

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**APRIL 17, 2007**  
**Substitute Page**

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**Item 1       Minutes**

Submittal of the Minutes from the January 30, 2007 and February 13, 2007 Cabinet Meetings.

Submittal of the Board of Trustees/South Florida Water Management District Minutes from the January 30, 2007 Cabinet Meeting.

(See Attachment 1, Pages 1-17)

**RECOMMEND APPROVAL**

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**Substitute Item 2       Chapters 18-2 and 18-24, F.A.C., Notice of Proposed Rulemaking**

**REQUEST:** Consent to publish the proposed revisions to sections 18-2.017, 18-2.018, 18-2.021, and 18-24.005, F.A.C., pursuant to section 120.54(3)(a)1, F.S.

**COUNTY:** Statewide

**APPLICANT:** Department of Environmental Protection (Department), Division of State Lands (Division) on behalf of the Acquisition and Restoration Council (Council)

**LOCATION:** N/A

**STAFF REMARKS:** Pursuant to section 120.54(3)(a)1, F.S., consent of the Board of Trustees as the agency head is required before the Department may publish proposed rules for eventual adoption. After the Board of Trustees approves publication, the Department will publish the rules in the Florida Administrative Weekly and the public will have 21 days to request a hearing, comment, or challenge the proposed rules. The Joint Administrative Procedures Committee has 30 days to comment. After the 30 days, Department staff will determine if they need to publish a notice of change to the proposed rules. Once the final rules are established, the Department will bring the rules back to the Board of Trustees for final adoption.

Pursuant to sections 253.034(1) and 259.035(1) and (4), F.S., the Council shall recommend rules for adoption by the Board of Trustees that address the Council's procedures for reviewing proposed land management plans and uses for conservation lands titled to the Board of Trustees, and for competitively selecting properties to acquire under the Florida Forever program. In a letter dated October 12, 2005, Division staff apprised the Board of Trustees that we would commence rulemaking to amend chapters 18-1, 18-2, 18-21 and 18-24, F.A.C., to address ten issues raised by the Auditor General's Office and to evaluate four general topics. This agenda item focuses exclusively on Council procedures, addressing one of the general topics (i.e., proposed boundary amendments to Florida Forever land acquisition projects) and two of the ten issues raised by the Auditor General (i.e., updating references to current council and to the most recent acquisition programs). It also includes updates to address revised statutory requirements

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**Substitute Item 2, cont.**

for land management planning and other technical revisions. Other general topics and Auditor General items focus primarily on the land appraisal processes in chapters 18-1, 18-2, and 18-21, F.A.C. Another agenda item will be presented at a future Board of Trustees meeting to address the other issues outlined in the October letter.

The proposed process to amend the boundaries of Florida Forever land acquisition projects is a modified version of a process amended by the Council in 2002. The primary modifications changed the criteria for when a proposed amendment would be considered by the council: (1) the criterion for maximum tax-assessed value was increased from \$500,000 to \$1,000,000; and (2) the criterion for the number of council members needed to request consideration when no other criterion was met was increased from two (for the previous six-member council) to three (for the current nine-member council). Subsequently, the Council discussed at public meetings the potential for further amendments to this process. In 2005, since the policy was completely developed, the Department's Office of General Counsel recommended that it be adopted under the rule making procedures of chapter 120, F.S. The criteria mentioned above were revised council policies that were never officially adopted in rule. During rule development, these criteria were further amended to increase the criterion for maximum tax-assessed value from \$1,000,000 to \$5,000,000 and decrease the criterion for the number of council members needed to request consideration to two, when no other criterion was met.

On behalf of the Council, Division staff conducted a workshop on proposed revisions to sections 18-2.017, 18-2.018, 18-2.021, and 18-24.005, F.A.C., on October 13, 2006. Seventeen people attended the workshop. Additionally, we received written comments from other interested parties independent of the workshop. Based on this collective feedback to the proposed revisions, we prepared a draft proposal for review by the Council. The Council reviewed the draft rules and approved them for submittal to the Board of Trustees at the December 6 and 7, 2006, public hearing and public meeting.

