

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
NOVEMBER 14, 2007
2nd Substitute Page

2nd Substitute Item 1 New College of Florida/Sarasota Manatee Airport Authority Option Agreement/Waiver/Delegation

REQUEST: Consideration of (1) an option agreement to acquire 3.795 acres for the benefit of the Florida Board of Governors and New College of Florida from Sarasota Manatee Airport Authority; (2) a request to waive the competitive bid requirements of section 18-2.018(2)(i), F.A.C., for a sublease to Yesteryear Venture, Inc.; and (3) delegation of authority to the Secretary of the Department of Environmental Protection or his designee to (a) cancel the existing lease with Yesteryear Venture, Inc.; (b) approve a sublease to Yesteryear Venture, Inc.; and (c) approve future subsubleases.

COUNTY: Sarasota

APPLICANT: New College of Florida (NCF)

LOCATION: Section 01, Township 36 South, Range 17 East

CONSIDERATION: \$4,140,000 (The purchase price consists of \$3,650,000 funds appropriated during the 2004-2005 legislative session, plus a \$490,000 contribution from New College Foundation, Inc.)

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY:</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>STATE'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>OPTION</u> <u>DATE</u>
		<u>(12/13/05)</u> Goodman	<u>(12/13/05)</u> Sutte				
Car Museum	3.795	\$3,600,000	\$3,650,000	\$ 3,650,000	unknown*	\$3,650,000** (100%)	120 days after BOT approval

* Seller has owned this parcel for more than 20 years. Quitclaim Deed to owner on 7/15/57 reflects minimum documentary stamps.

** The purchase price includes 100% DSL value of \$3,650,000 (leased fee value), plus \$490,000 funding from New College Foundation, Inc. (113%); \$1,090,909 per acre. DSL value for a fee simple purchase is \$4,960,000.

Noted Features of Subject Property:

The neighborhood is on U.S. Highway 41 commercial corridor, which runs north/south through Sarasota. Zoning and land use allow commercial, office, hotel/motel, multi-family, and mixed use development. The property includes 3.795 acres with no wetlands. Fee simple value is based on price per gross square foot of land area. Improvements on the site include 58,000 square feet of gross building area and site improvements, built between 1952 and 1973. The improvements are not considered to have any contributory value. The improvements, along with 3.43 acres, are currently leased to Yesteryear Ventures, Inc. and operated as a car museum. At the time of the appraisal, the lease had a remaining term of 6 years and 11 months. The lease rate is below the market rate. The Sarasota Manatee Airport Authority obtained its own appraisal of the parcel through a state certified appraiser. The Airport Authority's appraisal was \$4,140,000. The Airport Authority is required to obtain its appraised value for property that it sells under regulations of the Federal Aviation Administration.

STAFF REMARKS: This acquisition was negotiated by NCF. Funds for the acquisition were appropriated during the 2004-2005 legislative session, and are still available for use by NCF for acquisition and costs associated with this purchase. Although the Board of Trustees will have no financial responsibilities in this acquisition, title to the property will be conveyed to the Board of Trustees at closing, pursuant to section 1001.74(6)(a) and section 1001.74(6)(f)(3), F.S.

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Project Summary

This parcel has a very prominent location at the northeast corner of U.S. Highway 41 and University Parkway in the City of Sarasota, in close proximity to the Ringling Museum, NCF, Asolo Theatre, and the Sarasota Bradenton International Airport. The property contains two buildings with a total of 57,996 square feet, which is currently leased to Yesteryear Venture, Inc. (Yesteryear), a Florida for-profit corporation and operated as a car museum. The existing improvements, constructed between 1952 and 1973, do not have contributory value over and above the value of the land as if vacant.

According to staff at NCF, the parcel is bordered east and north by the “east campus” of NCF. The east campus is the center of student life at NCF. Nearly 600 dormitory beds, the student center, classrooms, and student recreational facilities are located on land that adjoins the parcel.

Additionally, according to the staff at NCF, the parcel offers the only expansion opportunity for NCF that is contiguous with the east campus. While use of the property as an antique car museum has not interfered with utilization of the east campus, Yesteryear’s lease has only about five years remaining. Once the lease term is over, the property would be available for general commercial uses, which could interfere with the campus environment and could pose a serious security threat to students. The property is separated from other airport property by the NCF Campus, and has very little utility for the Sarasota Bradenton International Airport except to generate revenue.

