would have sufficient area to ingress and egress from their assigned slips. These marinas typically do not want non-marina patrons boating within the basin waters and these areas are typically considered preempted pursuant to section 18-21.003(40), F.A.C. This provision specifically states that:

"Preempted area" means the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as

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Substitute Item 1, cont.

the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public...”

It is the applicant’s position that these interior waters are not and have never been preempted from public access or use. The applicant asserts that the structure does not prevent traditional public access to the interior waters between the existing docks and further, that members of the general public have been observed over the years entering the basin to fish without any interference. The applicant further asserts that the interior waters also serve as a safe haven for the general public when sudden adverse and dangerous weather conditions develop on the river. The applicant has requested that only the areas preempted by the actual structures and mooring areas be incorporated into the lease.

However, DEP believes that the design and configuration of the docks, albeit that the configuration is such to limit damage to moored vessels in adverse weather conditions, ultimately creates a perception of preclusion from the perspective of the general public which otherwise renders the interior sovereignty submerged lands inaccessible to the general public. While the applicant asserts it is not its intention to preclude the public from the basin, they have failed to demonstrate that the public routinely uses or does not have a perception of preclusion from the sovereignty submerged lands within the basin. Further, while the applicant asserts that it allows the general public to fish within the interior marina basin all other traditional uses of sovereignty submerged lands by the public, such as water skiing and jet skiing cannot be conducted.

On August 29, 1972, the Board of Trustees granted the applicant authorization to preempt 164,165 square feet of sovereignty submerged lands for the construction and operation of the marina in the form of a state marina and commercial dock facility license (ML-16-30-0027). The license was subject to an annual licensing fee that would need to be paid in order to renew. The applicant allowed the license to expire, due to lack of payment, and was contacted by former Department of Natural Resources’ staff on October 24, 1974 notifying them of the lapse. The applicant subsequently made application on June 28, 1984 to become registered as a grandfathered structure (GSR registrant #160042). The applicant believed that annual fees should not be imposed since the structure was previously there and needed to be rebuilt. The applicant also argued that they were not a “marina” and were strictly a “club pier”. The applicant asserted that membership to the club was by invitation only and that the moorings at the pier were for club members only.

The applicant has also noted that numerous dock configurations have existed since the facility’s inception in the 1920s up to the repeal of the Butler Act in 1951. The applicant had filed a Butler Act Disclaimer application for a portion of the submerged lands within the existing marina basin that was previously preempted by a dock structure, which is no longer in

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Substitute Item 1, cont.

existence. DEP agreed that in order to bring the facility under lease, a reduction in the overall lease area, by the square footage that would have been granted in such a disclaimer, could be provided in return for a quitclaim deed from the applicant for all other submerged lands below the mean high water line at the site. DEP would allow for the 4,770-square-foot Butler Act allowance, bringing the preempted area to 159,395 square feet. The 4,770-square-foot area is located within the current preempted area. A special approval condition will require that the applicant provide the quitclaim deed for all submerged lands riparian to the applicant's upland property. The Butler Act Disclaimer application which is pending will no longer be pursued as a result of the 4,770-square-foot allowance agreed upon.

It is staff's opinion that the applicant preempts the 159,395 square feet of sovereignty-submerged lands including the interior marina basin. The applicant maintains they have no signs posted proclaiming they are a private facility although membership to its club is by invitation only. The applicant believes that since the docks do not cut off the navigable water within the marina basin that the applicant only preempts those areas of sovereignty submerged lands covered by the docks and its associated mooring areas, an area of 47,482 square feet. This number excludes the 4,770-square-foot Butler Act Claim allowance.

DEP staff conducted a financial audit which was completed on October 17, 2006. There was evidence that the club did collect revenue from transient boaters occasionally. However, the transient boaters were mainly members of the Florida Counsel of Yacht Clubs, of which the club is a member. It was determined at the time of the audit that it does not appear the applicant would have to pay six percent of the generated revenue to the Board of Trustees unless their docking rates increased dramatically.

As DEP and the applicant have not reached resolution in regard to the total area preempted by the facility, a survey of a proposed lease area has not been requested by DEP nor obtained by the applicant. Therefore, if staff's recommendation is approved, or if the Board of Trustees elects to exclude the marina basin area, or a portion thereof, from the total preempted area, a special approval condition will require the applicant to obtain a professional survey, which includes the decided preempted area prior to receipt of an executed lease. This survey shall then be reviewed by DEP, and if approved, be incorporated into an executed lease.

