AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MAY 15, 2007
Substitute Page

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Substitute Item 1 **Sandler At Greater Marathon Bay, LLC Recommended Consolidated Intent**

REQUEST: Consideration of an application for (1) a modification of an existing five-year sovereignty submerged lands lease to (a) combine two existing leases into one lease; (b) change the use from a commercial docking facility to a private residential multi-family docking facility; (c) increase the preempted area from 200,400 square feet to 236,334 square feet; and (d) exceed the preempted area to shoreline ratio; and (2) authorization for the relocation of one 76-foot-long wave attenuator in the northern basin and installation of one 40-foot-long wave attenuator in the southern basin.

COUNTY: Monroe
Lease No. 440345585
Permit No. 44-00332-P
Application No. 060710-15

APPLICANT: Sandler At Greater Marathon Bay, LLC

LOCATION: Section 10, Township 66 South, Range 32 East, in Florida Bay, Class III Waters, within the local jurisdiction of Monroe County
Aquatic Preserve: No
Outstanding Florida Waters: Yes
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Zone: No

CONSIDERATION: $134,807.17 representing (1) $34,653.55 as the initial annual lease fee computed at a base rate of $0.14126 per square foot, and including the initial 25 percent surcharge payment for the additional area; and (2) $100,153.62 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S. 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 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, South Florida Water Management District (District) 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 land, whether or not the activity qualifies for a permit, the District will issue a "Consolidated Notice of Denial."

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Substitute Item 1, cont.

Project Synopsis:
The proposed project consists of combining two existing sovereignty submerged lands leases into one lease and constructing a 99-slip private residential multi-family docking facility, with 79 slips over 236,334 square feet of sovereignty submerged lands. The applicant is proposing to reduce the authorized number of wet slips in the entire docking facility (including both privately-owned and sovereignty submerged lands) from 115 to 99, for a reduction of 16 slips. The applicant also proposes to increase the preempted area from 200,400 square feet to 236,334 square feet, for an increase of 35,934 square feet. The increase in preemption is due to including the entire area of the enclosed southern basin into the lease area. The facility will accommodate private recreational vessels ranging in lengths from 24 to 70 feet with a maximum draft of 5.6 feet. The applicant also proposes to replace one piling-and-tire wave attenuator with a 70-foot-long by 4-foot-wide rock crib wave attenuator and replace and relocate one piling-and-tire wave attenuator with a 76-foot-long by 6-foot-wide rock crib wave attenuator in the northern basin, and install one 40-foot-long by 6-foot-wide wave attenuator rock crib in the southern basin.

Background:
On December 29, 2004, the South Florida Water Management District issued Environmental Resource Permit Number 44-00332-P authorizing construction of a surface water management system serving a 7.99-acre multi-family residential development that consists of 84 single-family homes and 8 residential flats. No wetland impacts were incurred with project development. On June 28, 2006 a modification to Environmental Resource Permit Number 44-00332-P authorizing construction of a redesigned surface water management system was issued.

The area of the proposed marina reconfiguration, which is the subject of this application, has two current sovereignty submerged lands leases (Nos. 440004095 and 440345585) which were assigned to the applicant on September 30, 2003 and May 24, 2005, respectively. The combined leases authorize 115 wet slips and the preemption of 200,400 square feet of sovereignty submerged lands.

Lease No. 440004095 is a five-year lease for a 34-slip docking facility used in conjunction with an upland mobile home park, with a preempted area of 14,485 square feet of sovereignty submerged lands. The initial lease was approved by the former Department of Natural Resources, under delegation of authority, on December 8, 1992.

Lease No. 440345585 is a five-year lease for a 81-slip commercial docking facility used in conjunction with an upland seafood processing facility, with a preempted area of 185,915 square feet. The marina has operated as a commercial fishing facility since the 1960s. The initial lease, containing 148,539 square feet of sovereignty submerged lands, was approved by the Board of Trustees on November 18, 1980. The lease has been modified over the years, under delegation of authority, to reflect changes in upland ownership and to incorporate unregistered grandfathered structures and associated preempted areas into the lease.

