

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**JUNE 12, 2007**  
**Substitute Page**

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**Item 1            Minutes**

Submittal of the Minutes from the February 27, 2007, March 13, 2007, April 17, 2007 and May 1, 2007 Cabinet Meetings.

(See Attachment 1, Pages 1-42)

**RECOMMEND APPROVAL**

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**Substitute Item 2    Chapters 18-1, 18-2 and 18-21, F.A.C., Notices of Proposed Rulemaking**

**REQUEST:** Consideration of a request to publish three Notices of Proposed Rulemaking regarding amendments to chapters 18-1, 18-2, and 18-21, F.A.C., that will update and clarify appraisal procurement procedures and modify appraisal requirements for private easements. Current rule provisions will also be clarified and updated.

**COUNTY:** Statewide

**APPLICANT:** Department of Environmental Protection, Division of State Lands

**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 of Environmental Protection (DEP) may publish proposed rules for eventual adoption. After the Board of Trustees approves publication, DEP will publish the rules in the Florida Administrative Weekly, and the public will have 21 days to request a hearing, comment on, or challenge the proposed rules. The Joint Administrative Procedures Committee has 30 days to comment. After the 30 days, DEP staff will determine if they need to publish a notice of change to the proposed rules. Once the final rules are established, DEP will bring the rules back to the Board of Trustees for final adoption.

On October 12, 2005, DEP, Division of State Lands (DSL) staff notified the Board of Trustees that DEP was proposing to enter into rulemaking to amend chapters 18-1, 18-2, 18-21, and 18-24, F.A.C. Proposed revisions to chapters 18-2 and 18-24, F.A.C., were approved for publication by the Board of Trustees on April 17, 2007, regarding Acquisition and Restoration Council boundary amendment procedures. At this time, revisions will focus on chapters 18-1, 18-2, and 18-21 for the purposes of responding to appraisal related issues in the June 2005 operational audit by the Auditor General's office, as well as to the need for updating and clarifying the implementation of statutes and policies adopted by the Board of Trustees for land acquisition, disposition, and management.

DSL staff conducted a workshop on proposed revisions to chapters 18-1, 18-2, and 18-21 on January 26, 2007; 14 people attended. There were no public comments made at the workshop related to the proposed changes. As those rules were developed, it became clear that it may be

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**Substitute Item 2, cont.**

necessary to open every rule in chapter 18-1, to update and clarify them. Therefore, on May 4, 2007, an amended Notice of Rule Development for 18-1 was published in the Florida Administrative Weekly. An amended Notice of Rule Development for 18-21 was published in the Florida Administrative Weekly on May 21, 2007, for proposed changes to 18-21.004.

The proposed revisions are to accomplish the following:

Chapter 18-1 (State Land Acquisition Procedures) has not been updated or amended since the 1980's. This was prior to the establishment of the Florida Real Estate Appraisal Board, which regulates the appraisal profession. Proposed revisions include all the individual rules, but especially to:

- clarify appraisal related language by adding, deleting, or amending definitions;
- add references to chapter 259, F.S., for conservation lands procedures;
- incorporate the "*Supplemental Appraisal Standards for Board of Trustees Land*" (Supplemental Standards) by reference;
- reduce redundancy and inconsistency between statute, the Supplemental Standards, and the current rule, which, to the extent practicable, need to conform to technical changes of the Appraisal Foundation, as published in the current edition of the "*Uniform Standards of Professional Appraisal Practice*", 2006;
- update appraiser selection procedures to reflect current practices, to ensure appraisal services are obtained efficiently and at the lowest reasonable cost, while not sacrificing quality or violating competency in the services received;
- update general requirements for land acquisition; and
- add the requirement that cooperating agencies under acquisition agreements follow DSL's procedures and chapter 18-1.

Chapter 18-2 (Management of Uplands vested in the Board of Trustees) includes proposed revisions, as follows:

- update terminology and definitions;
- add and clarify appraisal procedures;
- incorporate appraisal references to chapter 18-1 for consistency with other chapters, and to establish and clarify appraiser selection procedures and the appraisal process;
- incorporate by reference the "*Supplemental Appraisal Standards for Board of Trustees Land*" and the "*Uniform Standards of Professional Appraisal Practice*" to assure professional standards of appraisal work for disposition and management decisions;
- provide a cost effective means of appraising the value of small, scattered platted lots of vacant land vested in the Board of Trustees where the cost of the appraisal can be higher than the value of the property; and
- add the requirement that the sale of surplus land, with an estimated value in excess of \$100,000, take into consideration an appraisal.

**Board of Trustees  
Agenda - June 12, 2007  
Substitute Page Three**

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**Substitute Item 2, cont.**

Chapter 18-21 (Sovereignty Submerged Lands Management), proposed revisions are to:

- add appraisal references to chapter 18-1 for consistency with other chapters, and to establish and clarify appraiser selection procedures and the appraisal process;
- update fee formulas to reflect current year multipliers;
- provide a more cost effective means for applicants seeking private single-family residential easements;
- clarify the cost for the renewal of easements across sovereignty submerged lands, where the use and size of the easement remains unchanged, will not include any enhancement value;
- to provide that certain significant changes trigger a new application, and
- to conform the filled lands rule to statutory changes.

In addition, this item incorporates the DEP's "*Supplemental Appraisal Standards for Board of Trustees Land*" that supplements the national "*Uniform Standards of Professional Appraisal Practice*", by setting forth the professional standards unique to the needs of the Board of Trustees. The Supplemental Standards are included for the Board of Trustees consideration, as these will be incorporated, by reference, if the Board of Trustees adopts the proposed rules.

Originally titled the "*Supplemental Appraisal Standards for Board of Trustees Land Acquisitions*", they have been used for acquisition appraisal work since the late 1970's or early 1980's. The word "Acquisition" has now been deleted from the title in order to expand the appraisal standards to cover issues present in the appraisal services for management decisions, such as dispositions, leases, and easements, as referenced by chapters 18-2 and 18-21. These Supplemental Standards are incorporated by reference in all three chapters being revised.

(See Attachment 2, Pages 1-83)

**RECOMMEND APPROVAL**

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**Substitute Item 3     McDonald Option Agreement/OGT/Marjorie Harris Carr Cross  
Florida Greenway Project**

**REQUEST:** Consideration of an option agreement to acquire 73.8 acres within the Marjorie Harris Carr Cross Florida Greenway project from Juanita McDonald.

