

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**  
**JANUARY 30, 2007**  
**Substitute Page**

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**Item 1**        **Minutes**

Submittal of the Minutes from the February 14, 2006 Cabinet Meeting.

(Attachment 1, Pages 1-12)

**RECOMMEND APPROVAL**

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**Substitute Item 2**     **Vanderbilt Partners II, Ltd. Recommended Consolidated Intent**

**DEFERRED INDEFINITELY FROM THE FEBRUARY 14, 2006 AGENDA**

**REQUEST:** Consideration of an application for (1) a five-year sovereignty submerged lands lease containing 49,245 square feet, more or less, for a proposed 49-slip private residential multi-family docking facility with a fishing pier; (2) authorization for the placement of eight 100-foot-long sections of riprap; (3) a letter of consent for the severance of 3,400 cubic yards of sovereignty material; and (4) a waiver of the severance fee.

**COUNTY:**        Collier  
                    Permit No. 11-01725-P  
                    Application No. 041029-4

**APPLICANT:** Vanderbilt Partners II, Ltd.  
                    (a/k/a Dunes Dock)

**LOCATION:**    Section 20, Township 48 South, Range 25 East, in Vanderbilt Channel, Class III Waters, within the local jurisdiction of Collier County  
                    Aquatic Preserve: No  
                    Outstanding Florida Waters: Yes, Class III  
                    Designated Manatee County: Yes, with an approved manatee protection plan  
                    Manatee Aggregation Area: No  
                    Manatee Protection Zone: Yes, slow speed year-round

**CONSIDERATION:** \$28,777.56, representing (1) \$8,463.99 as the initial annual lease fee computed at the base rate of \$0.1375 per square foot, and including the initial 25 percent surcharge payment; and (2) \$20,313.57 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C. The project qualifies for a waiver of the severance fee pursuant to section 18-21.011(3)(c), F.A.C. 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.

**Board of Trustees  
South Florida Water Management District  
Agenda - January 30, 2007  
Substitute Page Two**

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**Substitute Item 2, cont.**

**BACKGROUND:** On August 12, 1999, the South Florida Water Management District (SFWMD) issued Permit No. 11-01725-P authorizing construction of a surface water management system serving a 43.25-acre condominium development, which is part of an overall 188.56-acre site. Wetland impacts and onsite mitigation associated with the planned residential development at the site were addressed as part of that permit. The upland development includes a total of 635 residential units consisting of 10 single-story villas and the remainder as condominium units within 7 high rise towers, a clubhouse, pool, and 6 tennis courts. The previously permitted development also includes upland pine flatwood/scrub/gopher tortoise preserve areas in addition to extensive mangrove wetland preserve areas.

A previous environmental resource permit (ERP) application for construction of a 49-slip dock and fishing pier, associated dredging, and sovereignty submerged lands authorization was submitted on April 18, 2002. The docking facility proposed by that application was intended to accommodate 20 vessels up to 30 feet in length, 9 vessels up to 35 feet in length, and 20 vessels up to 40 feet in length. That ERP application was reviewed by SFWMD's Governing Board on October 13, 2004 and was not approved by the Governing Board, primarily due to concerns over the vessels in the 40 foot length category. The sovereignty submerged lands lease request was subsequently withdrawn by the applicant. The current ERP application was submitted on October 29, 2004 and proposes the same total number of slips (49) but includes 10 slips for vessels up to 30 feet in length and 39 slips for vessels up to 35 feet in length and by eliminating the slips for vessels up to 40 feet in length allows the depth of dredging to be reduced from a maximum depth of -5.5 feet mean low water (MLW) to -4.5 feet MLW.

This application was originally scheduled for the February 14, 2006 Cabinet Meeting. However, the applicant elected to defer this item indefinitely and now has requested to reschedule this item before the Board of Trustees. In the interim, the applicant requested a modification of the District permit to amend the conservation easement originally recorded pursuant to the 1999 District ERP in order to correct the legal description of the easement area to exclude that portion of the easement recorded waterward of the mean high water line (MHW) and to record a partial release of conservation easement to release the area waterward of MHW from the easement. The amendment also added language to the easement document to clarify that the ERP conservation easement did not preclude the applicant from counting the entire length of shoreline within the applicant's ownership under sovereignty submerged lands criteria. The amended conservation easement and the partial release of conservation easement were approved by the District on August 8, 2006 and were recorded in the official records of Collier County on August 11, 2006.