NCF shall use the property according to its management plans for Board of Trustees’ Lease No. 4429, and NCF’s Campus Master Plan Update, approved by the Board of Trustees of NCF in September 2007. For the next five years the project use is as a leased facility in accordance with a proposed sublease agreement. The intended uses contemplated for the site under NCF’s Campus Master Plan at the conclusion of the sublease term are a new gymnasium and a multipurpose meeting hall.

Federal Aviation Administration

The United States of America, acting by and through the Administrator of the Federal Aviation Administration (FAA), Department of Transportation, will be executing a Deed of Release in favor of Sarasota Manatee Airport Authority (Airport Authority), releasing pre-existing restrictive covenants that are inconsistent with the intended use of the property, and a reverter. Based upon a previous Deed of Release executed by the FAA, five provisions shall be required to be included in the deed to be executed by the Airport Authority (conveying the property to the Board of Trustees). These provisions are listed below as stated in the deed:

“(1) That the Sarasota Manatee Airport Authority reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinabove described, together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, for use of said airspace for landing on, or taking off from or operating on Sarasota Bradenton International Airport.”

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“(2) That the Sarasota Manatee Airport Authority expressly agrees for itself its successors and assigns to restrict the height of structures, objects of natural growth and other obstructions on the hereinabove described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.”

“(3) That the Sarasota Manatee Airport Authority expressly agrees for itself, its successors and assigns, to prevent any use of the hereinabove described real property which would interfere with the landing or takeoff of aircraft at Sarasota Bradenton International Airport or interfere with air navigation and or communication facilities serving Sarasota Bradenton International Airport, or otherwise constitute an airport hazard.”

“(4) Insure that the Sarasota Manatee Airport Authority and their successors and assigns shall not permit/afford access from the subject at Sarasota Bradenton International Airport or interfere with air navigation and or communication facilities serving Sarasota Bradenton International Airport, or otherwise constitute an airport hazard.”

“(5) Insure that if the property is used or converted to a municipal use, an amount equal to the fair market value will be deposited into identifiable interest bearing account prior to conversion of the property to the municipal use. The proceeds should remain in this account until utilized in accordance with FAA Order 5190.6A, paragraph 7-9.c, copy enclosed.”

After review of the document, Department of Environmental Protection’s (DEP) Division of State Lands’ (DSL) staff believes the first four deed provisions are consistent with the intended use of the property and are appropriate for a parcel located in close proximity to an operational airport. Deed provision (5) requires that the fair market value of the property be paid into an identifiable interest-bearing account and applied for various airport-related uses, if the property is ever used or converted to a municipal use. The term “municipal use” is not defined and DSL staff is concerned the language contained in deed provision (5) could be read to require the Board of Trustees (as the owner of the property) to pay for the property a second time, if a conversion to a municipal use is alleged by the FAA subsequent to the purchase from the Airport Authority.

Proposed Resolution

As set forth in paragraph 7.B. of the option agreement, the Airport Authority has agreed to apply the proceeds of the sale of the property to the Board of Trustees in accordance with the requirements of deed provision (5), as discussed above. In view of this, NCF has agreed to contact the FAA in an effort to have the deed provision (5) deleted from the FAA Deed of Release (and from the deed conveying the property to the Board of Trustees). If this is not feasible, NCF will endeavor to obtain a letter of correction or other documentation from the FAA that confirms the Airport Authority’s application of the sales proceeds as contemplated will satisfy the provision (5) requirements, and the requirements will not constitute an encumbrance running with the land that binds the Board of Trustees and any successors in title to the property.

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In the event, the deed provision (5) language is not deleted from both the FAA Deed of Release and the deed conveying the property to the Board of Trustees, and the FAA subsequently attempts to enforce the terms and provisions of deed provision (5) against the Board of Trustees, the Airport Authority has agreed to cooperate with the FAA and to otherwise comply with the requirements of the deed provision (5) language, all at no cost to the Board of Trustees or NCF, and to hold the Board of Trustees and NCF harmless from any obligations, cost or expense associated with any action to enforce the provisions of the deed provision (5) language. NCF has also agreed to hold the Board of Trustees harmless from any action to enforce the deed provision (5).