Project Description:
The proposed size of the lease area, pursuant to section 18-21.004(4)(a), F.A.C., exceeds the 40 to 1 criteria, using 2,943 linear feet of shoreline, by 118,614 square feet. Pursuant to section 18-

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Substitute Item 1, cont.

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 lands for each linear foot of the applicant's riparian shoreline by providing net positive public benefit through the donation of: (1) $49,708 to the City of Marathon (City) to provide the balance of funding for the installation of 160 public mooring buoys within the Boot Key Harbor Marina; (2) $30,292 to the City for improvements to two public boat ramps and associated parking (located on Aviation Boulevard and 33rd Street in City); (3) $100,000 to the City for the construction and maintenance of a new boat ramp and associated parking within the City; and (4) $570,000 worth of goods and services to the Department of Environmental Protection's Office of Coastal and Aquatic Managed Areas. Theses goods and services will be used solely to support the installation and maintenance of mooring buoys on sovereignty submerged lands that will be open to the public on a first-come, first-served basis and restoring known recreational areas on sovereignty submerged lands within Florida State Parks and the Florida Keys National Marine Sanctuary in the Florida Keys.

Of the donations made to the City described above, the amount of $100,000 for item (3) will be provided to the City upon issuance of the submerged land lease. The amount of $80,000 for items (1) and (2) has already been given to the City, as these projects were immediately pending and would have been needlessly delayed if this funding had been contingent on lease issuance.

Pursuant to section 18-21.004(4)(g), F.A.C., a proprietary conservation easement will be placed over the entire shoreline (2,943 linear feet) of the subject parcel to prohibit construction of additional docks on sovereignty submerged lands in association with the private residential multi-family docking facility. This has been included as a special lease condition.

The environment resource permit requires a sewage pumpout facility, and prohibits liveaboards and fueling facilities, and the applicant has committed to operate the marina under the Department's Clean Marina guidelines. The recommendations of the Florida Fish and Wildlife Conservation Commission regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. The project is not expected to have adverse impacts to natural resources. The marina configuration has been designed to eliminate impacts to seagrass areas or sensitive benthic communities. Nearshore water quality is expected to improve by replacing existing septic pits with an Advanced Wastewater Treatment Plant and installing a new stormwater treatment system, both of which are consistent with current upland development standards.

The applicant has provided notice of the proposed sovereignty submerged lands lease to adjacent property owners within 500 feet of the proposed project. The District has received correspondence from one individual requesting notice of any proposed agency action. This individual is included on the distribution list for this project. A Letter of Understanding was sent to the property owner acknowledging the proposed development.

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

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Substitute Item 1, cont.

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 Monroe County.

(See Attachment 1, Pages 1-26)

RECOMMEND **APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION, THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF $134,807.17**

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Substitute Item 2 **S-Bay Development, L.L.C. Lease Modification**

REQUEST: Consideration of an after-the-fact application for a modification of a 20-year sovereignty submerged lands lease to (1) reflect a change in upland ownership; and (2) increase the preempted area the preempted area from 94,096 square feet to 121,406 square feet, more or less, for a commercial marina.

COUNTY: Manatee
Lease No. 411045803
Application No. 41-0220401-001

APPLICANT: S-Bay Development, L.L.C.
(d/b/a Sarasota Cay Club)

LOCATION: Section 26, Township 35 South, Ranges 17 East, in Bowlees Creek, Class II Waters, within the local jurisdiction of Manatee County
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: $12,004.87, representing the initial lease fee computed at the base rate of $0.14126 per square foot, discounted 30 percent because 90 percent of he slips are open to the public for rent on a first-come, first-served basis. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. Lease fees may be adjusted based on six percent of the annual income, pursuant to section 18-21.001(1)(a)1, F.A.C.