The proposed revisions accomplish the following:

**Section 18-2.017, F.A.C.:**

- Adds new definitions to the rule chapter for "conservation lands," "land acquisition program," and "nonconservation lands."
- Deletes definitions for "C.A.R.L." (Conservation and Recreation Lands), "E.E.L." (Environmentally Endangered Lands), "L.A.T.F." (Land Acquisition Trust Fund), "L.W.C.F." (Land and Water Conservation Fund), and "S.O.C." (Save Our Coast), which are subsumed under the new definition for "land acquisition program."
- Revises the definitions for "Council" to refer to Acquisition and Restoration Council, and for "State Lands Management Plan" to address its adoption date and subsequent amendments.

**Section 18-2.018, F.A.C.:**

- Deletes references to "C.A.R.L.," "E.E.L.," and "L.A.T.F."

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**Substitute Item 2, cont.**

Section 18-2.021, F.A.C.:

- Amends rule to comply with statutory changes to management plan requirements for conservation lands, to distinguish between Council's role and Division's role in reviewing conservation vs. nonconservation lands for potential sublease and surplus lands evaluations, and to specifically address public comments and recommendations of statutorily required advisory groups and land management review teams.

Section 18-24.005, F.A.C.:

- Codifies Council's procedures for evaluating proposed boundary amendments to Florida Forever land acquisition projects, listing application requirements and criteria for when Council will consider proposed amendments, and requiring an on-site evaluation by their staff for proposed amendments that exceed 5,000 acres in size, unless at least four members request its consideration without an on-site evaluation.

(See Attachments 2; Pages 1-14)

**RECOMMEND APPROVAL**

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**Item 3      Antioch Baptist Church of Quincy Florida, Inc. Conveyance/Determination**

**REQUEST:** Consideration of (1) a determination that a 0.38-acre, more or less, parcel of state-owned land in Gadsden 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.; (2) a determination that the property is surplus; and (3) a sales contract under which the Board of Trustees would convey the 0.38-acre parcel to Antioch Baptist Church of Quincy Florida, Inc., a Florida nonprofit corporation.

**COUNTY:**    Gadsden

**APPLICANT:** Antioch Baptist Church of Quincy Florida, Inc., a Florida nonprofit corporation (Church)

**LOCATION:** Township 01 North, Range 04 West

**CONSIDERATION:** \$2,900 to be deposited in the Land Acquisition Trust Fund

<u>PARCEL</u>	<u>ACRES</u>	<u>SA VALUE*</u> <u>(01/25/07)</u>	<u>TRUSTEES</u> <u>SALES PRICE</u>	<u>CLOSING</u> <u>DATE</u>
BOT	0.38	\$2,900	\$2,900	120 Days After BOT approval

\* Pursuant to section 253.034(6)(g), Florida Statutes, a comparable sales analysis (CSA) may be used to determine value for parcels estimated to be less than \$100,000. The Division of State Lands, Bureau of Appraisal staff prepared the CSA for this parcel.

**STAFF REMARKS:** In May of 1969, the Board of Trustees purchased approximately 150 acres for the Bear Creek Recreation Area. This property was managed by the Division of

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**Item 3, cont.**

Recreation and Parks until 1994, when an interagency agreement provided that the Division of Forestry (DOF) would manage the property. The lands are currently managed by DOF as part of the Lake Talquin State Forest under Lease No. 3971.

The Church has requested to purchase the 0.38-acre parcel to consolidate its ownership. The parcel is a narrow strip of mowed centipede grass, approximately 20 feet wide and 822 feet long that bisects the Church ownership. The Church has been maintaining the property for years believing the strip was part of its ownership, which borders the subject to the north and south. Recently, when Church members were discussing plans to build, they discovered that the Church did not own the parcel.