**COUNTY:** Marion

**LOCATION:** Sections 08 and 17, Township 14 South, Range 24 East

**CONSIDERATION:** \$996,000

**Board of Trustees  
Agenda - June 12, 2007  
Substitute Page Four**

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**Substitute Item 3, cont.**

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY	<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>OPTION DATE</u>
		Waller (10/17/05)				
Juanita McDonald	73.8	\$996,000	\$996,000	unknown *	\$996,000** (100%)	120 days after BOT Approval

\* Property has been owned by McDonald family members since 1880's

\*\* \$13,496 per acre

Noted Features related to the appraised value of the McDonald Parcel, Marion County:

The subject is located in northeastern Marion County, adjacent to the Marjorie Harris Carr Cross Florida Greenway and the Ocala National Forest;

The Zoning and Land Use is agricultural, allowing a maximum of one dwelling unit per ten acres;

The land includes 71.5 acres of uplands and 2.3 acres of wetlands;

Value is based on a price per acre for agricultural and rural residential use;

The property includes a 0.20-acre access easement in favor of Mubar Investments, Inc. This easement runs along the edge of the subject and does not affect value;

An Indian mound is situated on the eastern portion of the property. Due to the small size of the mound in relation to the low density zoning of the subject, there is no impact on value; and

The property includes a 1920's, Florida Cracker House and ancillary structure, that have no impact on value.

**STAFF REMARKS:** The Marjorie Harris Carr Cross Florida Greenway McDonald Addition project has been identified on the Department of Environmental Protection (DEP), Office of Greenways and Trails (OGT), Florida Forever approved acquisition list. DEP, Division of State Lands, on behalf of OGT, negotiated this acquisition under the Florida Forever Greenways and Trails program. If the Board of Trustees approves this agreement, the project will be complete.

**Federal Acquisition Procedures**

This property is being acquired using federal acquisition procedures in accordance with the Federal Intermodal Surface Transportation Efficiency Act and the Code of Federal Regulations Title 49. On June 22, 1999, the Board of Trustees approved a recommendation to substitute the land acquisition procedures of the Federal Highway Administration for the State of Florida's procedures outlined in section 259.041, F.S., for the projects that qualify for federal enhancement funding, as administered by the Florida Department of Transportation. Under the federal guidelines, DEP is required to disclose the full appraised value of the parcel at the beginning of negotiations.

**Project Summary**

This acquisition is important because it borders the Marjorie Harris Carr Cross Florida Greenway (CFG) and provides direct, paved-road access to an otherwise inaccessible portion of the CFG. The parcel's condition and location also make it possible for development as a trailhead. A Native American Indian mound and 1920's Florida Cracker House add historical value to the parcel and will be preserved and utilized for educational programs.

**Property Description**

The northern boundary of the property borders the CFG, a unique conservation and recreation project managed by OGT. Traversing Citrus, Levy, Marion, and Putnam Counties, the 110-mile greenway occupies much of the land that was formerly the Cross Florida Barge Canal. The Ocala National Forest borders the western side of the property.

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**Substitute Item 3, cont.**

The subject property consists of old fields, pastures, and large areas of both mesic and mixed hardwood hammocks. It also contains areas of second growth, long leaf pine. Although this is a predominately upland parcel, it contains 2.3 acres of wetlands; including a spring located in the northwest portion of the property, with a run flowing through an undisturbed mesic hammock into Cedar Creek. A biological field inspection report on the parcel revealed several active gopher tortoise burrows and based on this observation, approximately 10 to 12 tortoises might exist within the parcel boundary.

Along with its ecological value, a Native American Indian mound and a 1920's Florida Cracker House with an associated ancillary structure, adds historical value to the parcel. OGT plans to preserve and manage the improvements for interpretive and educational purposes. A reported archaeological site known as the Buck McDonald mound, site number 8MR00145, is located on the property. The mound measures approximately 240 feet in circumference, and is relatively undisturbed due to the McDonald family's protection through the years. If acquired, OGT would coordinate with the Department of State, Division of Historical Resources to survey the property.

The parcel has direct paved road access off of Highway 314 on NE 146<sup>th</sup> Avenue to an otherwise inaccessible section of the CFG. The size, location, and condition of the parcel give it a high potential for a multi-use trailhead, or access point, to get along the Ocklawaha River and will accommodate paddling, hiking, and biking uses.

**Encumbrances**

A perpetual, non-exclusive 10 feet wide access easement for ingress and egress purposes in favor of Mubar Investments, Inc., a Florida Corporation, exists on the edge of the northeastern section of the property. Noted the administrative review of the appraisal, this 0.20-acre easement is typical of properties near and within the Ocala National Forest, and does not adversely impact the value of the property.

**Closing Information**

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

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

**Florida's Statewide Greenways & Trails System**

The major components of the Florida Statewide Greenways and Trails Program were established through a legislatively adopted plan. This plan was developed through the work and consensus of a broad range of groups and stakeholders, such as recreational users, conservation groups, and private landowners. The foundation for its development consisted of various legislative actions and efforts which occurred throughout the more than 20 years prior to its adoption in 1999. OGT is charged with overseeing the establishment of the statewide system of greenways and trails, in coordination with the Florida Greenways and Trails Council (Council).

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**Substitute Item 3, cont.**

One important component of the Florida Greenways and Trails Program is the identification of ecological and recreational connections (opportunity areas) throughout the state. These areas have been identified, mapped, prioritized, and are the basis for developing and evaluating acquisition projects.

**OGT's Application Process**

Applicants apply for OGT's 1.5 percent (\$4.5 million) annual allocation of Florida Forever funding through an application process. The applicants must meet criteria specified by chapter 260, F.S., and detailed by rule in chapter 62S-1, F.A.C. Applications are initially reviewed by OGT staff and biologists and then forwarded to the Council for review and approval. The Council consists of 21 members, as outlined in chapter 260, F.S. At a public meeting, the council evaluates the projects before recommending a final acquisition list. The list is then forwarded to the Secretary of DEP for final approval.

In order to be eligible, applicants must apply for and receive a Certificate of Eligibility. A Certificate of Eligibility is approved by OGT staff if: (1) the proposed project meets the definition of a greenway or trail, as defined in chapter 260, F.S.; (2) the planned project corridor is located within or adjacent to at least one opportunity segment on one or more of the Recreational Prioritization Maps; (3) at least 80 percent of the planned project corridor has a landowner willing to negotiate; and (4) the project has a willing manager. Once the Certificate of Eligibility is approved, the project application may be submitted to OGT during an open cycle period. Proposed projects are evaluated based on the following criteria: (1) the rank (high, medium, or low) assigned to the project based on the Recreational Prioritization Maps; (2) percentage of any matching funds available or committed to the project; (3) the percentage of acreage that is proposed for less-than-fee acquisition; (4) ecological values; (5) recreational attributes; and (6) historical and cultural resources.

OGT will be the long term manager of the property and will manage as part of the Marjorie Harris Carr Cross Florida Greenway.

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

(See Attachment 3, Pages 1-52)

**RECOMMEND APPROVAL**

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**Item 4      Volusia County Option Agreement/DACS/DOF/Lake George State Forest Additions and Inholdings Project**

**REQUEST:** Consideration of an option agreement to acquire 1,162.29 acres within the Department of Agriculture and Consumer Services, Division of Forestry's Lake George State

**Board of Trustees  
Agenda - June 12, 2007  
Page Seven**

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**Item 4, cont.**

Forest Additions and Inholdings project from Volusia County, a political subdivision of the State of Florida.