Finally, if the FAA does not consent to delete deed provision (5) from the Deed of Release and the deed conveying the property to the Board of Trustees prior to closing, NCF has agreed to use diligent efforts to obtain documentation that will delete deed provision (5) from both deeds subsequent to the closing.

DSL staff has reviewed the restrictions contained in the Deed of Release and has determined they have no affect on the value of the property.

Yesteryear Venture, Inc. Lease

The proposed acquisition parcel is encumbered by an existing lease for 3.43 acres, more or less, that was originally entered into by and between Airport Authority, as the landlord, and Bellm's Cars & Music of Yesterday, Inc., as the tenant. This lease was subsequently assigned to Yesteryear on June 30, 1997. The lease, which has a 30-year term, commenced in 1982 and is for the operation of a museum for antique cars, arcade games, and music machines. The lease allows the tenant to also operate or sublease concessions for the sale of records, tapes, literature, novelties, merchandise related to its business, food and beverages. The initial lease fee for the first five years was \$40,000 per annum, adjusted every five years thereafter throughout the term of the lease. The adjustment is based upon the average increase or decrease in the real property tax assessed valuation with respect to land only. The current annual lease payment is \$50,915.16. There are approximately five years remaining on the lease term, which expires on November 30, 2012.

Although the option agreement requires the Board of Trustees to take title to this parcel subject to this existing lease, it will be terminated at closing immediately after the Board of Trustees acquires this parcel. As soon as the Board of Trustees acquires title to this parcel and as part of the closing, this parcel will be added by a lease amendment to Board of Trustees' Lease No. 4429 held by NCF, and NCF will sublease this parcel to Yesteryear for the remainder of the existing lease term, which expires November 30, 2012.

Competitive Bid Waiver

Pursuant to section 18-2.018(2)(i), F.A.C., equitable compensation shall be required when such use of the uplands will generate income or revenue for a private user, or will limit or preempt use by the general public. The Board of Trustees shall award such uses on the basis of competitive

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bidding rather than negotiation, unless otherwise provided for or determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use. The initial lease existed prior to the Board of Trustees' acquisition of the property and DSL staff is recommending NCF and Yesteryear to enter into a sublease arrangement which better conforms to Board of Trustees' rules and policies. There will be no option for renewal on the term of the sublease. DSL staff recommends that the Board of Trustees waive the competitive bid requirements as it would extinguish an existing lease that does not adequately protect the Board of Trustees.

Encumbrances

All mortgages and liens will be satisfied at the time of closing. Improvements on the property include two buildings, which will be used according to its management plans for the Board of Trustees' Lease No. 4429.

An environmental site assessment (ESA) of the property, along with a supplemental asbestos, lead-based paint, and radon survey was performed on April 16, 2007 by Professional Service Industries, Inc. (the "Phase I ESA"). The Phase I ESA has disclosed the existence of non-friable asbestos and lead-based paint in portions of the buildings located upon the property. NCF agrees to abate or remove the asbestos and lead-based paint in compliance with applicable procedures and construction standards during the renovation or destruction of the buildings located upon the property subsequent to NCF taking possession of the property after the expiration or termination of the aforementioned lease, all at no cost or expense to the Board of Trustees. The Phase II ESA, dated June 2, 2007 performed by Professional Service Industries, Inc, has revealed the presence of hazardous materials located upon the property that are slightly above the soil cleanup target level (SCTL) for residential usage and below the SCTL for commercial/industrial usage. In view of the fact that the property is not being used for residential purposes, no clean-up remediation of the hazardous materials identified in the Phase II ESA shall be required at this time. In the event that the property is converted to residential usage, (or any usage that would make the residential SCTL applicable), NCF shall conduct any additional testing and clean-up required to bring the property into compliance with applicable Environmental Law, all at no cost or expense to the Board of Trustees.

In the event the commitment for title insurance, to be obtained prior to closing, reveals any encumbrances that may affect the value of the properties or the proposed management of the properties, DSL staff will so advise the Board of Trustees prior to closing.