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, 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. On August 11, 2006, the Acquisition and Restoration Council approved the recommendation to surplus the subject parcel. DOF, the current manager, has determined that this small parcel has no value for access to the remaining state lands and no apparent environmental value. The majority of the parcel is separated by Church property to the north and south, and therefore, would be difficult to manage. DOF has agreed to release this parcel from its lease and has no objection to the parcel being surplus. Based upon the foregoing, Division of State Lands' staff is recommending that the Board of Trustees approve this conveyance by making an affirmative determination that the 0.38-acre parcel is no longer needed for conservation purposes and is surplus.

Pursuant to sections 253.034(6)(f)1 and 253.111, F.S., state agencies and Gadsden County governments were notified of the proposed sale and did not express any interest in the parcel. The subject parcel is not located within the city limits, so local government noticing was not applicable.

A consideration of the status of the local government comprehensive plan was not made for this item. The Florida Department of Environmental Protection has determined that surplus land sales are not subject to the local government planning process.

(See Attachment 3, Pages 1-19)

**RECOMMEND APPROVAL**

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**Substitute Item 4     BOT/SJRWMD Acquisition and Ownership Agreement/Bull Creek North Property/Northeast Florida Timberlands and Watershed Reserve Florida Forever Project**

**REQUEST:** Authority to enter into an acquisition and ownership agreement with the St. Johns River Water Management District for the Bull Creek North property, owned by 1621 Venture, LLC, in the Northeast Florida Timberlands and Watershed Reserve Florida Forever project.

**COUNTY:** Clay

**LOCATION:** Sections 01 through 18, Township 06 South, Range 24 East and Sections 34 through 36, Township 05 South, Range 24 East

**STAFF REMARKS:** The Northeast Florida Timberlands and Watershed Reserve project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 27, 2007. The project contains 143,499 acres, of which 52,582 acres have been acquired, or are under agreement to be acquired.

To facilitate the acquisition of this project, the St Johns River Water Management District (District) has offered to take the lead in the acquisition of the entire Bull Creek North property (approximately 6,200 acres). Department of Environmental Protection (DEP) staff has prepared an agreement that would allow the District to acquire the Bull Creek North parcel within the Northeast Florida Timberlands and Watershed Reserve Florida Forever project in accordance with section 259.041(17), F.S., utilizing the procedures set out in section 373.139, F.S. On September 13, 1994, the Board of Trustees approved the use of the District's procedures to allow the District to acquire lands to be held jointly by the Board of Trustees and the District. Pursuant to section 373.139, F.S., the District has identified these parcels as needed for water management, water supply, and the conservation and protection of water resources.

On February 13, 2007, the Governing Board of the District approved and executed the agreement. Incorporated into the agreement are a number of assurances that the District is giving the Board of Trustees in return for its consideration of this agreement. The District has agreed to: (1) comply with the procedures set out in section 373.139, F.S.; (2) defend the Board of Trustees against all title and survey disputes or defects and environmental contamination associated with each acquisition negotiated by the District that were either known or should have been known by the District at the time the District acquired the parcel; and (3) reimburse the Board of Trustees for any overpayment of the purchase price if an audit or investigation determines that the purchase price paid by the Board of Trustees exceeded 50 percent of the actual value.

District staff is finalizing negotiations for the purchase agreement. Pursuant to the proposed agreement, District staff has obtained and is reviewing appraisals in cooperation with the Division of State Lands, has negotiated a purchase contract, and has secured the approval of its Governing Board. The District will provide the Division of State Lands with a board resolution requesting reimbursement of the Board of Trustees' share of the purchase price. DEP staff will seek approval for the Board of Trustees' share of the purchase price of the parcel the District

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**Substitute Item 4, cont.**

contracts to purchase. In addition, the agreement provides for the District, under some circumstances, to be reimbursed 50 percent of all costs associated with its attempt to acquire lands within the project, with the pre-acquisition costs and certain closing costs being reimbursed even if the District is unsuccessful in acquiring any property. If the Board of Trustees approves the purchase, the District will proceed to closing with title to be vested jointly, with the District and the Board of Trustees each holding an undivided 50 percent interest.