**COUNTY:** Volusia

**APPLICANT:** Department of Agriculture and Consumer Services, Division of Forestry

**LOCATION:** Section 36, Township 14 South, Range 27 East and Sections 04, 05, 07, 08 and 18, Township 15 South, Range 28 East

**CONSIDERATION:** \$2,800,000

PARCEL	ACRES	APPRAISED BY		APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
		String (12/20/06)	Goodman (12/20/06)				
Volusia	1,162.29	\$3,020,000	\$3,000,000	\$3,020,000	\$2,630,000*	\$2,800,000** (93%)	120 days after BOT approval

\*Volusia County purchased the property on January 27, 2006 for \$2,630,000

\*\*\$2,409 per acre

**Noted Features:**

The neighborhood is located in unincorporated Volusia County with land devoted to cattle ranching, pine timberland, outdoor recreation, and limited residential development;

Zoning and land use is resource corridor and forestry resource, which allows agriculture, silviculture, recreation, and low density residential uses. Value is based on resource corridor and forestry resource land use with little threat of near term (next 5 +/- years) residential development;

The property includes two non-contiguous tracts of land totaling 1,162.29 acres: 301.00 acres are uplands (26%) and 861.29 acres are wetlands (74%);

The appraisers indicate there is no impact on market value as a result of the oil, gas, and mineral rights reservations, since the majority of the land is wetlands and agricultural use with little likelihood of any near-term development; and

The more northern tract is accessed from Shell Harbor Road, a county maintained, paved road. The more southerly tract is accessed from Volusia Bar Road, a county maintained, unpaved, stabilized road.

**STAFF REMARKS:** This acquisition was negotiated by Department of Agriculture and Consumer Services, Division of Forestry (DOF) under its Florida Forever Additions and Inholdings Program.

**Project Summary**

In the past five years, DOF has made efforts to acquire this property from the previous owner, Florida Power Corporation and its subsequent corporate entities, but negotiations were not successful. Volusia County was able to acquire the tract in January 2006, which now allows DOF the opportunity to purchase this property from Volusia County. Volusia County will utilize the proceeds of this sale to the Board of Trustees to replenish its environmental acquisition funds in its Volusia Forever Conservation Program.

**Property Description**

This parcel is bordered on the west by Lake George and on the east by Lake George State Forest. Acquiring this property will provide additional protection to the watershed area around Lake

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**Item 4, cont.**

George. This acquisition also affords natural resource conservation and expanded outdoor recreational opportunities under the multiple-use management regime practiced by DOF. Lake George State Forest offers many recreation opportunities including fishing, picnicking, and a three-quarter mile interpretive nature trail. While there is no boat ramp available, canoes and small jon boats may be launched from the bank. Fishing is also available at Jenkins Pond. Hikers, bicyclists, and equestrians are welcome on roads, designated trails, and permanent fire lines.

Lake George State Forest is primarily comprised of slash pine, longleaf pine, bottomland hardwoods, and interspersed cypress and bay depressions. Lake George State Forest is one of several publicly-owned tracts of land encircling Lake George, the second largest lake in Florida. The St. Johns River borders three and one-half miles of the forest and provides a wealth of ecologically valuable communities, as well as river-based recreation. The surrounding landscape of the forest contributes to water resource protection of the Lake George watershed and aquifer recharge. Wildlife that makes their home on the forest include: bald eagle, sandhill crane, white-tail deer, wild turkey, bobcat, and gopher tortoise. Lake George State Forest is also part of an extensive wildlife corridor that provides habitat and roaming area vital to the survival of the black bear population in the area

**Encumbrances**

The property is encumbered by an outstanding oil, gas, and mineral reservation in favor of third parties, who will not relinquish these rights. The letter provided by the Department of Environmental Protection's (DEP), Division of Resource Assessment and Management, Florida Geological Survey states the surface and near-surface sands may hold limited potential for fill. There are two county maintained roads, Volusia Bar, and Shell Harbor Road/Jones Hammock Road, that run east and west through the property. In addition, there is a Special Assessment Lien filed on this property for the purpose of road paving. Volusia County's portion of the assessment for this property is \$3,451.62. Volusia County will pay and extinguish this assessment prior to closing. These conditions are reflected in the value. The valuation of the property does not include any land below the Ordinary High Water Line of Lake George. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. DEP staff will review, evaluate, and implement an appropriate resolution for these and any other title issues that arise prior to closing.

**Closing Information**

All mortgages and liens will be satisfied at the time of closing.

An environmental site assessment, a title insurance policy, and a survey will be provided by DOF prior to closing.

**Management**

The parcel will be managed by DOF as an addition to the Lake George State Forest.



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**Item 4, cont.**

This acquisition is consistent with section 187.201(22), F.S., the Agriculture section of the State Comprehensive Plan.

(See Attachment 4, Pages 1-35)

**RECOMMEND APPROVAL**

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**2<sup>nd</sup> Substitute Item 5**      **BOT/City of West Palm Beach/Exchange/Determination/  
Substitution/Waiver**

**REQUEST:** Consideration of (1) a proposal to exchange a 24.59-acre parcel of sovereignty submerged lands ("Parcel A") for an adjacent 8.94-acre parcel of submerged lands in Lake Worth owned by the City of West Palm Beach ("Parcel B"); (2) a determination, in accordance with Article X, Section 11, Florida Constitution, that the sale and conveyance of the Parcel A to the City of West Palm Beach is in the public interest; (3) the substitution of other reasonably prudent acquisition procedures for those contained in Section 259.041, F.S., provided the public's interest is reasonably protected, in accordance with Section 259.041(1), F.S., and (4) the waiver of any contrary acquisition procedures contained in chapter 18-1, F.A.C.

**COUNTY:** Palm Beach

**APPLICANT:** City of West Palm Beach (City)

**LOCATION:** Section 22, Township 43 South, Range 43 East

**STAFF REMARKS:** The Department of Environmental Protection's (DEP), Division of State Lands (DSL) has received a request from the City to exchange Parcel A in Lake Worth, for Parcel B, which is immediately south of and adjoining Parcel A. Parcel B is part of a larger parcel conveyed to the City by Board of Trustees' Deed No. 22754 (801-40) in 1961 and Board of Trustees' Deed No. 23049(801-50) in 1962.

**Parcel A: Background and Project Description**

Parcel A encompasses 24.59 acres which extends from the existing bulkhead on the western boundary to the legal limit of the channel on the eastern boundary, and approximately 1,500 feet south from the Flagler Memorial Bridge. A portion of Parcel A is currently being used as the Palm Harbor Marina with 160 wet slips, none of which are owned by individual owners in the Waterview Towers Condominiums on the nearby upland property.