STAFF REMARKS:

Project Synopsis:
The applicant is requesting after-the-fact authorization for a 27,310-square-foot addition to an existing 94,096-square-foot sovereignty submerged lands lease area containing a 76-slip commercial marina docking facility used in conjunction with an upland condominium hotel. The

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Substitute Item 2, cont.

applicant's request would expand the area under lease to 121,406 square feet. The proposed addition is currently authorized under a Temporary Use Agreement (TUA). The TUA incorporates several mooring areas along a marginal dock and additional mooring area currently being utilized by longer vessels at the main dock.

Background:
The Board of Trustees approved the initial 20-year sovereignty submerged lands lease to Sarajack Corporation, Inc., on March 4, 1986. A modification in 1986 to the original 1985 Department of Environmental Regulation (DER) permit authorized 54 permanent wet slips at the main dock (temporary mooring slips were not counted as slips by DER at that time). However, a total of 78 slips, 58 slips at the main dock and up to 20 transient and temporary mooring slips adjacent to the marginal dock, have been utilized at the facility.

The lease was reassigned to the applicant's predecessor in title, Sarasota Hotel Owners, LP (Sarasota Hotel), upon its acquisition of the riparian upland property on August 28, 1997. During a routine five-year lease compliance inspection conducted on January 8, 2003, DEP staff observed vessels mooring outside the lease area, as well as several structures not shown on the lease survey (inside and outside the lease area). The structures consisted of a 96-foot-long by 7-foot-wide fueling dock and an approximately 450-foot-long by 6-foot-wide marginal dock that are not shown on the original lease survey but were previously permitted by DER in 1985. In addition, the lease survey did not include an approximately 370-foot-long by 6-foot-wide extension to the marginal dock that was not permitted by DER, but is shown in place on a 1987 aerial photograph. There have been no significant changes to the structures since 1987.

It also appeared that many of the slips were occupied by liveaboards, as evidenced by numerous non-water dependent items (e.g., bicycles, grills, exercise equipment) on the docks adjacent to many of the vessels. Liveaboard use was confirmed through conversations with the residents of the marina and the dock master. Examination of an aerial photograph from 1987 revealed that all of the structures presently at the marina existed at that time when the original lessee, Sarajack Corporation, owned the facility. Because the previous owner installed these structures, DEP did not pursue regulatory enforcement against Sarasota Hotel. Sarasota Hotel resolved the non structural violations by payment of administrative fines and lease fees in arrears through a TUA for the period of August 18, 1997 to March 4, 2006.

The applicant assumed ownership of the riparian upland property on May 5, 2005. However, DEP did not learn of the purchase until late in 2005. On June 16, 2006 the applicant entered into a TUA with DEP while its application for a lease modification was being completed. The applicant was paid up on lease fees for the entire preempted area through March 22, 2007, at the time the TUA was executed; so, no fees were collected through the TUA. The current TUA will expire on June 16, 2007.

A compliance inspection on July 6, 2006 revealed that the facility was in violation of regulatory statutes and rules and out of compliance with the terms and conditions of the lease as a result of installation of a floating jet-ski platform without regulatory and proprietary authorization. DEP staff also determined that the facility was again allowing liveaboards within the lease area. The

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Substitute Item 2, cont.

floating vessel platform was removed within 20 days of notification of the violation, and the managers agreed to implement new procedures to provide reasonable assurance that liveaboards would not be permitted at the facility. Those procedures included updating all of their websites and slip rental agreements with language clearly prohibiting overnight occupation of any vessel within the marina for more than 5 consecutive days or for any 10 days in a 30 day period, and instructing all staff and management of the prohibitions. A short form Consent Order was executed between DEP and the applicant on September 9, 2006, in order to resolve the regulatory and proprietary violations at the facility. That order required the payment of $3,000 in penalties, including $1,750 in administrative fines, $1,000 in civil penalties, and $250 in costs and expenses related to the tracking and processing of the case. Follow up inspections on July 31, 2006 and April 7, 2007 revealed that the facility is in compliance with the proposed lease modification.