Closing Information

A title insurance policy will be provided by NCF. A survey and an ESA have been provided by NCF, and will be updated, if appropriate.

Management

This property will be managed by NCF as part of the existing campus.

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Summary

Staff has received the following: (1) a DSL-approved memorandum of understanding, which has been executed by Yesteryear and NCF, that will extinguish at closing the existing lease held by Yesteryear; (2) a lease amendment, which has been executed by NCF, that adds the subject parcel to Board of Trustees' Lease No. 4429 held by NCF; and (3) a DSL-approved sublease, which has been executed by NCF and Yesteryear. The lease amendment and sublease will go into effect immediately upon closing.

(See Attachment 1, Pages 1-66)

RECOMMEND APPROVAL OF THE OPTION AGREEMENT WITH DIRECTION TO DSL STAFF TO EXERCISE THE OPTION ONLY IF: (1) A LEASE AMENDMENT TO INCLUDE THE SUBJECT PARCEL IN BOARD OF TRUSTEES' LEASE NO. 4429 BETWEEN THE BOARD OF TRUSTEES AND NCF HAS BEEN FULLY EXECUTED; AND (2) A DSL-APPROVED SUBLEASE BETWEEN NCF, AS SUBLESSOR, AND YESTERYEAR, AS SUBLESSEE, HAS BEEN FULLY EXECUTED AND DELIVERED TO NCF ON THE DAY OF CLOSING ON THE SUBJECT PARCEL

(AGENDA CONTINUED ON NEXT PAGE)

Substitute Item 2 Lee Ranch, Inc. Sale and Purchase Agreement/Turkey Creek Property/SJRWMD/Econ - St. Johns Ecosystem Florida Forever Project

REQUEST: Consideration of authorization to acquire an approximate 89 percent undivided interest in 1,645 acres within the Econ-St. Johns Ecosystem Florida Forever Project from Lee Ranch, Inc.

COUNTY: Seminole

LOCATION: A portion of Sections 19 and 20, and 29 through 31, Township 21 South, Range 33 East

CONSIDERATION: \$14,500,000 (\$15,000,000 total expenditure, consisting of \$14,500,000 as the purchase price for the property, plus an additional amount not to exceed \$500,000 toward pre-acquisition and closing costs)

(AGENDA CONTINUED ON NEXT PAGE)

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Substitute Item 2, cont.

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED VALUE</u>	<u>SELLER'S PURCHASE PRICE</u>	<u>TRUSTEES' PURCHASE PRICE</u>	<u>CLOSING DATE</u>
		<u>Lentz (8/16/2007)</u>	<u>Holden (8/16/2007)</u>				
Lee Ranch (aka Turkey Creek Parcel)	1,645	\$16,450,000	\$19,740,000	\$19,740,000	unknown*	\$14,500,000** (73%)	12/31/07***

* The Seller has owned the property for more than 30 years.

** \$8,815 Board of Trustees' price per acre.

*** The Board of Trustees will take an interest in \$5,000,000 worth of property at the District's closing on 12/31/07 and receive the remaining undivided interest in 1,645 acres upon making the remainder payment of \$9,500,000, plus an additional amount not to exceed \$500,000 toward pre-acquisition and closing costs, in July 2008.

NOTED FEATURES:

The property has access at the terminus of a county maintained paved road.

70% of the 1,645 +/- acre parcel is uplands.

This acquisition is a part of a 5,572-acre ranch owned by the Lee family.

There is a 27.25-acre conservation easement in favor of the SJRWMD (1.66% of the parcel), which does not impact the current agricultural uses or any future potential of the property for clustered low density rural residential development.

The property is located in a rural area of southeast Seminole County. Residential growth is expanding to the area from the northwest and southwest.

Valuation is based on direct comparison of 600 to 3,000-acre sales that took place in 2006 and 2007, drawn from central and east central Florida counties.

STAFF REMARKS: The Econ-St. Johns Ecosystem project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 28, 2007. The project contains 28,274 acres, of which 18,980 acres have been acquired, or are under agreement to be acquired. If the Board of Trustees approves this proposed acquisition covered by this Agreement, approximately 9,294 acres, or 33 percent of the project, will remain to be acquired.