In the 1990s, the City sought ownership of the dredged sovereignty submerged lands surrounding the Marina through the Butler Act. The claim was denied by the Florida Supreme Court in *City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund, et al.*, 746 So. 2d 1085 (Fla. 1999); however, the existing 41,842-square-foot footprint of the docks qualifies for

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**2<sup>nd</sup> Substitute Item 5, cont.**

a disclaimer under the Butler Act. The City has never requested a disclaimer and DEP's Office of General Counsel recognizes that the Board of Trustees could not assert title to this portion of the submerged land.

The City proposes to reconfigure, update and expand the existing facility to 165 total new wet slips and, as part of the exchange transaction, has agreed to a deed restriction being placed on Parcel A requiring that at least 50 percent of the 165 total new wet slips will be open to the public on a first-come, first-served basis pursuant to chapter 18-21, F.A.C. Any fees associated with the Palm Harbor Marina in arrears will be waived as part of this exchange.

**Parcel B: Project Description**

Parcel B is 8.94 acres of submerged land that lie immediately south of Parcel A in Lake Worth abutting City-owned uplands. The City's proposed waterfront revitalization project in this area will be known as Waterfront Commons (Commons) and will create one mile of waterfront accessible to the public for recreation, education and public events. The upland portion of the Commons will provide the public with extensive sidewalks; a beach area with stair steps leading to a landing at water level; a 3,000 square foot pavilion; and approximately 25,000 square feet of lawns, gardens and fountains. The submerged land portion of the Commons will have three floating day-docks with 33 total slips, all of which will be open to the public on a daily basis only for access to the uplands. Construction is scheduled to begin in September 2007 with an anticipated completion date of November 2008. The estimated cost of the Commons will be \$22,500,000. The City anticipates that its share of the revenues from the marina facility to be constructed on Parcel A will be earmarked for the maintenance and operations of the Commons.

Two of the proposed docks would extend beyond the boundary of Parcel B thus requiring a sovereignty submerged land lease. An application for the lease has been approved and is pending the outcome of this exchange. If the exchange is approved and Parcel B is transferred to state ownership, the proposed fee-waived lease will be modified to encompass the three docks and associated preempted area. A separate lease will also be issued to the City by DSL under its delegation of authority for the northernmost approximately 20,000 square feet of Parcel B, that is currently leased to Palm Harbor Marina by the City, and will be subject to standard lease fees pursuant to section 18-21, F.A.C.

**Exchange Components**

An additional component of the exchange requires that the City will dedicate \$600,000 towards improvements to public water access facilities for canoes and kayaks in Grassy Water Preserve (Preserve). The Preserve, which is located in the Loxahatchee Slough, consists of wet pine flatwoods, swamps, marshes, wet prairies and cypress domes. It is part of the Northeast Everglades Natural Area (NENA), which is a network of conservation lands, natural areas and parks extending from the Atlantic Ocean to Lake Okeechobee in Martin and Palm Beach counties. The \$600,000 worth of water access improvements will include a canoe/kayak facility and canoe portages, boardwalks and non-dredged canoe trails. Preserve improvements will be centrally located within the NENA where paddlers can launch to reach Jonathon Dickinson State Park to the north and Lake Okeechobee to the west.

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**2<sup>nd</sup> Substitute Item 5, cont.**

Staff is requesting that the Board of Trustees (1) determine that the public's interest will be protected with the substitution of sections 259.041(6), (7), and (9), F.S., for other reasonably prudent procedures; and (2) waive the survey requirements under chapter 18-1.005, F.A.C. The following actions will be taken and deed restriction language utilized to protect the public's interest. The City will conduct a title search on Parcel B to verify that there are no liens or encumbrances and will convey Parcel B to the Board of Trustees by no less than a special warranty deed. The deed conveying Parcel A to the City shall contain deed restrictions and reverter language as summarized below:

- At least 50 percent of the 165 total new wet slips will be to be open to the public on a "first-come, first-served" basis pursuant to chapter 18-21, F.A.C.,
- The City will expend \$600,000 towards improvements to public water access facilities for canoes and kayaks in Grassy Water Preserve on or before June, 2011, at which time the City will provide DSL with a complete accounting of the expenditures,
- The property shall be used solely for water dependent activity as defined in section 18-21.003(66), F.A.C.
- No fill of any kind shall be placed on the property;
- Grantee shall not discriminate; and
- Grantee shall prohibit the operation of or entry onto the property of gambling cruise ships, or vessels,

or the property will revert at the option of and to the Board of Trustees. The deed restrictions must be in a form acceptable to DSL. To ensure that these deed restrictions are adhered to and that the City is in compliance, the City shall submit an annual certification to DSL stating that the restrictions have been followed. This certification requirement shall also be included as a special lease condition in the City's two leases for the submerged lands they are obtaining as a result of the exchange. In addition, the Board of Trustees shall retain all oil, gas and mineral interests on Parcel A and the City shall convey to the Board of Trustees all oil, gas and mineral interests on Parcel B at closing.

Article X, section 11 of the Constitution of the State of Florida states, in part, that sale of sovereignty submerged land may be authorized by law, but only when in the public interest. Section 253.03, F.S., authorizes such a sale of sovereignty submerged lands and staff is recommending that the Board of Trustees determine the exchange to be in the public interest because the public will benefit from improved and expanded water access by: (1) expanded marina facilities on Parcel A with 50 percent of the 165 total new wet slips open to the public on a first-come, first-served basis; (2) 33 public wet slips at the Commons' day-docks; (3) better Preserve facilities for canoe and kayak paddlers, funded as part of the transaction, and (4) the creation of one mile of waterfront accessible to the public for recreation, education and public events. The exchange will also result in the Board of Trustees holding 100 percent of the oil gas and mineral interest in both Parcel A and Parcel B.

Due to the historical docks and mooring at the existing marina on Parcel A, there is only a small patch of seagrass at the south end of the parcel. Parcel B, however, has a more abundant amount of mixed seagrasses in several areas running along the seawall.

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**2<sup>nd</sup> Substitute Item 5, cont.**

In accordance with section 253.115, F.S., property owners within 500 feet of the subject property were notified of the proposed exchange. No objections were received.

The acquisition of the City parcel is consistent with section 187.201(7), F.S., the Water Resources Section of the State Comprehensive Plan.

(See Attachment 5, Pages 1-9)

**RECOMMEND DEFERRAL**

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**2<sup>nd</sup> Substitute Item 6      City of West Palm Beach Lease**

**REQUEST:** Consideration of an application for (1) a 10-year sovereignty submerged land lease containing 114,350 square feet, more or less, for a 33-slip public day docking facility, used in conjunction with upland public facilities and boardwalk; and (2) waiver of lease fees.