Project Description:
The upland facilities adjacent to the docks consist of a 178-unit condo-hotel, restaurant, and outside bar. The rooms at the condo-hotel are sold to individual investors, but the rooms are rented on a daily basis by a rental management entity in the same manner as a conventional hotel. The investors receive income from the rental of the unit and may stay at the facility 14 days out of the year. Memberships to the network of Cay Clubs are also available to those individuals whom pay annual dues. Members are given preferred access to many of the amenities and services in the network of hotels including wet slip dockage, dry boat storage (located at a nearby facility), wet-slip dockage, chartering services and watersport rentals.

The applicant maintains that 90 percent of the slips at the marina will continue to be available for rent to the public on a first-come, first-served basis. This requirement has been included as a special lease condition. The applicant also maintains that all of the water-related activities at the Sarasota Cay Club marina are also available to the public on a first-come, first-served basis. The applicant has agreed to a special lease condition which states that the applicant cannot sell a boat slip to the owners of the upland condominium hotel units nor to any other individual and that the purchase of an upland unit or the membership in an affiliated club of the condominium hotel shall not provide any greater right or privilege to rent a boat slip than that offered to the greater general public.

The existing docking facility consists of the main docking structure that extends 560 feet into the waterbody, along with a 916-foot-long by 6-foot-wide (average) marginal dock that runs along the entire length of the seawall of the upland property. The types of vessels currently using the facility are commercial and recreational, ranging from 25 to 55 feet in length with 4-foot drafts.

Water depths at the site are approximately -6 feet at mean low water and are sufficient to preclude vessel propeller dredging of the bottom. There are no benthic resources in the area impacted by the docking facility.

The marginal dock extension is located within the 10-foot setback area on both ends of the docking facility; however, letters of concurrence with the encroachment have been received from the affected adjacent property owners pursuant to section 18-21.004(3)(d), F.A.C.

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Substitute Item 2, cont.

The existing lease prohibits liveaboards and fueling facilities over sovereignty submerged lands, but does allow sewage pumpout facilities if they meet regulatory requirements of DEP. The marina has temporary and fixed pumpout facilities available to their patrons and the general public, as well as fueling facilities on the uplands that service vessels at the marina. The project was not required to be noticed pursuant to section 253.115(5)(i), F.S.

The recommendation of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding protection of manatees has been addressed as a special lease condition.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167 F.S. The Department of Community Affairs (DCA) determined that the plan was in compliance. The proposed action is consistent with the adopted plan according to a letter received from Manatee County.

(See Attachment 2, Pages 1-11)

RECOMMEND APPROVAL OF A ONE-YEAR LEASE SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF $12,004.87

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Substitute Item 3 **Alta Marina, LLC Recommended Consolidated Intent**

REQUEST: Consideration of an application for: (1) a five-year sovereignty submerged lands lease containing 150,985 square feet, more or less, for a private residential multi-family docking facility and a commercial marina; and (2) authorization for the severance of 4,800 cubic yards of sovereignty material.

COUNTY: Lee
Lease No. 360032515
ERP File No. 36-0200793-003

APPLICANT: Alta Marina, LLC, a Florida limited liability company

LOCATION: Section 13, Township 44 South, Range 24 East and Section 18, Township 44 South, Range 25 East, in Billy's Creek and the Caloosahatchee River, Class III waters, within the local jurisdiction of the city of Fort Myers
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, idle/slow speed zone

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Substitute Item 3, cont.