Further, DEP staff recommends that lease fees in arrears, with interest, be assessed from the date of the expiration of the grandfathering program, which was January 1, 1998 to January 1, 2007. The amount in arrears has been determined by DEP based upon staff's position in regard to the total preempted area; however, it has not been collected from the applicant pending a decision on the actual preempted area by the Board of Trustees. A special approval condition will require remittance of the lease fees in arrears, and associated interest, by the applicant prior to the execution of the lease.

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**Substitute Item 1, cont.**

Notification of property owners located within a 500-foot radius of the project area is not required for sovereignty land leases for registered and existing unregistered grandfathered facilities pursuant to section 253.115(5)(g), F.S. The existing facility is a registered grandfather facility.

The recommendations of the Florida Fish and Wildlife Conservation Commission regarding protection of manatees are included as special lease conditions. Duval County is a designated manatee county with an approved manatee protection plan. The facility is consistent with the current plan.

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 a compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. The facility is consistent with the adopted plan as amended according to a letter from the Jacksonville Planning and Development Department dated October 30, 2006.

(See Attachment 1, Pages 1-14)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$245,761.30**

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**Item 2      **Intracoastal Marina of Melbourne, LLC Recommended Consolidated Intent****

**REQUEST:** Consideration of an application for (1) modification of an existing 10-year sovereignty submerged lands lease to combine two existing leases into one lease; (2) increase the total existing preempted area from 204,717 square feet to 308,995 square feet for a commercial marina; (3) modification of the existing 10-year sovereignty submerged land lease by extending the term to 25 years; (4) a 25-year sovereignty submerged lands private easement containing 76,968 square feet, more or less, for a wave break and access channel to a commercial marina.

**COUNTY:**      Brevard  
                    Lease No. 050000924  
                    Application No. 05-268899-001

**APPLICANT:** Intracoastal Marina of Melbourne, LLC

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Item 2, cont.

**LOCATION:** Sections 27 and 34, Township 27 South, Range 37 East, In the Indian River, Class II Waters, within the local jurisdiction of the city of Melbourne  
Aquatic Preserve: No  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Yes, Slow Speed year-round

**CONSIDERATION:** \$43,947.91, representing (1) \$33,325.31 as the initial annual 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 for rent on a first-come, first-served basis, and including the initial 25 percent surcharge payment for the additional area; (2) \$10,621.70 as the extended lease term fee; and (3) one-time fee to be determined as the appraised market value of the easement and 10 percent of the enhanced riparian upland property value (*subject to special approval condition*). Sales tax and county discretionary sales surtax will be assessed pursuant to section 212.031 and 212.054, 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. Fees will be revised upon receipt of an acceptable appraisal.

**STAFF REMARKS:** In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity that require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

The subject site has two current sovereignty submerged land leases (Nos. 050000924 and 051506694) that authorize 121 slips. The subject upland parent parcel was originally created by filling submerged lands in the Indian River prior to 1963, and the State of Florida granted TIIF Deed #23521 (790-05) on November 6, 1963, to Jim Rathman Enterprises, Inc. for the filled area. Lease No. 050000924 is for an 81-slip marina with a preempted area of 129,487 square feet. The 81-slip marina was originally built in 1970 under the ownership of Jim Rathman Enterprises, Inc. The facility was brought under lease on February 17, 1987 to Charles Romandetti and Vincent Marasia, as an after-the-fact unauthorized/unregistered grandfathered structure. On March 1, 2002, Lease No. 050000924 was renewed and modified to reflect a change in ownership to Intracoastal Marina of Melbourne, Inc.

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**Item 2, cont.**

Lease No. 051506694 is for a 40-slip marina with a preempted area of 75,230 square feet, originally permitted under the name of Boatland, Inc., on April 14, 1989 by DER permit 05-150669-4. The lessee was changed to Intracoastal Properties, Ltd. on June 4, 1997, and later to Intracoastal Marina of Melbourne, Inc., on March 1, 2002.

The project includes reconfiguring the interior layout of the marina facility by combining the two existing sovereignty submerged lands leases into one lease, and expanding the marina facility to a total preempted area of 308,995 square feet (7.1 acres), including 145 powerboat slips. The lessee is proposing to expand the existing 121-slip commercial marina, presently used in conjunction with the upland marina facilities, by constructing 24 additional slips, thereby creating a 145-slip facility for vessels ranging in lengths from 30 to 60 feet. The current leases authorize the preemption of 204,717 square feet of sovereignty submerged lands. The proposed preempted addition is 104,278 square feet, for a new total of 308,995 square feet. Boat slip numbers 1 through 121, and 126 through 145 will be 90 percent open to the public, on a "first-come, first-served" basis. Boat slip numbers 126 through 145 will facilitate transient customers using the fuel dock, sewage pumpouts, and upland facilities, and will be designated for temporary use only. Boat slips 122 through 125 will be used by government vessels only, including local, state, and federal law enforcement, and fire and rescue.