**COUNTY:**      Palm Beach  
                    Lease No. 500337516  
                    Application No. 50-0228398-002

**APPLICANT:** City of West Palm Beach (City)

**LOCATION:** Section 22, Township 43 South, Range 43 East, in the Lake Worth Lagoon, Class III Waters, within the local jurisdiction of the city of West Palm Beach  
Aquatic Preserve: No  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, without an approved Manatee Protection Plan, but with significant progress  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Yes, slow speed year-round

**CONSIDERATION:** The project qualifies for a waiver of lease fees pursuant to section 18-21.011(1)(b)7, F.A.C., which states that fees may be waived for government entities that are either not-for-profit or non-profit uses when the revenues are used for operation and maintenance for the structure and the activity is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor.

**STAFF REMARKS:**

**Project Synopsis**

The City is proposing to install a 33-slip public docking facility consisting of three piers and a marginal floating walkway along a portion of the shoreline, which will preempt 114,350 square

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**2<sup>nd</sup> Substitute Item 6, cont.**

feet, for temporary day docking and access to upland public amenities including sidewalks, lawns, gardens, fountains, and a pavilion known as the West Palm Beach Commons. Upon construction 100 percent of all of the slips will be maintained on an open-to-the-public first-come, first-served basis, which is a special condition of the lease. Overnight mooring will not be allowed at the facility and a special lease condition will be included in the lease to ensure compliance.

**Background**

The Department of Environmental Protection (DEP), Division of State Lands (DSL) has received a request from the City to exchange approximately 25 acres of sovereignty submerged land (Parcel A) in Lake Worth Lagoon, for approximately 8.94 acres of City-owned submerged land (Parcel B) immediately south of Parcel A. Parcel B is part of a larger parcel conveyed to the City by Board of Trustees' Deed No. 22754 (801-40) in 1961 and Board of Trustees' Deed No. 23049(801-50) in 1962.

On September 21, 2006, DEP issued an environmental resource permit and intent to issue sovereignty submerged lands lease (under delegation of authority) to the City for the installation of a public docking facility within the above described Parcel B. The lease was only for the area that the docks extended beyond the currently deeded area (Parcel B). The lease has not been executed due to the proposed exchange. The original proposed lease area must be modified to incorporate the entire permitted day docking facility as the docks will now be located completely over state-owned submerged lands within Parcel B.

All structures are setback 25 feet from the riparian line. The proposed project is in compliance with section 18-21.004(3)(d), F.A.C.

DEP's environmental resource permit (50-0228398-002) does not authorize sewage pumpout facilities, fueling facilities, and prohibits liveaboards.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. Palm Beach County is a designated manatee county without an approved manatee protection plan, but deemed to be making significant progress by FWC.

The original lease request was noticed, pursuant to section 253.115(5)(i), F.S., and no objections were received.

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 proposed action is consistent with the adopted plan according to a letter received from the City of West Palm Beach.

(See Attachment 6, Pages 1-7)

**RECOMMEND DEFERRAL**

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**Substitute Item 7     City of Sarasota Recommended Consolidated Intent**

**REQUEST:** Consideration of an application for (1) a 10-year sovereignty submerged lands lease containing 4,976,670 square feet (114.25 acres), more or less, for a managed, municipal mooring field and anchorage; and (2) waiver of lease fees.

**COUNTY:**        Sarasota  
                    Lease No. 580341873  
                    Application No. 58-0251809-002

**APPLICANT:** City of Sarasota (City)

**LOCATION:**    Sections 24 and 25, Township 36 South, Range 17 East, and Sections 19 and 30, Township 36 South, Range 18 East, in Sarasota Bay, within the local jurisdiction of the City of Sarasota  
                    Aquatic Preserve: No  
                    Outstanding Florida Waters: Yes, Class II  
                    Designated Manatee County: Yes, with an approved manatee protection plan  
                    Manatee Aggregation Area: No  
                    Manatee Protection Speed Zone: Yes, 300-foot slow speed buffer

**CONSIDERATION:** The project qualifies for a waiver of lease fees pursuant to section 18-21.011(1)(b)7, F.A.C., which states that fees may be waived for government, research, education or charitable entities that are either not-for-profit or non-profit uses when the revenues are used for operation and maintenance of the structure and the activity is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor.

**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 City is proposing to create a 4,976,670-square-foot (114.25 acres) mooring field, known as the City of Sarasota Bayfront Mooring Field, containing 109 permanent mooring spaces and 18 to 24 transient mooring spaces in the proposed anchorage area. The mooring field and anchorage area will accommodate vessels ranging in lengths from 20 to 100 feet, with 2 to 8 foot drafts. The mooring field and anchorage area will be located on the southern side of City-owned Island Park and will be operated on an open-to-the-public first-come, first-served basis.

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**Substitute Item 7, cont.**

**Background**

Currently, over 100 vessels are moored without regulation at the site of the proposed mooring field. Problems associated with the unregulated mooring include: (1) engine blocks and other inappropriate anchoring devices used to secure vessels; (2) abandoned and derelict vessels (in 2007, 20 derelict vessels were removed from the site by the City's Police Department) or vessels breaking free of inadequate anchoring devices and causing damage to other vessels or nearby property; and (3) unlawful discharges of waste.

The City has negotiated a contract with the owners of Marina Jack, a Florida Clean Marina, located on the northern side of Island Park (Lease No. 581022443) to operate the mooring field. The City has submitted a City of Sarasota Bayfront Mooring Field Management Plan (Plan) that provides background information, design, operational rules and procedures, and objectives for the City's oversight and management of the entire mooring field and anchorage area via Marina Jack's harbor master. A special lease condition will incorporate the Plan into the lease.

The benefits of a regulated mooring field are: (1) signed license agreements between the anchorage management entity and the mooring space licensee that includes such things as hurricane contingency plans, safety and anti-pollution measures, a proper sewage disposal regimen, and established ingress and egress fairways; (2) improvement to water quality because Marina Jack's will offer mooring field licensees showers and restrooms, laundry facilities, a convenient sewage pumpout service, waste receptacles, hazardous waste collection, prevention of derelict and abandoned vessels, boater education, formalized dinghy dockage and quicker, more effective fuel spill response; (3) resource protection by keeping vessels away from nearshore seagrass beds and shallow areas; (4) law enforcement presence through provision of two slips to the City's marine law enforcement officers; and (5) an on-site harbor master to ensure that the mooring field licensees follow the regulations of the Plan. Other amenities provided by the management entity are fueling facilities, restaurants, harbor master, and ship's store.

The City will be required to develop an ordinance that prohibits mooring and anchoring on sovereignty submerged lands outside of the lease. This will eliminate random mooring outside of the lease, thus alleviating unmonitored discharge of sewage and gray water, as well as, unregulated mooring over submerged resources in the area. DEP will work with the City to ensure that the ordinance provides consideration for anchoring outside of the lease area during storm events. A special approval condition requires the City to adopt the ordinance prior to issuance of the lease. Once the ordinance is adopted, City law enforcement officers will provide enforcement of the ordinance.