CONSIDERATION: $192,198.11, representing: (1) $26,660.18 as the initial lease fee computed at the base rate of $0.14126 per square foot, and including the initial 25 percent surcharge payment; (2) $12,221.82 as the one-time premium for the private residential multi-family portion of the facility pursuant to section 18-21.011(1)(c), F.A.C.; (3) $40,738.75 as the initial lease fee computed at a negotiated rate of $14.17 per square foot for the area of filled formerly submerged sovereignty lands, and including the initial 25 percent surcharge payment; (4) $101,777.36 as lease fees in arrears for the area of filled formerly submerged sovereignty lands; and (5) $10,800.00 for the severance of 4,800 cubic yards of sovereignty material computed at the rate of $2.25 per cubic yard, pursuant to section 18-21.011(3)(a)2, F.A.C. Sales tax 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 upon receipt of an acceptable survey and legal description.

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

Project Synopsis:
The applicant is requesting a five-year sovereignty submerged lands lease to modify an existing commercial docking facility. The applicant proposes to: (1) change the use of the facility from a commercial marina to a private residential multi-family docking facility and commercial marina; (2) increase the preempted area from 92,935 square feet to 150,985 square feet; and (3) increase the wet slips from 39 to 109. The facility will accommodate recreational vessels ranging in lengths from 30 to 75 feet, with 2 to 4.5 foot drafts.

Background:
On May 30, 1986, the former Department of Natural Resources registered the docking facility as a grandfathered structure (GSR No. 360078). The docking facility and riparian upland property were sold to a successor in title (Balsam Acquisitions, LLC) on November 22, 2002. Alta Mar Development, LLC, acquired title to the docking facility and riparian upland property on March 1, 2004. Because the docking facility was not brought under lease as required by rule, DEP and the applicant entered into a Temporary Use Agreement (TUA) on February 16, 2007 for the area of sovereignty submerged lands preempted by the existing docking facility. The TUA required payment of $33,843.31 as lease fees in arrears for the prior use of sovereignty submerged lands. The applicant paid the lease fees in arrears on February 19, 2007.

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Substitute Item 3, cont.

The applicant has submitted a request to DEP for a Butler Act disclaimer for the existing 11 finger piers totaling 1,320 square feet in Billy's Creek that provide 22 boat slips. The evidence provided does not appear to support a Butler Act claim. If the Butler Act disclaimer is issued for that application, the lease will be modified by DEP pursuant to a delegation of authority to reflect the reduction in lease area.

Upland Development:
The upland property was recently redeveloped into a condominium complex called Alta Mar, with 131 residential units and 1 commercial unit consisting of the dockmaster office. The riparian upland property is owned by Alta Mar Development, LLC, which has entered into a perpetual Marina Easements Agreement (Agreement) with the applicant on February 26, 2004 for operation of the docking facility. The Agreement specifically provides riparian rights to the applicant for the riparian uplands between the condominium and sovereignty submerged lands. It provides in part "rights of pedestrian and vehicular ingress and egress between and among the nearest public right of way, the Marina Parcel, the Dock Master Unit, and certain parking facilities described in the Marina Easement...." The marina parking easement is for 73 vehicle parking spaces on the first floor of the parking garage of the condominium property.

The applicant has submitted to DEP the condominium documents that it is required to file with the Department of Business and Professional Regulation (DBPR) for the project. The Declaration of Condominium document specifically excludes the docking facility and area subject to the Agreement from the condominium. The Declaration of Condominium also states: "Neither the Marina Parcel nor the Marina, if constructed or operated at all, will be a recreational facility or other facility or amenity of the Condominium." It also states that the number of boat slips at the docking facility that may be leased or occupied by unit owners is limited, and that the purchase or lease of a residential unit in the condominium does not guarantee that a unit owner or occupant will be able to lease or occupy a boat slip at the docking facility. The Declaration of Condominium states that 73 parking spaces on the first floor of the development are a limited common element to the Dock Master Unit.

A special approval condition requires the applicant to provide DEP a complete copy of the recorded documents, whether or not those documents are required to be filed with DBPR, prior to receipt of the lease. If DEP determines that any changes to the documents substantively change the relationships shown in the unrecorded draft documents that have been submitted, the special approval condition will require the changes be submitted for Board of Trustees' consideration. Another special approval condition will require DEP approval of the wet slip sales agreement prior to receipt of the lease. To date, DEP has not discovered any boat slips at the facility that have been sold.