Project Summary

Pursuant to the acquisition agreement with the St. Johns River Water Management District (District), approved by the Board of Trustees on October 2, 2007, the Department of Environmental Protection's (DEP) Division of State Lands (DSL) has joined the District in efforts to facilitate the acquisition of the Turkey Creek parcel. The acquisition agreement allows the District to acquire the 5,212-acre Turkey Creek parcel, utilizing the procedures set out in section 373.139, F.S. On September 13, 1994 the Board of Trustees approved the use of the District's procedures to allow the District to acquire lands to be held jointly by the Board of Trustees and the District.

The District entered into a purchase and sale agreement covering the entire Turkey Creek parcel on August 8, 2007. Under the terms of the acquisition agreement between the Board of Trustees and the District, the Board of Trustees will contribute a total of \$14,500,000 toward the purchase of an approximate 89 percent undivided interest in an estimated 1,645 acres located in the northwest corner of the property. The Board of Trustees' payment will be made in two parts.

First, the Board of Trustees will contribute \$5,000,000 at the closing between the District and Lee Ranch, Inc., on or before December 31, 2007. At that time, the Board of Trustees will receive an interest equal to its contribution. The Board of Trustees will then contribute the

Substitute Item 2, cont.

remaining balance of \$9,500,000 to the District on or before July 31, 2008. At that time, the Board of Trustees will receive the remainder of its interest in the property. Under the terms of the acquisition agreement, the Board of Trustees will also contribute monies toward pre-acquisition and closing costs, in an amount not to exceed \$500,000.

Incorporated into the acquisition agreement are a number of assurances that the District is giving the Board of Trustees in return for its consideration of this agreement. The District agrees to: (1) comply with the procedures set out in section 373.130, F.S.; (2) defend the Board of Trustees against all title and survey disputes or defects and environmental contamination associated with the acquisition negotiated by the District that were either known or should have been known by the District at the time the District acquired the parcel, but were not disclosed to DEP's DSL; and (3) be responsible for responding to any audit, legal or other investigation pertaining to any phase of its acquisition of any parcel covered by this agreement.

The District obtained appraisals, negotiated, and entered into a purchase and sale agreement to acquire the 5,212-acre Turkey Creek parcel. DSL also obtained and reviewed separate appraisals for the Board of Trustees' 1,645-acre portion of the acquisition. The District is partnering with the Federal Natural Resources Conservation Service's (NRCS) Wetland Reserve Program on approximately 2,898 acres of the parent property. District staff and DEP staff agreed to divide the property so that the Board of Trustees will obtain its interest in a 1,645-acre area unencumbered by the Federal NRCS grant. The remaining 669 acres within the Turkey Creek parcel are considered sovereign submerged lands and were not valued in the appraisals. None of the areas considered sovereign submerged lands are within the 1,645 acres in which the Board of Trustees is gaining an interest.

The Governing Board of the District adopted Resolution No. 2007-45 on August 7, 2007, which approved the purchase price and the purchase agreement between the District and Lee Ranch, Inc. If the Board of Trustees approves this acquisition, the District will purchase the property from Lee Ranch, Inc. The District will close the transaction on behalf of the Board of Trustees, subject to DSL's review and approval of the survey, environmental site assessment, title commitment, and closing documents, as provided in the acquisition agreement.

Project Description

Between the growing cities of Orlando and Titusville is a near wilderness through which the middle St. Johns River flows. The Econ-St. Johns Ecosystem project will protect part of this undeveloped area along Puzzle Lake where the Econlockhatchee River flows into the St. Johns, adding to conservation lands already on the river, protecting habitat for bald eagle and other wildlife and rare plants, preserving several archaeological sites, and providing the public of this urbanizing region opportunities for canoeing, fishing, hunting, and other recreation.

Encumbrances

All mortgages and liens will be satisfied at the time of closing. There is an existing agreement for cabbage palm removal on the property. This agreement will continue for one year post-closing. Likewise, there is an existing hunting lease on the property that will continue through April 2008.

Substitute Item 2, cont.