By letter dated October 6, 2006, the Florida Fish and Wildlife Conservation Commission (FWC) stated that the revised conservation easement clarified the issue concerning the amount of shoreline that could be counted for determining the number of allowable powerboats as required in the Collier County Manatee Protection Plan (MPP) and that its previous recommendation on

**Board of Trustees  
South Florida Water Management District  
Agenda - January 30, 2007  
Substitute Page Three**

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**Substitute Item 2, cont.**

powerboat restrictions was no longer pertinent. The October 6, 2006 letter from FWC also stated that the project, with the number of slips requested, is consistent with the Collier County MPP. The 49 slips proposed by the applicant fall below the thresholds contained in Collier County's approved MPP.

**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, SFWMD 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, SFWMD will issue a "Consolidated Notice of Denial."

The applicant requests a five-year sovereignty submerged lands lease over 49,245 square feet to accommodate a 49-slip private residential multi-family docking facility, an associated fishing pier at the north end of the dock and installing riprap beneath the dock. The project also requires a Letter of Consent authorization for dredging 3,400 cubic yards of material within and outside of the lease area, as well as, an ERP. The riparian uplands are currently under construction for a previously permitted condominium development, residents of which will be the sole purchasers of slips at the proposed marina. Since the applicant proposes to sell the use of the slips, a lease is required because the activity is considered to be revenue-generating. The proposed lease will contain the following new standard lease condition:

**"3. WET SLIP RENTAL CERTIFICATION/SUPPLEMENTAL PAYMENT:**

(A) The Lessee shall provide upon request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(26), Florida Administrative Code, derived directly or indirectly from the use of sovereignty submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the leased docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said

**Board of Trustees  
South Florida Water Management District  
Agenda - January 30, 2007  
Substitute Page Four**

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**Substitute Item 2, cont.**

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 docking facility includes approximately 11,300 square feet over water and consists of a 35-foot-long by 6-foot-wide fishing pier at the north end, a shore-parallel dock approximately 1,140-foot-long by 6-foot-wide that includes fifteen 30-foot-long by 4-foot-wide finger piers requiring bow-first mooring for 26 of the 49 proposed mooring slips, with the remaining 23 slips parallel to the dock. The project also includes installing eight 100-foot-long sections of natural limestone riprap beneath the dock to provide structural habitat for marine life, function as a wave baffle to help protect nearshore seagrasses and to help stabilize submerged sediments. In addition, the applicant requests a Letter of Consent to dredge approximately 3,400 cubic yards of material from 57,364 square feet (1.32 acres) of sovereignty submerged lands to achieve depths of -4.5 feet MLW. Dredging is to be accomplished using a hydraulic dredge to minimize potential turbidity, with dredged material pumped to an upland spoil containment area and return discharge of excess water from the containment area directed to non-OFW waters. A turbidity monitoring program will be implemented during in-water project construction and dredging activities. The proposed dredging has been determined to qualify for a waiver of the severance fee, pursuant to section 18-21.011(3)(c), F.A.C., as the dredged material has been documented to not be beach compatible material and to have no economic value.

The project is not expected to have adverse impacts to natural resources. While dredging is planned in the vicinity of the proposed boat slips to achieve navigable water depths, the docking facility and associated dredging are proposed to occur waterward of observed seagrass limits. To minimize and avoid potential adverse resource impacts, the project has been reduced from an earlier proposal for 84 slips to 49, thereby also reducing the proposed lease area; the slip layout has been reconfigured to reduce the scope of proposed dredging by about half and to avoid potential disturbance to seagrasses and mangrove wetlands, while limiting the dock to not encroach more than 25 percent of the width of the waterway to maintain clearance for navigable access; bow first mooring is required for those slips perpendicular to the dock to reduce potential sedimentation due to prop wash from affecting seagrasses; fixed finger piers elevated 3 foot above MHW as opposed to floating piers and grated decking will be used where the access pier passes over seagrasses to improve light penetration to the submerged bottom. Any residual shading associated with the access pier is expected to affect less than 0.01 acre of seagrasses. While construction of the access pier/boardwalk is expected to impact 0.15 acre of mangrove wetlands, the previous SFWMD permit issued for the upland condominium development included mitigation for these impacts. Any temporary disturbance to mangroves due to project activities will be restored.

**Board of Trustees  
South Florida Water Management District  
Agenda - January 30, 2007  
Substitute Page Five**

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**Substitute Item 2, cont.**

Coordination with FWC indicates that based on the design modifications made to the project as described above, FWC's earlier concerns regarding the project's impacts to seagrasses have been resolved. The applicant has addressed FWC's water depth concerns by providing bathymetry data for the channel between the project site and Wiggins Pass. FWC staff had recommended a maximum of 28 slips be allowed. However, this calculation excluded the applicant's shoreline which was proposed to be placed under a conservation easement granted to the District during the original permitting of the upland condominium development and which the District had agreed could be counted toward the applicant's allowable number of slips. An amendment to the conservation easement clarifying this intent was approved by the District on August 8, 2006 and was recorded in the official records of Collier County on August 11, 2006.