The Northeast Florida Timberlands project will be managed by the Department of Agriculture and Consumer Services' Division of Forestry under a multiple-use management regime consistent with the State Forest system.

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

(See Attachment 4, Pages 1-13)

**RECOMMEND WITHDRAWAL**

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**Item 5      The Fisherman's Marina, LLC Recommended Consolidated Intent**

**REQUEST:** Consideration of an application for a modification of a ten-year sovereignty submerged lands lease to increase the preempted area from 10,256 square feet to 54,429 square feet for a commercial marina.

**COUNTY:**      Duval  
Lease No. 160001762  
Application No. 16-261963-001-EI

**APPLICANT:** The Fisherman's Marina, LLC

**LOCATION:** Section 30, Township 01 South, Range 27 East, in the Trout River, Class III Waters, within the local jurisdiction of the city of Jacksonville  
Aquatic Preserve: No  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Yes, slow speed minimum wake within 300 feet of shoreline

**CONSIDERATION:** \$6,942.02, representing the initial lease fee computed at the base rate of \$0.14126 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

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**Item 5, cont.**

payment on the additional area. 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.

**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 lessee is proposing to remove the existing 16-slip commercial marina and construct a new 68-slip commercial docking facility to be used in conjunction with an upland marina. The lease was originally approved by the Board of Trustees on May 4, 1976. The existing lease authorizes the preemption of 10,256 square feet of sovereignty submerged lands. The proposed addition is 44,173 square feet, for a new total of 54,429 square feet. The facility will accommodate recreational vessels ranging from 15 to 40 feet in length, with drafts ranging from 2 to 5 feet.

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. The proposed marina will extend into the Trout River approximately 666 feet, which is approximately 70 feet longer than the existing marina to the southeast. The Trout River is approximately 2,400 feet wide. Although the proposed marina will preempt 27 percent of the width of the river, the U. S. Army Corp of Engineers issued a permit for the 68-slip marina on January 11, 2007 and made the determination that the proposed project will not adversely affect navigation in the area. However, DEP recommends that this expansion represent the maximum length for this facility on sovereignty submerged lands. This recommendation has been addressed as a special lease condition.

DEP staff conducted a site inspection of the existing facility on February 5, 2007 and determined that the lessee is not in compliance with the conditions of the existing lease due to the unauthorized preemption of 4,527 square feet of sovereignty submerged lands. The unauthorized preemption occurred prior to the lessee's acquisition of the facility on November 21, 2005. This violation has been resolved through a Consent Order assessing: (1) 2,263.50 in civil penalties; and (2) \$653.78 in lease fees in arrears for the use of those lands commencing November 21, 2005, the date in which the lessee acquired the property, to present. The Consent Order was signed on February 16, 2007 and total fees of \$2,917.28 were received on February 19, 2007.

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**Item 5, cont.**

DEP's environmental resource permit authorizes sewage pumpout and fueling facilities, and prohibits liveaboards. The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the permit. Duval County is a designated manatee county with an approved manatee protection plan. FFWCC has determined that the proposed project is consistent with the plan. There are no submerged or emergent grasses present in the project area. The proposed project was not required to be noticed pursuant to section 253.115(5)(i), F.S.

The proposed project was modified from the original to provide adequate navigation space between the end of the slips and the riparian line to the south. This gives reasonable assurance that the boats from Fisherman's Marina will not impede/cross the riparian area of the southern neighboring property. The northern neighbor has signed a letter of no objection to the design of Fisherman's Marina. The letter states that she is aware that the boats from Fisherman's Marina may cross her riparian line and activities may be conducted in her riparian area while navigating. Neither the structure nor the lease area extends into the 25 foot setback to the riparian lines; the boat size will be restricted to guaranty compliance with the required setbacks. The boat lengths to the south shall be limited to 30 feet and the boat lengths to the north shall be limited to 40 feet.