An existing launch ramp and travel lift located in the central portion of the parcel will be removed, and the launch ramp will be moved to the north section of the facility. The launch ramp will be available to the customers of the marina on a "fee-for-use" basis of \$10.00 (subject to change) for each in/out operation. Within 550 days of construction commencement of the project, the upland marina maintenance facilities will be completely removed, and the upland dry slip facility will be removed or reduced to 186 dry slips.

The upland activity is a deeded strip of land that runs the length of the riparian shoreline, 1,057 linear feet, with an average parcel width of approximately 20 feet. No marina facilities or structures are proposed on the riparian upland parcel. The marina, Intracoastal Marina of Melbourne, LLC, will lease the associated facilities on the adjacent uplands from Melbourne Realty Investments, LLC. These leased facilities will include the dockmaster building, marina retail space, restrooms, and parking. A portion of the upland parcel adjacent to the marina parcel, will be developed as a 176-unit condominium complex, which is currently under Environmental Resource Permitting review by the St. Johns River Water Management District under file no. 42-009-33696-4.

The project will include the installation of a new breakwater structure around the perimeter of the marina and entrance channel. The breakwater structure will consist of 11-foot-long by 4-foot-wide concrete paneling pieces, interlocked with "H" pile supports. Each panel segment will have a 6-foot-long by 8-inch-wide open flow slot. The breakwater will extend 334 feet

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**Item 2, cont.**

waterward from the existing shoreline bulkhead along the north and south boundary of the marina, and includes a 226.5-foot-long and 538.5-foot-long segment that runs parallel to the shoreline, and two 200-foot-long segments extending into the Indian River along the entrance channel (mouth) of the facility. Open, non paneled “flow thru” sections will be placed on the NE and SE corners of the breakwall perimeter, and entrance channel breakwater.

The project will include placing a sovereignty submerged lands private easement over the existing entrance channel and channel breakwater section. The easement will extend eastward from the western boundary of the lease area, and measure 533 feet long by 135 to 165 feet wide. A portion of the proposed easement was dredged in 1992 under a former Department of Natural Resources’ authorization (No. 05-198096-4) and in 2005 under DEP exemption 05-258625-001. Pursuant to section 18-21.010(1)(e), F.A.C., the applicant has provided a statement evidencing that the easement sought is in the public interest. Intracoastal Marina’s project is in the public interest because it will provide government emergency access and open public access to the Indian River and surrounding waterways.

Under a Special Approval Condition, the applicant shall submit an appraisal, accepted by the Bureau of Appraisal, to determine monetary value for the private easement. The easement fee shall be paid prior to full execution of the sovereignty submerged lands lease and easement documents.

The proposed project is located within an existing marina, on the western shore of the Indian River, and is not expected to impact seagrasses, or other submerged resources. Based upon the location of the project, the subject water body features, water quality data, engineered flushing studies, and measures taken by the lessee to address potential impacts, the project provides reasonable assurance that the standards for Class II waters will not be violated or contributed to. The lessee will provide measures to address and limit water quality impacts, such as sewage pumpout access at each marina slip, boatlift installation, removal of the upland repair and maintenance facility, commitment to compliance with the Clean Marina Act, and limiting the number of in water pilings through the use of floating docks.

The lessee is also requesting approval to modify the existing ten-year sovereignty submerged land lease by extending the term to 25 years. The lessee has provided and will continue to provide access to public water and sovereignty submerged lands for the general public on a first-come, first-served basis as qualifying for an extended term under section 18-21.008(2)(a)1, F.A.C. Because the lessee is in compliance with the terms and conditions of the existing lease and rule, staff recommends approval of the requested lease modification.

Ninety percent of all of the slips will continue to be maintained on an open to the public, first-come, first-served basis, with no longer than one-year rental terms. This requirement has been included as a special lease condition.

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**Item 2, cont.**

DEP's environmental resource permit requires sewage pumpout facilities, prohibits liveboards, and authorizes fueling facilities with appropriate spill contingency plan. Fueling facilities will be relocated to the northern access pier, and only made available on the designated fuel dock.

The recommendations of the Florida Fish and Wildlife Conservation Commission regarding protection of manatees have been addressed in the permit. Brevard County is a designated manatee county with an approved manatee protection plan. The proposed project is consistent with the plan according to FFWCC. The proposed project will not impact any significant submerged or aquatic resources. The project was not required to be noticed pursuant to section 253.115(5)(i), F.S.