Project Description:
The modified docking facility will be operated as a "hybrid" docking facility, with the applicant proposing to: (1) make 58 boat slips available for rent to the general public on a "first-come, first-served" basis; and (2) sell the right to use 51 of the boat slips in conjunction with purchase of a residential condominium unit. Based on the project site's 769 linear feet of shoreline adjacent to sovereignty submerged lands, section 18-21.004(4)(a), F.A.C. (the "40:1 rule") limits

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Substitute Item 3, cont.

the docking facility's preempted area to 30,760 square feet. A special lease condition will require no more than 30,760 square feet be leased, rented or otherwise used by entities having an ownership interest in any residential condominium unit in the Alta Mar development. Slips to be reserved for condominium unit purchasers include 26 slips at Dock B (approximately 15,740 square feet) and the 25 slips in Billy's Creek (approximately 11,050 square feet), for a total of 26,790 square feet that is within the 40:1 rule. A special lease condition will require the lessee to obtain a modified lease prior to any additional boat slips being assigned to entities having an ownership interest in any residential condominium units in the Alta Marina development. Pursuant to section 18-21.011(1)(c), F.A.C., the applicant will be assessed the one-time premium for the private residential multi-slip portion of the facility.

Pursuant to section 18-21.004(4)(g), F.A.C., a proprietary conservation easement will be granted to the Board of Trustees for the entire 769 linear feet of shoreline to prohibit construction of additional docks in association with the upland residential development. This has been included as a special approval condition.

The proposed lease will contain standard and special lease conditions requiring: (1) reporting of income derived directly or indirectly from the use of sovereignty submerged lands on an annual basis; (2) DEP approval of wet slip rental/lease/sales agreements and the collection of revenues due from the rental/lease/sale of such wet slips to ensure compliance with chapter 18-21, F.A.C., regarding fees for the use of sovereignty submerged lands; and (3) maintenance of appropriate financial records pertaining to income associated with the docking facility.

The lease will authorize sewage pumpout facilities but will prohibit fueling facilities and liveaboards. The DEP environmental resource permit will incorporate several requirements designed to prevent and/or reduce water quality impacts, thereby resulting in a net improvement to water quality at the site. As a result, DEP is of the opinion that long-term secondary and cumulative impacts from this project are anticipated to be improved as compared to historic conditions at the site, and that the proposed project will provide a net improvement to water quality in the bay, thereby qualifying for issuance of an environmental resource permit.

The applicant proposes to dredge 4,800 cubic yards of sovereignty material to provide adequate water depth (approximately -4.88 feet mean low water) for mooring vessels. The dredging will increase depths in areas that are currently 2 to 4 feet deep at mean low water. The material to be dredged consists of sand and silt. There are no significant benthic resources in or adjacent to the area proposed to be dredged. The spoil material will be disposed of at an appropriate self-contained upland site. The dredging will occur entirely within the proposed lease. The applicant does not qualify for a waiver of the dredge fee pursuant to section 18-21.011(3)(c), F.A.C.; therefore, a special approval condition requires the applicant to pay the dredge fee to DEP prior to receipt of a fully executed lease.

Through review of historic aerial photographs, current aerial photographs, a historic survey, and the proposed lease survey, DEP staff recently discovered that the applicant's uplands had been extended waterward between 1984 and 1986, apparently due to filling by a predecessor in title.

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Substitute Item 3, cont.

The area encompasses approximately 2,900 square feet of formerly submerged sovereignty lands. Approximately 2,300 square feet exceeds the area allowed by rule for seawall replacements and riprap installation. No record of regulatory authorization from the former Department of Environmental Regulation or Board of Trustees' authorization has been located for that fill and associated seawall.