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 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 plan as amended according to a letter received from the city of Jacksonville.

(See Attachment 5, Pages 1-27)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS  
AND PAYMENT OF 6,942.01**

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**Substitute Item 6      Island Pointe Marina, LLC Recommended Consolidated Intent**

**REQUEST:** Consideration of an application for (1) a modification of an existing 10-year sovereignty submerged lands lease to (a) combine two existing leases into one lease; (b) reflect a change in upland ownership; (c) decrease the term from 10 years to 5 years; (d) change the use of the docking facility from an open to the public facility to a private residential multi-family docking facility; (e) increase the preempted area from 115,412 square feet to 180,737 square feet; and (f) exceed the preempted area to shoreline ratio; and (2) a 25-year sovereignty submerged lands private easement containing 74,384 square feet, more or less, for an access channel to a private residential multi-family docking facility and commercial marina.



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**Substitute Item 6, cont.**

**COUNTY:** Brevard  
Lease No. 050612274  
Application No. 05-200403-006

**APPLICANT:** Island Pointe Marina, LLC

**LOCATION:** Sections 35, Township 24 South, Range 36 East, In the Indian River, Class III Waters, within the local jurisdiction of Brevard County  
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:** \$27,837.86, representing (1) \$27,837.86 as the initial annual lease fee computed at the base rate of \$0.14126 per square foot, and including the initial 25 percent surcharge payment for the additional area; and (2) 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 lands leases (Nos. 050022844 and 050612274) that authorize 145 slips. Lease No. 050022844 is a 10-year lease for a 47-slip commercial marina, open to the public on a "first-come, first-served" basis, with a preempted area of 27,131 square feet. The 47-slip marina, historically known as Island Pointe Marina, was originally built in 1964 under TIIF State Permit CD-671. The facility was brought under lease in 1998 under Grandfather Registration No. 050006. On March 1, 2002, Lease No. 050022844 was renewed and modified to reflect a change in ownership to Towne Development of Island Pointe, Inc.

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**Substitute Item 6, cont.**

Lease No. 050612274 is a 10-year lease for a 98-slip commercial marina, known as Indian Cove Marina, with a preempted area of 88,281 square feet. Over water structures have been associated with the facility prior to 1951, and the facility was originally brought under lease on June 21, 1984 under Grandfather Registration No. 050013.

All in water structures associated with the two previous sovereignty submerged lands leases have been completely removed as of 2004. The proposed project consists of combining the two existing sovereignty submerged lands leases into one lease and expanding the facility to a total preempted area of 180,737 square feet. The applicant is proposing to reduce the number of authorized wet slips from 145 to 127, for a reduction of 18 wet slips. The current leases authorize the preemption of 115,412 square feet of sovereignty submerged lands. The proposed preempted addition is 65,325 square feet, for a new total of 180,737 square feet. Of the 127 slips, 95 slips will be used exclusively for private multi-family use by the residents of the adjacent Island Pointe Condominiums, and 32 slips for use by the general public on a "first-come, first-served" basis, exclusive of the condo residents. The facility will accommodate private vessels ranging in lengths from 30 to 50 feet with drafts of 3 to 4 feet.

The existing upland development consists of a 185-unit condominium complex, 16 public marina parking spaces, and marina dockmaster building which has been permitted by the St. Johns River Water Management District under permit nos. 40-009-8161-1 and 40-009-8161-2. Sufficient riparian upland interest by the applicant has been demonstrated through a leased strip of land that runs the length of the facility riparian shoreline, 1,329 linear feet. The subject upland lease is for a 99-year term, from Island Pointe Condominium Association of Merritt Island, Inc. (landlord) to Island Pointe Marina, LLC (tenant). The upland leased premises will include all necessary marina facilities including public parking for the public marina slips, dockmaster building, marina retail space, access boardwalk decking, and restrooms. The use of the marina as it relates to "mixed-use" has been clearly outlined in the Declaration of Condominium Documents; article XXXV MARINAS, provided in the backup material.