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

(See Attachment 2, Pages 1-42)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITION, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$43,947.91**

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**Substitute Item 3    BOT/William C. Saba, et al. Settlement Agreement**

**REQUEST:** Consideration of a proposed settlement agreement in the case of William C. Saba, individually, and Linda C. Firkins, Frank J. Conrad, and Jennifer Lee Saba, as Co-Trustees of the William Conrad Saba Trust, dated December 29, 1987 v. Board of Trustees of the Internal Improvement Trust Fund, District Court of Appeal, Second District, State of Florida, Case No. 2D05-5358.

**COUNTY:** Manatee

**APPLICANTS:** Department of Environmental Protection, Division of State Lands; William C. Saba; and Linda C. Firkins, Frank J. Conrad, and Jennifer Lee Saba as Co-Trustees of the William Conrad Saba Trust

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**Substitute Item 3, cont.**

**LOCATION:** Section 15, Township 35, Range 16

**STAFF REMARKS:** This settlement is the result of a dispute over ownership of submerged real property adjacent to Longboat Key, FL. Plaintiffs, collectively referred to as "Saba," filed suit in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida to quiet title to three lots in the Longbeach Plat that they allege became partially submerged as the result of construction of seawalls and other shore protection measures permitted by the State of Florida.

The Board of Trustees prevailed on a Motion for Summary Judgment, and Saba has appealed the decision to the 2<sup>nd</sup> DCA. The Board of Trustees currently has an extension of time to file its answer brief until December 15, 2006 for the purposes of negotiating a settlement agreement.

Saba and staff, recognizing the strengths and weaknesses in their cases, the costs and length of continued litigation, and the uncertainty of the outcome of appeal, have negotiated a proposed settlement agreement. The transfer contemplated by the agreement exceeds staff's normal recommended criteria for exchange of sovereign lands within the public interest. Even if the parties were not in litigation, staff would recommend the proposed exchange. The material terms of the settlement agreement are as follows:

- (1) Upon approval to fill 0.2 acres of the parcel, Saba will deliver a quitclaim deed to the Board of Trustees for the western 0.14 acre-portion of the disputed parcel.
- (2) The Board of Trustees will deliver a quitclaim deed to the remainder of the disputed parcel comprising 0.2 acres adjacent to the upland portion.
- (3) Saba will purchase and deliver a quitclaim deed to the Board of Trustees for a 3-acre parcel of uplands and submerged lands selected by the Department of Environmental Protection within the Florida Forever Terra Ceia Project.

(See Attachment 3, Pages 1-17)

**RECOMMEND WITHDRAWAL**

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**Substitute Item 4    BOT/Key    West    Marina    Investments,    LLC    Exchange/  
Determination/DOA**

**REQUEST:** Consideration of (1) an exchange under which the Board of Trustees will convey 6.44 acres of isolated sovereignty submerged land to Key West Marina Investments, LLC, in exchange for 9.57 acres of privately-owned submerged land and 8.01 acres of privately-owned

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**Substitute Item 4, cont.**

uplands in the Florida Keys Ecosystem Florida Forever Project; (2) a determination that, pursuant to Article X, Section 11 of the Florida Constitution and section 253.12(2)(a)(b), F.S., the proposed conveyance of sovereignty submerged lands is in the public interest; and (3) delegation to the Secretary of the Department of Environmental Protection, or designee, to complete, approve, and execute the exchange agreement, provided there are no substantive changes to the exchange agreement.

**COUNTY:** Monroe

**APPLICANT:** Key West Marina Investments, LLC

**LOCATION:** **Submerged Land** - Section 36, Township 67 South, Range 25 East  
**Uplands** - Section 25, Township 67 South, Range 27 East

**CONSIDERATION:** Value-for-value land exchange and six percent of revenues generated, pursuant to section 18-21.011, F.A.C., relating to the conveyance of sovereignty submerged lands

**STAFF REMARKS:** Peninsula Marina is an active commercial marina at Stock Island in the City of Key West. The marina is situated on filled land that was conveyed by Board of Trustees Deed Nos. 21117 and 26595(3189-44). The property was acquired July 2006 by Key West Marina Investments, LLC, (KWMI), and they are requesting acquisition of 6.44 acres of sovereignty submerged land situated immediately adjacent to the marina in exchange for (1) 8.01 acres of privately-owned uplands within the Florida Keys Ecosystem Florida Forever Project; and (2) 9.57 acres of privately-owned submerged land west of the marina that was conveyed by Board of Trustees Deed No. 20903 in 1957. KWMI has a contract for purchase agreement on the 8.01-acre upland parcel, contingent upon approval of this exchange by the Board of Trustees. The 6.44 acres of sovereignty submerged land is almost completely encircled by a filled spit, which was conveyed by Board of Trustees' Certificate No. 29526(4647-44), and forms a manmade cove. Pursuant to Florida Constitution, Article X, Section 11 and section 253.12(2)(a)(b), F.S., the Board of Trustees may sell and convey submerged lands if determined by the Board of Trustees to be in the public interest.