The City has also proposed to dredge 8,240 cubic yards of sovereignty material for the purpose of removing debris and accumulated sediment that have created several highpoints in the proposed mooring field. None of the proposed dredge areas are located near seagrass beds or other resources. The proposed dredging was separated from the application for the mooring field project because the City stood to lose grant money if some aspect of the project construction did not commence by a certain deadline. So that the City would not lose the grant money, DEP

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**Substitute Item 7, cont.**

issued, on March 23, 2007, a regulatory diminimus exemption letter and proprietary consent of use (under delegation of authority) for the removal of the 8,240 cubic yards of sovereignty material. Pursuant to section 18-21.011(3)(c)1, F.A.C., a waiver of the dredge fees was granted since the material was to be placed on public property and used for public purposes.

**Project Description**

The proposed mooring field will contain 109 permanent mooring spaces in the proposed 114.25-acre mooring field. Included in the 114.25 acres is a 10.4 acre transient anchorage area containing 18 to 24 mooring spaces, which is designed to hold overflow vessels or vessels that come in after hours. Under the Plan any vessel that stays in the anchorage area for more than one night is required to enter a rental license agreement and come under mooring field regulations. Where soil conditions permit, the 109 vessels in the permanent mooring spaces will be secured to helical screw anchors, cables and buoys that are designed to prevent scouring of the submerged bottom and minimize the footprint of the anchoring system. Otherwise, the vessels will be secured to steel beam anchors. All proposed mooring spaces are to be located beyond nearshore seagrass beds and in bay waters having a depth of at least six feet at mean low water. Mooring field signs and buoys will mark the permanent anchors in each mooring space in addition to the fairways used for ingress and egress.

Section 18-21.011(1)(b)7, F.A.C., states that lease fees may be waived under the following circumstances: "a. Any revenues collected from the activity or use of sovereign submerged lands are used solely for the purposes of operation and maintenance of the structure; and b. The activity or use of sovereign submerged lands is consistent with the public purposes of the applicant organization and not an adjunct to a commercial endeavor." Based on information provided by the City, the funds generated from the rental of the mooring spaces will be revenue neutral, i.e. sufficient to cover the costs of operating and maintaining the facility only. Therefore, DEP is of the opinion that the proposed project meets the rule requirement and recommends that the lease fees be waived. A special lease condition will require the City to provide annual accounting data that will determine whether the mooring field operation continues to qualify for a fee waived lease. If the accounting data demonstrate that the activity is generating revenue above the operation and maintenance costs, the special lease condition requires the City to submit lease fees pursuant to Section 18-21.011, F.A.C.

Upon entering the mooring field, all vessel operators are required to have their sewage holding tanks inspected and emptied into the sewage pumpout facility or vessel prior to mooring. No pumping of sewage in any area of the mooring field is allowed, except at the pumpout stations. The City is requesting authorization to allow liveaboards that meet the standard lease condition definition of a liveaboard, which limits stays to no longer than 6 months in a 12-month period and prohibits liveaboards as a legal or primary residence. DEP recommends allowing liveaboards in the regulated mooring field that conform to the standard lease condition. To provide reasonable assurance that unlawful discharges of waste from liveaboard vessel operators



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**Substitute Item 7, cont.**

will be reduced or eliminated, the Plan requires that all liveaboard vessel operators empty their domestic sewage holding tanks into the approved sewage pumpout station or into the authorized pumpout vessel not less than every 10 days, unless an alternate pumpout schedule is approved by the harbor master based on the size of the vessel's holding tank. In addition, all liveaboard vessels shall be pumped out prior to leaving the facility. A special lease condition will incorporate the Plan into the lease.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees recommended have been addressed as specific conditions in the environmental resource permit. Sarasota County is a designated manatee county with an approved manatee protection plan. FFWCC stated the proposed project is consistent with the plan.

The environmental resource permit authorizes liveaboards, requires maintenance of existing sewage pumpout facilities at Marina Jack and operation of a sewage pumpout vessel, and prohibits new fueling facilities at Marina Jack. The proposed project was noticed pursuant to section 253.115, F.S. No objections were received by the end of the 30-day comment period on April 26, 2007.

A local government comprehensive plan has been adopted for this area by the City of Sarasota, 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.

(See Attachment 7, Pages 1-47)

**RECOMMEND      APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS AND SPECIAL LEASE CONDITIONS**

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**Item 8              Waterside at Coquina Key North Boat Club Association, Inc. Recommended  
Consolidated Intent**

**REQUEST:** Consideration of an application for a modification of a five-year sovereignty submerged lands lease to increase the preempted area from 14,858 square feet to 51,885 square feet, more or less, for a private residential multi-slip docking facility.

**COUNTY:**        Pinellas  
                     Lease No. 520224543  
                     Application No. 52-0258984-001

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**Item 8, cont.**

**APPLICANT:** Waterside at Coquina Key North Boat Club Association, Inc.

**LOCATION:** Section 31, Township 31 South, Ranges 17 East, in Big Bayou, Class III Waters, within the local jurisdiction of the city of St. Petersburg  
Aquatic Preserve: Yes, Pinellas County  
Outstanding Florida Waters: Yes, Class III  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: No

**CONSIDERATION:** \$8,636.89, representing the initial annual lease fee computed at the base rate of \$0.14126 per square foot, and including the one-time 25 percent surcharge payment on the additional preempted area of 37,027 square feet. 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 chapters 253 and 258, 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 lessee is proposing to expand an existing 30-slip private residential multi-slip docking facility, presently used in conjunction with a 284-unit upland condominium development, by: (1) increasing the preempted area by 37,027 square feet; and (2) constructing 60 additional slips, thereby creating a 90-slip facility.

**Background**

The existing docking facility was constructed in 1978. As a result, pursuant to section 18-20.019(11), F.A.C., the docking facility was grandfathered as regards to having to meet current rule requirements for docks located in Pinellas County and Boca Ciega Bay Aquatic Preserves. However, the proposed expansion is in compliance with the provisions of section 18-20.019, F.A.C. The initial sovereignty submerged lands lease, approved by DEP under delegation of authority on January 16, 2002, authorized the preemption of 14,858 square feet of sovereignty lands.

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**Item 8, cont.**

**Project Description**

The lessee has designed the project to minimize impacts to seagrass beds located in the nearshore area. All terminal platforms and associated mooring areas will be located beyond the seagrass beds. Access walkways will be elevated at least five feet above the mean high water elevation to minimize shading impacts. The lessee is proposing to moor vessels with a maximum length of 26 feet and a draft of 2.5 feet in water depths ranging from -4 to -14 feet at mean low water.