The proposed preempted area for the entire facility is 180,737 square feet. The proposed preempted area associated with private multi-family use, in conjunction with the upland condo development, is 123,361 square feet, which exceeds the 40 to 1 criteria, using 2,230 linear feet of shoreline, by 34,161 square feet. Pursuant to section 18-21.004(4)(b)2, F.A.C, the applicant has proposed to offset the increase in preempted area greater than 40 square feet of sovereignty submerged land for each linear foot of the applicant's common riparian shoreline, by providing net positive public benefit including: (1) reconfiguring the slip layout to avoid nearshore submerged aquatic vegetation; (2) providing a 32-slip commercial marina on a "first-come, first-served" basis; (3) as a special approval condition, the riparian owner will quitclaim to the Board of Trustees its interest in submerged lands within the project area that may be eligible for a Butler Act disclaimer, and will include these lands within the preempted area that is leased from the State of Florida; (4) as a special approval condition, the applicant will complete a \$25,000 project that contributes to public water access within Sebastian Inlet State Park, or as designated by

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**Substitute Item 6, cont.**

DEP; and (5) as a special approval condition, the applicant will provide a warranty deed to the Board of Trustees for approximately two acres of privately-owned submerged lands in the vicinity of the project.

The applicant is vacating the previously used mooring area located on the north western shoreline of the facility, which provides adequate habitat and water quality for submerged aquatic vegetation. In addition, the applicant will maintain 32 slips open to the public, provide public amenities, and quitclaim Butler Act interest in submerged lands within the marina. The applicant will also provide a warranty deed to the Board of Trustees for two acres of submerged lands in the Indian River, approximately 15 miles north of the project area, which exhibits natural littoral vegetation and submerged resources.

Further, the applicant will complete a \$25,000 public benefit project at the Sebastian Inlet State Park (Park), which is approximately 35 miles south of the Island Pointe Marina. The project will be used to improve boating access at the Park to the Indian River. A need exists at the Park to install channel markers for the access channel leading to and from the Park's marina. The channel is poorly marked with PVC pipes at present. Installing proper markers would enhance boating access to and from the marina, and provide better protection for the aquatic resources in Indian River Aquatic Preserve. The need for the markers is identified in the Park's management plan and DEP's state park boating access study. The applicant has offered to provide additional public benefit by completing the channel marker project. The estimated cost for purchasing and installing the markers is \$25,000. The applicant will be responsible for all costs and work associated with the project. A special approval condition requires the applicant provide a letter reflecting the specifics of the public benefit project agreement, and confirmation of payment funding of \$25,000 to a contractor, for the benefit of the Park.

Pursuant to section 18-21.004(4)(g), F.A.C., a proprietary conservation easement will be placed over the entire shoreline (2,230 linear feet) of the subject parcel to prohibit construction of additional docks in association with private residential docking facilities. This has been included as a special approval condition.

The project also includes placing a sovereignty submerged lands private easement over the existing and historically dredged channel leading into the facility. The easement will extend westward from the western boundary of the lease area, and measure approximately 695 feet long by 84 to 147 feet wide. The proposed easement area was dredged in 1995 under DEP authorization (No. 05-237380-4). Pursuant to section 18-21.011(2)(a), F.A.C., 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. This has been addressed as a special approval condition.

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**Substitute Item 6, cont.**

The proposed project is located on the eastern shore of the Indian River, on Merritt Island, and is not expected to impact seagrasses or other submerged or aquatic resources. Based upon the location of the project, the subject water body features, a reduction of slips from 145 to 127, and water quality data, the applicant has provided reasonable assurance that the standards for Class III waters will not be violated or contributed to. The applicant will provide measures to address and limit water quality impacts, such as sewage pumpout access by each slip occupant, and removal of upland repair and maintenance facilities. DEP's environmental resource permit requires a sewage pumpout facility and prohibits liveaboards. The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) 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 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 Brevard County.