A field inspection report comparing the ecological value of the upland parcels to the 6.44 acres of sovereignty submerged land was provided by Consulting Engineering & Science, Inc. The report states that there is no perceptible marine benthic community on the 6.44 acres of sovereignty submerged land and that due to excessive water depths and poor tidal flushing, the conditions are not suitable for a natural benthic community. The upland parcels contain a mixture of high-quality tropical hardwood hammock, freshwater hardwoods and salt marsh buttonwood wetlands. The parcels are strategically located in an area of existing conservation lands and will fill in gaps between a large area of Federal, state and county lands. There is no apparent activity on the 9.57-acre privately-owned submerged parcel, and it was not addressed in the report.

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**Substitute Item 4, cont.**

The approved Department of Environmental Protection (DEP), Division of State Lands (DSL) value of the 8.01-acre upland parcels total \$78,950.00. Multiple purchase offers have been made by DSL for the upland parcels. The last offer totaled \$124,950, which included incentives approved by the Board of Trustees; however, these acquisition efforts, to date, have been unsuccessful

The appraisals for the 6.44 acres of sovereignty submerged lands and the 9.57 acres of privately-owned land are currently in process. Once the appraisals are completed, the exchange agreement would be finalized based on the DSL-approved values. If the state-owned lands are of greater value than the value of the privately-owned parcels, KWMI would pay to the Board of Trustees at closing, an amount equal to the difference in value. However, if the privately-owned lands are of greater value, the Board of Trustees would not pay any monetary consideration, and the values would be considered equal for purposes of the exchange. Both KWMI and the Board of Trustees will convey their respective lands without a reservation for phosphate, mineral, metal, and petroleum interests, as provided by section 253.62, F.S.

DSL staff is recommending including deed restriction and reverter language for the 6.44 acres of sovereignty submerged land to allow only water-dependent activity and not to allow any fill or structures including mooring to be placed at the entrance to the parcel. The deed restrictions are summarized below and must be in a form acceptable to DSL:

1. The property shall be used solely for water dependent activity as defined in section 18-21.003(66), F.A.C. Six percent of revenues generated, pursuant to section 18-21.011, F.A.C.; will be remitted to the Internal Improvement Trust Fund;
2. No fill of any kind shall be placed on the property;
3. No structures shall be placed on or over and no vessels shall be anchored or moored on the mouth of the parcel being conveyed to applicant;
4. Grantee shall not discriminate; and
5. Grantee shall prohibit the operation of or entry onto the property of gambling cruise ships, or vessels.

In addition, a conservation easement will be placed along the upland shoreline adjacent to the 9.57-acre parcel of privately-owned submerged land, as well as the outer perimeter of the aforesaid filled spit of land and outer remaining shoreline, preventing any future development of marina facilities on this undisturbed parcel. The applicant has stated that it is working with the county on a proposed public boat ramp, and has asked that the conservation easement that will be on the entire riparian ownership with the exception of the cove allow for this type of improvement. Based on the applicant providing a public boat ramp, donating the easement, the undisturbed condition of the 9.57 acres of privately-owned submerged land compared to the 6.44 acres of isolated sovereignty submerged land, the pristine condition of the upland parcels,

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**Substitute Item 4, cont.**

the deed restriction and reverter language, as well as DSL's demonstrated objective to acquire the upland parcels, and obtaining revenues to be deposited in the Internal Improvement Trust Fund, DSL staff recommends that the Board of Trustees find that the exchange would be in the interest of the public.

In order to finalize this transaction, staff is requesting authority be delegated by the Board of Trustees for the Secretary of DEP, or designee, to complete, approve, and execute the exchange agreement, provided there are no substantive changes to the exchange agreement.

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 8.01-acre upland parcel being conveyed to the Board of Trustees will be managed by the Florida Fish and Wildlife Conservation Commission as part of the Florida Keys Wildlife and Environmental Area.

No noticing was conducted, as the 6.44-acre sovereignty submerged land parcel is situated more than 500 feet from the nearest adjacent non-riparian property owner.

DEP has determined that surplus land actions are not subject to the local government planning process. The acquisition of the privately-owned parcels is consistent with section 187.201(9), F.S., of the State Comprehensive Plan.