The District and the Trustees will also be taking title to an existing lease for cattle grazing at market rate. This agreement will continue for six years at lessee's option and then for a potential three renewal periods, of three years, each at lessor's option. This cattle lease provides that the animal stocking rate on the property will be adjusted downward as wetland restoration work under the NRCS program is completed across various sections of the property. Cattle leases can often function as valuable management tools. They provide vegetation management from the grazing activity itself, as well as helping to provide security for the managed property in the form of the cattlemen who maintain the herds. Additionally, cattle leases provide helpful revenue for management. In this case the Department of Agriculture and Consumer Services, Division of Forestry (DOF), at its discretion, has the additional option of substituting work service credits in lieu of annual lease payments during any effective year. This potentially allows for the lessee to perform work that aids in the management of the property directly on behalf of the managing agency. Work service credits are to be coordinated between DOF and the lessee prior to implementation.

Portions of the property are covered under an oil, gas, and mineral lease that was recorded in 1944 and amended in 1948. Under the terms of that lease, the right of entry expired after ten years wherein no activity related to the lease was performed on the property. 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. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for these and any other title issues that arise prior to closing.

Management

The site will be managed by DOF, under a multiple-use management regime consistent with the State Forest system.

Comprehensive Plan

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 2, Pages 1-63)

RECOMMEND APPROVAL SUBJECT TO THE TERMS OF THE ACQUISITION AGREEMENT BY AND BETWEEN THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND THE BOARD OF TRUSTEES, AS APPROVED BY THE BOARD OF TRUSTEES ON OCTOBER 2, 2007

**Item 3 Hoglan Sale and Purchase Agreement/Survey Waiver/Florida Keys
Ecosystem Florida Forever Project**

REQUEST: Consideration of (1) an agreement for sale and purchase to acquire .77 acre within the Florida Keys Ecosystem Florida Forever project from Alice Ann Hoglan; and (2) the authority to waive the survey requirement.

COUNTY: Monroe

LOCATION: Section 32, Township 61 South, Range 39 East

CONSIDERATION: \$323,750

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Item 3, cont.

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY: W.H. Benson	APPROVED <u>VALUE</u>	SELLERS PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	CLOSING <u>DATE</u>
15122-15124	.77	08/01/05	\$259,000	Gift*	\$323,750**	120 days
15249					(125 %)	BOT approval
15250						
15269						
15270						

* The property has been family owned since 1973 and was transferred from Hubert Hoglan to Alice Ann Hoglan as a gift for no monetary consideration on February 24, 2003.
 **Price per acre is \$420,455.

Noted Features of Subject Property:

The subject properties are platted lots in Thompson's Subdivision on the ocean side of U.S. 1 at Mile Marker 99 on Key Largo. The neighborhood has mixed uses. It has commercial uses along the highway and residential/recreational uses throughout. Zoning is residential; highest and best use is dedication in the ROGO system, and the property is valued as seven ROGO allocations. Each of the seven lots front a platted, but unimproved street.

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 28, 2007. The project contains 11,854 acres, of which 5,478 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 6,376 acres, or 54 percent of the project, will remain to be acquired.

Delegation of Authority

On February 16, 2005, the Board of Trustees delegated authority to the Secretary of the Department of Environmental Protection (DEP), or designee, to (1) extend offers and approve any contract for the sale and purchase of land pursuant to section 259.041(1), F.S., at \$7,000 over, or up to 125 percent, per parcel of the current appraised value, whichever is greater, when the purchase price per parcel does not exceed \$100,000; (2) recognize and appraise as Rate of Growth Ordinance parcels those parcels that previously qualified for Rate of Growth Ordinance designation; and (3) allow payments in lieu of litigation to settle claims by private landowners to lands that appear to be sovereignty lands, such payments not to exceed \$1,000 per parcel.

Project Description

The unique hardwood hammocks of the Florida Keys, forests of West Indian plants that shelter several extremely rare animals, are being lost to the rapid development of these islands. The Florida Keys Ecosystem project will protect all the significant unprotected hardwood hammocks left in the Keys and many rare plants and animals, including the Lower Keys marsh rabbit and Key deer. It will also help protect the Outstanding Florida Waters of the Keys, the recreational and commercial fisheries, and the reefs around the islands, and also give residents and visitors more areas for enjoying the natural beauty of the Keys.