The proposed lease meets all of the requirements for private residential multi-family docks in the Pinellas County Aquatic Preserve (section 18-20.019, F.A.C), as follows: (1) the length of structures do not exceed 25 percent of the width of the waterbody or 500 feet; (2) the preempted area does not exceed 30 square feet for every linear foot of riparian shoreline owned by the applicant (51,885 square feet proposed vs. 83,580 square feet allowed); and (3) the lessee is to grant a conservation easement over 2,786 linear feet of riparian shoreline to preclude the addition of preempted area that would exceed the 30 to 1 ratio; and (4) water depths are at least -2 feet at mean low water. In addition, the 90 slips on sovereignty submerged lands do not exceed the one to one upland residential unit to wet slip ratio pursuant to section 18-21.004(4)(b)1, F.A.C.

Since the proposed lease area is located within an aquatic preserve, the project must be in the public interest, pursuant to section 18-20.004(1)(b), F.A.C. The lessee has offered to place the proposed project in the public interest by increasing public access opportunities for the boating public to sovereignty submerged lands at the Sutherland Bayou Boat Ramp owned and operated by Pinellas County (County) in the Town of Palm Harbor. The lessee is proposing to contribute funds toward construction of a second boat ramp and access lane at the site in the amount of \$300,000. The County has earmarked the funds for placement in a capital improvement fund specifically established for the construction of the new boat ramp and access lane. Because funds have yet to be appropriated by the County for the improvements, the lessee's contribution will greatly help in jump starting this phase of improvements. The addition of a second boat ramp and access lane will facilitate and provide for greater access for all of the citizens in the County to sovereignty submerged lands within the aquatic preserve. In light of the above, DEP staff is of the opinion that the proposed project is in the public interest.

The project did not require noticing due to an exemption for lease modifications, pursuant to section 253.115(5)(i), F.S.; however, DEP requested that the project be noticed. Sixteen property owners were specifically noticed on May 14, 2007 and one objection has been received to date. The one noticed objector along with five nearby residents, aware of the project through the media and word of mouth, have sent letters to DEP essentially objecting to the potential for cumulative impacts to manatees, a pair of bald eagles that nest in a cellular phone tower nearby, other nesting and shore birds, and seagrass beds that would be caused by an additional 60 slips in Big Bayou. In addition, concerns about dock lengths impeding the navigation of passing boats and the leaking of oil and gas into the bayou were expressed. DEP has responded to the objectors by explaining how DEP's environmental resource permit and sovereignty submerged lands authorization review process has addressed their concerns. As a part of the review process, the Florida Fish and Wildlife Conservation Commission (FWC) reviewed the project and made recommendations that address potential impacts to manatees and seagrass habitat. FWC

**Board of Trustees  
Agenda - June 12, 2007  
Substitute Page Twenty**

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**Item 8, cont.**

recommendations regarding protection of manatees have been addressed in the draft permit. DEP has worked with the lessee to redesign the project to minimize impacts to seagrass beds by elevating all access walkways five feet above mean high water and using half inch spacing in the decking. Impacts will be avoided altogether by moving all proposed terminal dock and mooring areas beyond the seagrasses. The lessee has agreed to wrap all CCA pilings to prevent arsenic from leaching into the water column and provided water quality data and hydrographic analysis that provide DEP with the reasonable assurance that the proposed project will meet water quality standards in an Outstanding Florida Water.

The environmental resource permit does not authorize liveaboards, sewage pumpout facilities or fueling facilities.

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 proposed action has been determined to be consistent with the adopted plan according to a permit issued by the Pinellas County Water and Navigation Control Authority on May 9, 2006.

(See Attachment 8, Pages 1-40)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$8,636.89**

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**Substitute Item 9 Harborwalk, Inc. 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 new lease; (b) reflect a change in upland ownership; (c) change the use from an open-to-the-public docking facility to a mixed use of private residential multi-family docking facility and a commercial facility; (d) decrease the term from 10 years to 5 years; and (e) increase the preempted area from 107,651 square feet to 143,260 square feet; and (2) authorization for the severance of 5,000 cubic yards of sovereignty material.

**COUNTY:** Okaloosa  
Lease No. 460002031  
Application Nos. 46-0195322-002-DF & 46-0182742-003-DE

**APPLICANT:** Harborwalk, Inc. (d/b/a Harborwalk, East Pass Investors, Inc., Pelican Point Harbor, Inc. and Kelly Boat Services, LLC)

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**Substitute Item 9, cont.**

**LOCATION:** Section 00, Township 02 South, Range 22 West, in Choctawhatchee Bay (Old Pass Lagoon), Class III Waters, within the local jurisdiction of the city of Destin  
Aquatic Preserve: No  
Outstanding Florida Waters: No  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Protection Speeding Zone: No

**CONSIDERATION:** \$22,494.36, representing: (1) \$21,494.45 as the initial annual lease fee computed at the base rate of \$0.141260 per square foot, and including the initial 25 percent surcharge payment for the additional area; (2) \$6,250.00 for the severance of sovereignty material at a rate of \$1.25 per cubic yard; and (3) \$5,250.09 credit for billing errors for East Pass Investors. 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)l, 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."

**Project Synopsis**

The applicant is proposing to merge two existing leases: a 13-slip commercial marina containing 13,631 square feet and a 43-slip charter boat docking facility containing 89,820 square feet, plus 4,086 square feet of non-water dependent structures. The proposed new lease will combine the existing two leases and include a new 47-slip facility containing 35,609 square feet to be used in conjunction with a 218-unit condominium complex. The total existing and proposed preempted area will contain 143,260 square feet and 103 slips, with 19 of these slips open to the public on a first-come, first-served basis.

The applicant is also proposing to dredge 5,000 cubic yards of spoil material from the marina basin to -10 feet mean low water. The dredging is due to material that washed in during several hurricanes.

**Background**

The site consists of five parcels of property, Lot Nos. 8-11, and currently has two sovereignty submerged lands leases. Lease No. 460002031 is a 10-year lease, known as East Pass Investors, for a 13-slip commercial marina and is currently closed due to construction. The current lease

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**Substitute Item 9, cont.**

allows a sewage pumpout facility, but prohibits fueling facilities and liveaboards. The marina was originally brought under lease in 1990. As the upland was considered to be commercial and now is mixed use, the change in upland usage is considered to be a lease modification. The change in upland usage was processed under file number 46-0182742-003-DE. East Pass Investors has been billed in error with the 30 percent discount and billed in error for a 906-square-foot non-water dependent structure which no longer exists. These two billing errors result in a credit of \$5,250.09.

Lease No. 460022481 is a 25-year lease, known as Kelly Boat Services, LLC, for a 43-slip commercial marina, open to the public on a first-come, first-served basis. The current lease allows a sewage pumpout facility and fueling facilities but prohibits liveaboards. The dock was originally grandfathered under the name of Coleman L. Kelly Trust, under GSR number 460038. The facility was then licensed under the name Kelly Boat Services in 1975 under number 46-30-2248 and was brought under lease in 1987. Lease No. 460002031 will be used for the entire project and Lease No. 460022481 will be cancelled by the Division of State Lands prior to issuance of the merged leases.