(See Attachment 4, Pages 1-41)

**RECOMMEND APPROVAL**

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**Item 5      BOT/City of Holly Hill/Holly Hill Associates, Ltd. Exchange Agreement/  
Easement/Determination/Dedication Amendment/Release of Dedication**

**DEFERRED FROM THE DECEMBER 13, 2005 AGENDA  
WITHDRAWN FROM THE JANUARY 31, 2006 AGENDA**

**REQUEST:** Consideration of (1) a determination that, pursuant to Article X, section 11 of the Constitution of the State of Florida, the exchange of a 0.87-acre parcel of filled, formerly

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**Item 5, cont.**

submerged, sovereignty lands in Volusia County for a 0.76-acre parcel of filled, formerly submerged lands owned by Holly Hill Associates, Ltd. is in the public interest; (2) an exchange agreement under which the Board of Trustees would convey a 0.87-acre parcel of filled, formerly submerged, sovereignty lands in Volusia County known as Third Street for a 0.76-acre parcel of filled, formerly submerged lands owned by Holly Hill Associates, Ltd., immediately adjacent to Second Street; (3) an easement over the 0.76-acre parcel received by the Board of Trustees in favor of the City of Holly Hill for development of a public park; (4) an amendment to the existing dedication on Second Street from road use to park use; and (5) release of dedication restriction on Third Street.

**COUNTY:** Volusia

**APPLICANT:** City of Holly Hill (City)

**LOCATION:** Section 05, Township 15 South, Range 33 East

**CONSIDERATION:** Parcel 1 for Parcel 2, and additional cash payment of \$305,915, to be deposited in the Internal Improvement Trust Fund.

PARCEL	ACRES	APPRAISED BY		EXCHANGE VALUE	CLOSING DATE
		Hamilton (04/28/05)	Spano (08/23/05)		
Second Street Addition - Holly Hill Associates, Ltd.	0.76*	\$2,107,970**	\$2,100,000**	\$2,103,985***	120 Days After
Third Street - BOT	0.87	\$2,409,900	\$2,400,000	\$2,409,900	BOT approval

\* The original appraisal for the Second Street Addition parcel was based on 0.78 acre; the parcel was reduced from 0.78 acre to 0.76 acre, due to a minor reconfiguration after appraisal.

\*\* The values for the Second Street Addition parcel were revised to reflect the reduced acreage from 0.78 to 0.76.

\*\*\*Pursuant to section 18-2.020(2)(d), F.A.C., the exchange value is the average of the two values.

**STAFF REMARKS:** On January 8, 1958, the Board of Trustees dedicated to the City 0.87 acre of filled, formerly submerged, sovereignty lands known as Third Street for public street purposes only, with the dedication terminating, should the land be used for other than street purposes or for neglect of maintenance.

A request has been received from the City to exchange a 0.76-acre parcel of filled, formerly submerged land known as Second Street Addition that is owned by Holly Hill Associates, Ltd., (Holly Hill) and is immediately adjacent to Second Street, for the 0.87-acre parcel of state-owned filled, formerly submerged, sovereignty land known as Third Street. Holly Hill plans to develop almost 20 acres north and south of and including the 0.87-acre portion of Third Street on the Halifax River. This planned project is called Marina Grande on the Halifax, and will include 972 luxury condominium apartment units and retail commercial space. The site is currently improved with an apartment complex. After the proposed exchange, the dedication

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**Item 5, cont.**

on the 0.87-acre Third Street parcel east of Riverside Drive would be vacated and incorporated into Holly Hill's development plan. If this item is approved, the Board of Trustees would grant an easement in favor of the City on the 0.76-acre Second Street Addition received in the exchange, and also amend an existing dedication on Second Street. The exchange will consolidate the Board of Trustees ownership, and result in a single parcel having 160 feet of waterfront that will be developed into a public park to accommodate the redevelopment of the area.

Holly Hill has agreed to invest \$1,300,000 toward the improvement of the easement to be granted by the Board of Trustees in favor of the City. Any part of the \$1,300,000 not spent on the Second Street Addition easement will help fund improvements to Sunrise Park, as directed by the City, and as required by the development agreement between Holly Hill and the City. The exchange agreement between the City, Holly Hill, and the Board of Trustees requires the monies be spent specifically on the Second Street park area or Sunrise Park.

Pursuant to Article X, section 11, of the Florida Constitution, sale of sovereignty lands may be authorized by law, but only when in the interest of the public. Section 253.03, F.S., authorizes such a sale of sovereignty lands. Redevelopment of the Third Street area and conversion of the Second Street and the Second Street Addition to a park will be a significant benefit to the citizens of the City and meet the public interest requirement in the following particulars:

- public observation deck and pier overlooking the Halifax River;
- park fountains, pavers and landscaping;
- public restrooms; and
- associated parking.