Survey Waiver

It is the opinion of DEP's Bureau of Survey and Mapping that the available boundary information is sufficient to reasonably protect the public's interest, and any additional benefit

Item 3, cont.

derived from a survey is minimal relative to cost. Therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C.

Closing Information

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. Therefore, DEP staff will review, evaluate, and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy and an environmental site evaluation will be provided by the purchaser prior to closing.

Management

The property will be managed by Monroe County Land Authority (MCLA). DEP's Office of Greenways and Trails (OGT) may need to use this parcel as a rest stop/trailhead or an access point for the public to utilize as part of the Florida Keys Overseas Heritage Trail (FKOHT). MCLA will coordinate with OGT to incorporate these uses (when appropriate) into the land management plan and will coordinate a schedule for implementation with OGT. In addition, OGT may need to use this parcel for mitigation for wetland impacts resulting from construction of the FKOHT (pending approval of the South Florida Water Management District). If OGT determines this parcel is feasible for any of the above uses, then MCLA will include the use(s) in the land management plan based upon an agreement with OGT. Costs incurred by OGT's use will be paid for by OGT.

Comprehensive Plan

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 1-25)

RECOMMEND APPROVAL

Substitute Item 4 Annual Land Management Review Team Findings

REQUEST: Consideration of the Annual Land Management Review Team findings.

COUNTY: Statewide

STAFF REMARKS: Section 259.036, F.S., which was enacted ten years ago, requires the Board of Trustees, acting through the Department of Environmental Protection (DEP), to conduct land management reviews of selected conservation, preservation and recreation lands

Substitute Item 4, cont.

titled in the Board of Trustees. The team assesses whether those lands are being managed for the purposes for which they were acquired, and whether they are being managed in accordance with their adopted management plans.

The 2003 Florida Legislature amended section 259.036, F.S., to require that all conservation lands greater than 1,000 acres in size be reviewed at least every five years. The properties reviewed were selected from a database of the Board of Trustees' lands based on the following factors: size of the property; plan due dates; managing agency; previous land management review date; and geographic location.

Regional review team members were selected in accordance with the requirements of the legislation, to include representatives of the following: (1) county or local community in which the parcel is located; (2) Division of Recreation and Parks (DRP); (3) Department of Agriculture and Consumer Services' Division of Forestry (DOF); (4) Florida Fish and Wildlife Conservation Commission (FWC); (5) DEP's regulatory district office; (6) private land manager; (7) local Soil and Water Conservation District board of supervisors; and (8) a conservation organization.

Participating state agencies, soil and water conservation districts, local governments, and conservation groups have had continual input into the development and ongoing evolution of the review process. Most recently, DEP's Division of State Lands (DSL) staff convened a meeting on September 14, 2007 with many of the past participants and other stakeholders to discuss the possible revision to the land management review process. DEP is compiling the results of this meeting and will coordinate further with stakeholders to develop a more objective process for evaluating management of conservation lands owned by the Board of Trustees. Additionally, DEP coordinates with representatives of the Water Management Districts (WMD) to integrate land management reviews where WMD lands are adjacent to Board of Trustees' lands, and when the Board of Trustees has joint ownership of parcels with a WMD.

Twenty-five reviews were conducted during the 2006-2007 fiscal year, involving more than 237,615 acres of managed lands. Three of the reviews that were scheduled in May 2007 were cancelled due to wildfires and have been rescheduled for the 2007-2008 fiscal year. Finalized reports of the management review team findings have been provided to the managing agency, and the Acquisition and Restoration Council (ARC), as well as being made available on DSL's web site (<http://www.dep.state.fl.us/lands/oes/landmgmt/default.htm>). This report includes the first full year of reviews under a new DSL coordinator, as well as the regional teams being composed of mostly new participants. This change in personnel was implemented to address concerns expressed by some legislators. In response, DEP encouraged participating agencies and other groups to alter their representation, rather than assign the same representatives who had previously participated as review team members.