(See Attachment 6, Pages 1-45)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$27,837.86**

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**Substitute Item 7 Sebastian River Boat Tours, LLC Recommended Consolidated Intent**

**REQUEST:** Consideration of an application for a five-year sovereignty submerged lands lease containing 2,782 square feet, more or less, for a proposed two-slip commercial marina.

**COUNTY:** Indian River  
Lease No. 310338103  
Application No. 31-243941 -001

**APPLICANT:** Sebastian River Boat Tours, LLC

**LOCATION:** Section 13, Township 30 South, Range 39 East, in the Indian River, Class III Prohibited Shellfish Harvesting Waters, within the local jurisdiction of the city of Sebastian  
Aquatic Preserve: Yes, Indian River Lagoon, Resource Protection Area 1 and 2  
Outstanding Florida Waters: Yes, Class III

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**Substitute Item 7, cont.**

Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Yes, slow speed year-round

**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 denial of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253 and 258, 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 applicant, Sebastian River Boat Tours, has been in operation in the Sebastian area since early 2001. The applicant provides educational sightseeing tours and private charters along the Indian River Lagoon and St. Sebastian River. Initially, the applicant leased dock space from Hurricane Harbor Restaurant located immediately to the south of the proposed dock location. As the business expanded, the leased space proved inadequate due to lack of appropriate facilities for the patrons of the business and lack of a sovereignty submerged lands lease at Hurricane Harbor. The subject property was a single-family home prior to its purchase by Sebastian River Boat Tours, LLC. On March 23, 2005, Sebastian Entertainment applied to the St. Johns River Water Management District for an environmental resource permit to construct a stormwater management system to serve a 0.51-acre commercial development known as Sebastian River Boat Tours. The authorized construction consisted of a parking area and a stormwater management system.

The applicant proposes to construct a two-slip commercial dock for the mooring of two 48-foot-long pontoon boats with a maximum draft of 18 inches. The application includes the construction of an 81-foot-long by 5-foot-wide extension, to an existing 139-foot-long by 5-foot-wide access walkway, and a 22-foot-long by 7-foot-wide terminal platform. The original application included an ingress/egress route from the proposed mooring area directly east to the Intracoastal Waterway (ICW). This route had water depths ranging from 2.5 to 3.5 feet mean low water (MLW).

DEP's Central District's dive team conducted several seagrass surveys of the area and concluded the ingress/egress route would be considered a Resource Protection Area (RPA) 1 with an estimated average of 70 percent coverage by *Halodule beaudettei*, *Syringodium filiforme*, *Halophila decipiens*, and *Caulerpa prolifera* with an average resource height of 12 inches. Under the originally proposed route, prop scarring from the motor and high volume of boat traffic would have significantly impacted seagrasses and other marine resources in the area. The

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dive team did verify the location of a “muck hole” which is a deeper area with fewer resources than the adjacent areas. The “muck hole” appears to be a result of the shading and scouring impacts from the terminal platform and boat slip that was located at the site prior to the 2004 hurricanes.

The Florida Fish and Wildlife Conservation Commission (FFWCC) provided final recommendations on April 28, 2005. When evaluating boat facility siting proposals, FFWCC uses Manatee Protection Plans (MPP) in the counties that have one to help determine if the effects of the proposed project will be likely to create an accumulation of risks to manatees or their habitat. Indian River County is a designated manatee county with a state-approved MPP. FFWCC determined that the project, as proposed, posed adverse impacts to manatees and was inconsistent with the Indian River MPP.