By letter dated October 6, 2006, the FWC stated that the revised conservation easement clarified the issue concerning the amount of shoreline that could be counted for determining the number of allowable powerboats as required in the Collier County Manatee Protection Plan (MPP) and that their previous recommendation on powerboat restrictions was no longer pertinent. The October 6, 2006 letter from the FWC also stated that the project, with the number of slips requested, is consistent with the Collier County MPP. The 49 slips proposed by the applicant fall below the thresholds contained in Collier County's approved Manatee Protection Plan. Specifically, the applicant has demonstrated that the project meets the criteria to qualify under the 'preferred' category in the MPP (e.g. the project site is located in an area with low manatee use, there is a minimum of 4' of water depths between the site and Wiggins Pass, and the project includes impacts to less than 5% of the resources in the project area), allowing 18 slips for every 100' of shoreline which amounts to  $18 \times 94 = 1,692$  slips. Even under a 'moderate' category, the MPP allows 10 slips per 100' of shoreline or 945 slips and under a 'protected' category, the MPP allows 1 slip per 100' of shoreline or a total of 95 slips.

The applicant has demonstrated that the proposed docking facility meets the sovereignty submerged lands standards and criteria for private residential multi-family docks and piers outlined in section 18-21.004, F.A.C. With 49,245 square feet of preempted area, the project is well below the threshold of 10 square feet of preempted area for every foot of shoreline (10 square feet x 9,467 linear feet of shoreline = 94,670 square feet) that would otherwise trigger a calculation of allowable number of slips. The docking facility does not encroach more than 25 percent of the width of the waterway. The lease would prohibit liveaboard vessels and no fueling facilities are proposed. Although the project is not required by section 18-21.004(4)(g), F.A.C. to record a proprietary conservation easement over the shoreline since the project preempts less than 10 square feet for each foot of the applicant's shoreline, the applicant will place a proprietary conservation easement along the affected 9,467 linear feet of riparian shoreline to prohibit additional docking facilities other than those already described.

**Board of Trustees  
South Florida Water Management District  
Agenda - January 30, 2007  
Substitute Page Six**

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**Substitute Item 2, cont.**

The applicant has provided notice of the proposed sovereignty submerged lands lease to the adjacent property owners within 500 feet of the proposed project. SFWMD has been contacted and has received correspondence from adjacent property owners, interested parties and attorneys representing various individuals and property owners' associations who have concerns about the project. District staff held a public workshop during the processing of the previous application for the Dunes Dock and held a second public workshop on November 29, 2005 for the current application to listen to the concerns of interested parties which previously focused on seagrasses, manatees, and navigational issues. The individuals who have written to SFWMD regarding the project proposed by this application have been included in the distribution list and are being provided a copy of the SFWMD's staff report. Concerns about seagrasses have been addressed by making a number of project modifications to reduce and avoid adverse impacts to seagrasses and mangrove wetlands, including reducing the number of boat slips, reducing the vessel size expected to use the slips, re-orienting the slips to include bow-first mooring to reduce potential disturbance to nearshore seagrasses and using grated decking where the access pier passes over seagrasses. Manatee concerns have been addressed by including the special conditions recommended by FWC for manatee signage and educational displays and required manatee protection measures during construction in the permit. In addition, the project is located in an area that is designated as slow speed zone all year. Boats using the docking facility are anticipated to primarily navigate from the site along Vanderbilt Channel and thorough Wiggins Pass to access the Gulf of Mexico and are not expected to contribute to boat congestions along waterways to the south of the site and to the north of Wiggins Pass since these areas do not provide outlets to the Gulf. The applicant has addressed navigational safety issues by limiting the draft of vessels using the dock to a maximum of 3 feet (which is consistent with the design vessel draft for Wiggins Pass established by the U.S. Army Corps of Engineers as outlined in the Wiggins Pass Management Plan), demonstrating that at least 4' of water depths at mean low water exist between the site and Wiggins Pass, restricting the dock to not extend more than 25 percent of the width of the waterbody as required by section 18-21.004(4)(d), F.A.C., and installing navigational lighting at the dock.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan was in compliance. The docks were listed as permitted accessory uses subject to the County's Land Development Code in the petition for the Dunes Planned Unit Development approved by Collier County, which has therefore been determined to be consistent with the adopted plan. A permit application for the docking facility is still under review by the Army Corps of Engineers pending State approval and issuance of water quality certification for the project.

(See Attachment 2, Pages 1-75)

**RECOMMEND WITHDRAWAL**