Improvements to Sunrise Park will benefit the public interest requirement in the following particulars:

- construction of a fishing pier;
- 20 new boat trailer spaces;
- new canoe/kayak launch;
- new picnic pavilions; and
- new playground equipment.

This project will also benefit the City in the following respects:

- revitalization of rundown, underutilized area;
- financial benefits, such as increased ad valorem tax revenues;
- public park amenities and dedication of additional land for general public use;

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**Item 5, cont.**

- public use and enjoyment of attractive open space and access to the Halifax River; and
- development will provide job opportunities in the area.

The Department of Environmental Protection has determined that surplus land actions are not subject to the local government planning process. The acquisition of the Second Street Addition parcel from Holly Hill is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 5, Pages 1-102)

**RECOMMEND APPROVAL**

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**Item 6      BOT/Indian River County Board of County Commissioners Exchange Agreement/Determination**

**REQUEST:** Consideration of (1) a determination that a 1.34-acre, more or less, parcel of state-owned land in Indian River County is no longer needed for conservation purposes pursuant to Article X, section 18 of the Florida Constitution and section 253.034(6), F.S; and that the property no longer needs to be preserved in furtherance of the P2000 Act, pursuant to section 259.101(6)(b), F.S.; (2) a determination that the exchange will result in a net positive conservation benefit to the state, pursuant to Article X Section 18 of the Florida Constitution and section 253.034(6), F.S.; (3) a determination that the property is surplus; and (4) an exchange agreement under which the Board of Trustees will convey a 1.34-acre parcel of state-owned land in exchange for a 1.73-acre parcel of land owned by Windsor Properties and the County will convey a conservation easement to the Board of Trustees over a 0.7-acre parcel of county-owned land adjacent to the 1.73-acre parcel.

**COUNTY:** Indian River  
Deed No. 31640

**APPLICANT:** Indian River County Board of County Commissioners (County)

**LOCATION:** Section 14, Township 31 South, Range 39 East

**CONSIDERATION:** Parcel-for-parcel with no cash boot to be paid by the Board of Trustees, and a conservation easement over 0.7 acre of beachfront property.

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**Item 6, cont.**

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY (Benson) (08/22/06)	APPRAISED BY (Armfield) (08/29/06)	<u>EXCHANGE VALUE</u>	<u>CLOSING DATE</u>
BOT	1.34	\$2,500,000	\$2,800,000	\$2,800,000	120 days after
Windsor	1.73	\$3,125,000	\$3,500,000	\$3,312,500*	BOT approval

\* Pursuant to section 18-2.020(2)(d), F.A.C., in the case of two appraisals the value of the private party parcel shall be no more than the average of the two appraisals.

**STAFF REMARKS:** The County owns approximately 12.8 acres of beachfront property and the Board of Trustees owns an adjacent 1.34-acre parcel within the Archie Carr Sea Turtle Refuge Florida Forever Project (ACSTR) that is currently being managed as the Golden Sands County Park. Windsor Properties (Windsor) owns beachfront property on both the north and south boundaries of the park and is seeking to consolidate its ownership. The County and Windsor have negotiated to exchange approximately 8.9 acres of County beachfront for approximately 8.5 acres of Windsor beachfront that will result in the County ownership being shifted south of its present location and the Windsor ownership being consolidated on the north boundary of the park. Their negotiated exchange would result in the 1.34-acre Board of Trustees-owned parcel being isolated from the newly configured park and new development.

The County has submitted a request to the Board of Trustees to exchange the isolated Board of Trustees-owned parcel for the remaining 1.73 acres of beachfront land owned by Windsor south of the newly configured park. In addition to obtaining the larger beachfront tract, the Board of Trustees will receive a conservation easement at no cost over the adjacent 0.7 acre (50 foot in width) of the beachfront property the County receives in its exchange with Windsor.

The Board of Trustees acquired the 1.34-acre parcel from the County in December 2001 as part of an ACSTR Bargain-Shared acquisition. The County conveyed 100 percent of fee title to the Board of Trustees for 50 percent of the acquisition cost. The deed contains a reverter that states a right of re-entry is reserved by the Grantor (County) if the property or any part of it is sold, or if the property is not used for environmental protection. The reverter is in effect for 15 years from the date of recordation in 2001 but will be released as part of this exchange if approved.