Pursuant to section 18-21.013(3), F.A.C., the Board of Trustees may pursue the following options in regard to sovereignty submerged lands filled without authorization after June 11, 1957: (1) direct the fill be removed by or at the expense of the applicant; (2) direct the fill remain as state-owned; or (3) sell the filled land. The first option is not recommended because removal of the fill could entail water quality impacts resulting in environmental damage to the area. The second option is typically not recommended by DEP because the location, size and configuration of the parcel as a narrow strip bordering private uplands is not suitable for management by the state for public use. The third option is typically recommended by DEP. However, to facilitate issuance of the lease, the applicant has requested that the Board of Trustees approve the second option.

The unauthorized fill constitutes a non-water dependent activity. Section 18-21.004(1)(f), F.A.C., provides that activities on sovereignty lands shall be limited to water dependent activities only unless the Board of Trustees determines that it is in the public interest to allow an exception as determined by a case by case evaluation. If the Board of Trustees approves the second option as requested by the applicant, DEP recommends that the area be included in the modified lease. The applicant anticipates submitting a request to purchase the filled land, pursuant to section 18-21.013, F.A.C., after the lease is issued. That request would be submitted for Board of Trustees' consideration, and if that request is approved, the lease would subsequently be modified pursuant to a delegation of authority to remove the filled area from the lease.

Section 18-21.011(1)(b)6, F.A.C., provides that the annual lease fees for non-water dependent uses shall be negotiated. The negotiated annual lease fee must consider the appraised market rental value of the riparian upland property and the enhanced property value, benefits, or profit gained by the applicant if the proposed lease is approved. The applicant has not provided DEP with an appraisal showing these values. However, the Lee County Tax Collector's record shows the per square foot taxable value of the riparian upland property (less improvements) was assessed at $1,637,500 in 2004 or approximately $12.65 per square foot. The 2005 value was $1,834,000.00 or approximately $14.17 per square foot. If the Board of Trustees assessed the annual lease fee for the filled area at $14.17 per square foot, which is comparable for commercial properties in the area, the annual lease fee for the 2,300-square-foot portion of fill would be $32,591.00 ($2,715.92 per month).

In light of the benefit to the applicant from the Board of Trustees allowing the fill to remain, DEP recommends that the Board of Trustees assess the annual lease fee for the 2,300-square-foot unauthorized fill at $14.17 per square foot, to be adjusted annually based on the change in the Consumer Price Index. If the Board of Trustees allow the fill to remain, a special approval condition will require the applicant to provide an acceptable survey and legal description of that

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Substitute Item 3, cont.

area. The maximum area allowed to be preempted by the private residential multi-slip portion of the facility portion of the docking facility may be adjusted based on the linear footage of shoreline that existed prior to the unauthorized filling. Another special approval condition will require the applicant to pay lease fees in arrears for the fill based upon the annual lease fee rate methodology recommended by DEP.

The current lease request was not required to be noticed due to an exemption for leases for registered and unregistered grandfathered facilities pursuant to section 253.115(5)(g), F.S.

On November 30, 2004, the Florida Fish and Wildlife Conservation Commission (FFWCC) stated no objection to the proposed project contingent upon the applicant: (1) complying with the standard manatee protection construction conditions; and (2) developing a manatee educational program. On April 10, 2007, FFWCC confirmed the applicability of its original comments. These recommendations are incorporated in DEP's environmental resource permit. Additionally, a special lease condition will require the lessee to ensure that the user/purchaser of any slip at the docking facility enters into a signed agreement, between the lessee and the user/purchaser, stating that the slip user/purchaser agrees to comply with all local, state and federal manatee protection speed zones. Lee County is a designated manatee county with an approved manatee protection plan. The proposed project is consistent with the plan according to FFWCC.

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

(See Attachment 3, Pages 1-50)

RECOMMEND **APPROVAL OF A LEASE FOR THE DOCKING FACILITY AND UNAUTHORIZED FILL SUBJECT TO THE SPECIAL APPROVAL CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF $192,198.11**