As initially proposed, the project failed to meet the requirements of rule 18-20, F.A.C. The applicant has worked with DEP and FFWCC to provide a modified project design. The revised proposal included a re-alignment of the mooring area to take advantage of a “muck hole” and the installation of a jack plate to elevate the motor to maintain a maximum draft of 18 inches (motor without jack plate had a 28-inch draft). Additionally, the ingress/egress route was adjusted so that the vessels would head north then east out to the ICW. This route has water depths ranging from 3.5 to 4.7 feet MLW. The new project modifications eliminated mooring over a RPA 1. The revised design has the mooring area located primarily over a RPA 3 with minor encroachments into a RPA 2 around the edges of the “muck hole”. The installation of the “jack plate” and modification to the navigation route from the mooring area to the ICW resulted in an increase of the clearance between the top of the seagrass to the deepest draft of the vessel to a minimum clearance of 12 inches.

FFWCC re-reviewed the modified project and concluded, in a letter dated December 21, 2006, that the modified project remained technically inconsistent with the Indian River MPP. However, FFWCC also stated that the MPP was so closely aligned to the aquatic preserve rules and the Governor and Cabinet have the authority to make final determinations on individual cases, that it would support the Board of Trustees’ final decision for the project.

DEP staff also re-reviewed the modified proposal and concluded that the applicant has not met all applicable requirements for proprietary authorizations to use sovereignty submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, chapters 253 and 258, F.S., and associated chapters 18-21 and 18-20, F.A.C. Specifically:

- the construction of the activity is inconsistent with section 18-20.004(5)(d)3, F.A.C., which prohibits the termination of a docking facility in a RPA 1 or 2. The mooring area as proposed is sited over portions of the Aquatic Preserve that would be considered a RPA 2; and

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- the construction of the activity is inconsistent with section 18-20.004(5)(d)4, F.A.C., which requires that access routes shall be sited to avoid injury to marine grass beds or other aquatic resources. DEP staff agrees that while the modified route would have less of an impact than what was originally proposed, the modified route does not have sufficient clearance to avoid injury to marine grass beds or other aquatic resources.

DEP finds the proposed project to be in the public interest because the applicant agrees to the do the following:

- implement a free education program to take a minimum of 250 kids annually out on the water and educate them about the value of the Lagoon and the Aquatic Preserve;  
plant *Spartina alterniflora* facing the existing vertical seawall along the entire shoreline (103 linear feet);  
donate 0.2 acre of submerged bottoms owned by Sebastian Entertainment, that are located immediately waterward of the vertical seawall at the subject parcel;
- monitor the seagrass along the ingress/egress route annually for the life of the facility. The seagrass monitoring plan would include a baseline survey with transect locations within the route and along lateral lines 100 feet to the north and south of route. Monitoring would comply with the approved procedures for site surveys in the Submerged Lands and Environmental Resource Program, SLER 0945. Annual monitoring would be provided to DEP and would be subject to verification by DEP staff;
- place floating buoys to delineate the ingress/egress route; and
- implement a mitigation plan that complies with the criteria in sections 373.414, F.S., and 62-345, F.A.C., if the results of the monitoring show decreasing coverage or health of seagrass related to the adjacent areas. The Uniform Mitigation Assessment Methodology would use a current condition rating of the seagrass beds prior to installation of the subject commercial dock.

DEP staff has discussed the rule criteria with the applicant, and the applicant has requested that the Board of Trustees approve the proposal as submitted.

The proposed project would be located within the 25-foot setback area on the north side. The north line setback meets exception of section 18-21.004(3)(d), F.A.C., as DEP staff has concluded that locating the mooring area within the setback area is necessary to avoid or minimize adverse impacts to natural resources. DEP has received a letter from the adjacent property owner to the north (Oyster Pointe & Oyster Point Bay Resort) stating it has no objection to the use of its riparian area by the applicant.

Save the Manatee Club (SMC) sent a letter of objection dated August 24, 2006. SMC objected to the issuance of the permit due to non-compliance with rule 18-20, F.A.C., violations of the Indian River Comprehensive Plan, the Indian River County MPP, and adverse impacts to manatees and their habitat.

**Board of Trustees  
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**Substitute Item 7, cont.**

(See Attachment 7, Pages 1-25)

**RECOMMEND DENIAL BASED ON NON COMPLIANCE WITH THE RULE**