The proposed exchange will require Windsor to provide the following:

- **New park facilities** to replace the outdated and storm-damaged existing facilities. Windsor has agreed to build a new park facility on the property the County will acquire under their exchange. The design of parking, over walks and facilities will be updated and will include improved environmental specifications, including better landscaping and native vegetation cover. Any development footprint from the old park not utilized in the new park will be restored to native conditions.

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**Item 6, cont.**

- **\$1,000,000 management funding** - The County will receive \$1,000,000 from Windsor to enhance the County's management ability and fund needs which are currently unfunded. The County has committed to use these funds for recreation and parks. The County has agreed to furnish the Division of State Lands in its annual budget process an accounting of all expenditures of the designated funds.
- **Reduction in development density** - The existing zoning density on the tract Windsor is to receive is currently conservation, however could be rezoned to three single family units per acre, creating a possibility of 27 houses. In order to reduce the density of owner use of the turtle nesting beach, Windsor will reduce the overall density on the property it will receive to allow only six units over the entire tract, for a density of less than one unit per acre. Windsor has already, at the request of the County, rezoned the adjacent development from multifamily to single family, partly to reduce density adjacent to the turtle nesting beach. Windsor will ensure best management practices for lighting in its development and will actively educate its residents on sea turtle issues.

Windsor has also agreed to the following:

- **Exotic vegetation removal** - Remove any exotic vegetation at the park and on the Board of Trustees-owned tract.
- **Public Sea Turtle Education** - Windsor has agreed to fund a sea turtle education kiosk at the park and an information program designed by the County in cooperation with the U.S. Fish and Wildlife Service (USFWS).

Pursuant to section 253.42(2), F.S. and section 18-2.018(1)(a), F.A.C., the proposed exchange will provide significant public benefits from the aforementioned requirements, by

- supporting the overall objectives of sea turtle preservation;
- enhancing protection on the publicly-owned lands;
- enhancing preservation measures on adjacent privately-owned lands through the recording of appropriate restrictive covenants;
- supporting the goals and objectives of the County in its management of the park, replacing storm damaged facilities within park, and providing an additional \$1,000,000 for County Parks and Recreation purposes;
- consolidating density-restricted (single family residential) development of adjacent lands, with additional restrictions for lighting, construction limitations, beach access and other appropriate measures intended for the protection of the sea turtle; and
- allowing adjacent development to be contiguous to the existing community to the north, and consolidating all of Windsor's beach access crossovers to north of the park. The exchange also will allow utilization of a pedestrian tunnel under Highway A1A that Windsor constructed for the safety of its residents.

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**Item 6, cont.**

Pursuant to Article X, section 18 of the Florida Constitution, the fee interest in real property may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes, and only upon a vote of two-thirds of the governing board. Pursuant to section 253.034(6), F.S, in order to surplus conservation lands through a land exchange, the Board of Trustees, by a vote of at least three members, must make a determination that the lands are no longer needed for conservation purposes and that the exchange will result in a net positive conservation benefit to the state. DSL staff is recommending that the Board of Trustees make an affirmative determination that the approximate 1.34-acre parcel is no longer needed for conservation purposes, because the potential isolation of the parcel from the rest of the park would leave a disconnected sliver of land, resulting in land that is difficult to manage, and less functional as a wildlife habitat area than when consolidated with additional conservation land. DSL staff is further recommending the Board of Trustees make an affirmative determination that the exchange of the approximate 1.34-acre parcel would result in a net positive conservation benefit to the state, because the Board of Trustees would receive a larger, more valuable beachfront parcel as a result of the exchange, equal to or better in resources and benefits.

The USFWS manager of the ACSTR, who supports the proposed exchange, has indicated that, "the exchange proposal provides significant additional benefit to sea turtle conservation..." and has agreed to monitor the conservation easement. On August 11, 2006, the Acquisition and Restoration Council (ARC) recommended Trustees approval of the proposed land exchange. Additionally, the Florida Recreation Development Assistance Program (FRDAP) administrator provided a statement in agreement that the proposed exchange does not appear to impact delivery of outdoor recreation services to the citizens of Indian River County. Pursuant to section 62D-5.059, F.A.C., the land the County will receive in the exchange will be dedicated in perpetuity for outdoor recreation purposes as well as complying with all other applicable portions of the FRDAP Rule, section 62D, F.A.C. The Department of Environmental Protection (DEP)'s FRDAP staff will ensure that the proposed replacement property will be developed with a recreational project of comparable scope and quality.

DEP has determined that surplus land actions are not subject to the local government planning process. The acquisition of the privately-owned parcels is consistent with section 187.201(9), F.S., of the State Comprehensive Plan.

(See Attachment 6, Pages 1-92)

**RECOMMEND APPROVAL**