DEP and Kelly Boat Services, LLC, entered into a Consent Order and Temporary Use Agreement (TUA) on May 30, 2007 for the following two areas:

- non-water dependent structure (4,086 square feet) which has been associated with the facility prior to 1970. Therefore, lease fees in arrears at 10 times the base rate are not required. However, Kelly Boat Services, LLC, has not been paying lease fees on the non-water dependent structures and has now been assessed lease fees in arrears, including interest, in the amount of \$3,286.41 from 2003 to 2008; and
- the current lease does not include an area in the center and an area on the western side of the docking facility, a total of 34,117 square feet, which are used as a fairway for boats to ingress and egress. The entrance to the facility was changed from the western to the eastern end of the dock via a hurricane emergency permit issued after Hurricane Opal in 1995. The majority of the slips face north/south. However, a DEP permit and a letter of consent were issued in 1997 for the addition of two slips located on the western end, which faces east/west. Lease fees in arrears in the amount of \$22,332.13, including interest, have been assessed for this area from 2003 to 2008.

Kelly Boat Services, LLC, has paid all fees associated with the TUA and the Consent Order. The Consent Order fees totaled \$1,500, which includes \$1,000 for penalties, \$250 for violation of section 253.77, F.S., and \$250 for administrative costs.

Lot Nos. 10A and 11 contain the remnants of a "T" shaped dock, historically known as the "Boogies" dock, which had TUA number 46-0023991. Fees amounting to \$13,560.66 were paid in 2003 as lease fees in arrears. The dock was substantially damaged by Hurricanes Ivan in 2004 and Dennis in 2005 and is not considered to be functional. As such, the dock was not brought

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**Substitute Item 9, cont.**

under lease and will be removed. In addition, the eastern end of the property contains the remnants of a platform, which will also be removed.

**Project Description**

The applicant is proposing to construct a new 47-slip structure on Lot Nos. 10A and 11, containing 19 boat slips, an 8-slip pontoon boat rental and a 20-slip jet ski rental. Of the 19 boat slips, the applicant is proposing to use 9 slips for the proposed condominium, 4 slips will be used by the charter boat fisherman and 6 slips will be open to the public on a first-come, first-served basis. The 9 slips proposed for condominium usage will encompass a total of 190 linear feet of shoreline and approximately 8,685 square feet. Using the 585 feet of shoreline for Lot Nos. 10A and 11 to calculate the preempted area, the condominium slips will be over 10 to 1, but not over 40 to 1. As such, a proprietary conservation easement is required for Lot Nos. 10A and 11, pursuant to section 18-21.004(4)(g), F.A.C. This requirement has been added as a special approval condition. The rest of the slips on all five parcels will be rented as commercial slips or will offer daily jet ski or pontoon boat rentals. However, since a portion of the dock is for condominium usage, the project does not qualify for a 30 percent discount of the lease fees and is not considered to be open to the public on a first-come, first-served basis.

The applicant is also proposing to dredge 5,000 cubic yards of spoil material from the marina basin to -10 feet mean low water adjacent to the bulkhead and in the nearshore area. The spoil material came from Norreigo Point, located across from the site, during numerous hurricanes from 1995 to 2005. This depth is two feet less than the water depths in the channel adjacent to the marina and is the minimum depth needed for boats ranging from 35 to 60 feet in length. As the material was the result of hurricane deposition, additional maintenance dredging should not be required on a frequent basis. No private easement is required for the dredging, since the entire volume of dredging is contained within the marina basin and lease boundaries.

The proposed upland development for Lot Nos. 8 through 11 includes a 218-unit condominium complex and a 199,999 square foot commercial shopping center. The submerged lands will contain the proposed 47-slip marina on Lot Nos. 10A and 11, the existing 13-slip lease number 460002031 for East Pass Investors on Lot No. 10 and the existing 43-slip marina lease number 460022481 to Kelly Boat Services, LLC on Lot Nos. 8 and 9. The upland has a Unity of Development Agreement that transfers the development rights and riparian rights of all of the parcels to Harborwalk, Inc. In addition, the development order issued by the City of Destin on March 19, 2004 considers the parcels to be one plan of development. This application also represents a change in upland use for the two existing leases from commercial to mixed use, making it a lease modification.

The proposed project is located on the northern side of Old Pass Lagoon at the mouth of the harbor in Class III, Shellfish Harvesting Prohibited Waters. Old Pass Lagoon has experienced a decline in water quality dating back to the early 1980's. As a result of these concerns, the Board of Trustees imposed on March 6, 1984, a condition that future developments on sovereignty submerged lands in Old Pass Lagoon must not only meet water quality standards, but must also have a Net Positive Environmental Benefit (NPEB) to the water quality in the lagoon. Because



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**Substitute Item 9, cont.**

of these concerns, the Northwest Florida Water Management District installed a pumping mechanism in the lagoon in 1995, turning the operation and maintenance over to the City of Destin. This mechanism pumps water from the Gulf of Mexico into the lagoon during an outgoing tide forcing the water in the lagoon out into the Gulf. The pump provides flow through circulation in the lagoon, as the lagoon only has one opening. DEP's hydrographic engineering section stated no objection to the project on November 12, 2004, as long as the pump operates on a regular basis. Quarterly water quality monitoring is conducted by the City of Destin, and, according to the City Engineer, improved water quality has been demonstrated with the operation of the harbor pump.

The applicant has agreed to donate \$13,440 for NPEB, based on a contribution of \$420 per slip for the boats and pontoon boats, and \$105 per slip for the jet skis. This is consistent with previous Board of Trustees' actions and payment of the NPEB has been added as special approval condition.

All of the water quality data sampling met state standards and the applicant has provided reasonable assurance that the standards for Class III waters will not be violated. The Department of Agriculture and Consumer Affairs, Shellfish Environmental Assessment Section will not require a reclassification of the area based on a letter dated January 25, 2007. DEP's wetland resource permit allows a sewage pumpout facility, but prohibits fueling facilities and prohibits liveaboards. The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. Okaloosa County is not a designated manatee county with an approved manatee protection plan. FWC Law Enforcement Section commented that the proposed project will not interfere with navigation in a memo dated October 30, 2003. The Division of Historical Resources stated no objection to the project on October 6, 2003. The project was not required to be noticed pursuant to section 253.1 15(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 as amended according to a letter received from the city of Destin. DCA determined that the proposed project would not require a Development of Regional Impact review based on the information submitted to the department in a letter dated March 1, 2004.

(See Attachment 9, Pages 1-35)

**RECOMMEND DEFERRAL**