An overview of the management review team findings follows:

- Public access was adequate on five sites (20 percent), and excellent on eighteen (72 percent) of the sites the teams visited;

Substitute Item 4, cont.

- On five sites (20 percent) over 30 percent of the fire dependent lands had been treated according to prescription. On fifteen sites (60 percent of the sites reviewed), over 60 percent of the fire dependent lands had been treated according to prescription. One site (4 percent) had no fire dependent communities;
- On six sites (24 percent) the teams found the burn frequency inadequate to preserve, restore, or maintain the natural communities. On twelve sites (48 percent) the team found fire quality to be adequate to excellent (Each managing agency is responsible for prescribed burning the lands they manage). One site (4 percent) had no fire dependent communities;
- Control of non-native invasive plants was a management issue on most of the lands reviewed, and the team found control measures were inadequate on one site (4 percent), adequate on one site (4 percent), and excellent on twenty-three (92 percent) of the sites reviewed;
- Fourteen sites (56 percent) had plans that adequately covered testing for degradation of surface waters, and eleven sites (44 percent) had adequate testing for groundwater;
- Seventeen sites (68 percent) were found to be excellent, six sites (24 percent) were adequate, and two sites (8 percent) were inadequate in actual management practices to protect listed plants and animals on site. For two sites (8 percent), the team found the management plans inadequate for on-site protection of listed plants and animals or inventories of listed plants and animals;
- On twenty sites (80 percent) law enforcement was adequate to excellent to protect the resources; and
- On twenty-four sites (96 percent) the public education and outreach programs were found to be adequate to excellent.

The review teams observed many examples of management meriting special mention:

- Lake Wales Ridge State Forest, the team commended DOF for its aggressive exotic invasive plant monitoring and treatment program;
- Catfish Creek State Park, the team commended DRP staff for the outstanding natural resource management with limited staffing and funding;
- Apalachicola National Estuarine Research Reserve, the team commended the Office of Coastal and Aquatic Managed Areas (CAMA) for the many outstanding public outreach and environmental education programs offered; and
- Apalachicola Wildlife and Environmental Area, the team commended the FWC for its dedication to development of an outstanding natural resource management program over a large, complex landscape with minimal staffing.

Overall, the review teams found that the managers of these areas are dedicated professionals who are doing an excellent job with the resources available.

Substitute Item 4, cont.

Many of the management problems noted in the findings may be directly related to the following:

- On fourteen sites (56 percent) the teams found that staffing levels were inadequate; on eight sites (32 percent) staffing levels were adequate; and only on three sites (12 percent) were staffing levels excellent;
- On thirteen sites (52 percent) the teams found that funding levels were inadequate to properly manage resources; on eleven sites (44 percent) funding levels were adequate, and only on one site (4 percent) were funding levels excellent; and
- On four sites (16 percent) the teams found the equipment inadequate to properly manage the property; seven sites (28 percent) were adequately equipped, and fourteen sites (56 percent) were excellently equipped.

All twenty-five sites reviewed were found to be managed for the purpose for which they were acquired. Actual management practices, including public access, were found to be in compliance with the management plans at all but St. Lucie Inlet Preserve State Park, Haw Creek Preserve State Park, and Doris Leeper Spruce Creek Preserve.

Due to extenuating circumstances beyond the manager's control during the devastating 2005 hurricane season, St. Lucie Inlet Preserve State Park, managed by DEP's DRP, was found not to be in compliance with the management plan. The disturbance created, as a result of a dredge pipeline easement through the upland portion of the park for a beach renourishment project to protect private lands north of the park, was the primary reason the park was found not to be in compliance. This easement was granted as an emergency issuance by DSL in October 2005. A previously used easement path for the pipeline was determined to be unacceptable after further biological assessment, because it now was populated by an endangered species, the beach star. To avoid impacting the beach star, the decision was made to pass through the maritime hammock and coastal strand natural communities where no endangered species were located. The review team's opinion was that this was in conflict with the management plan's guidance for protection of the natural communities. To avoid future problems like this, DSL will develop procedures to address emergency activities not included in approved management plans.

Haw Creek Preserve State Park was donated to the State to be protected as a natural reserve and is managed by DEP's DRP. The property was transferred to the state with no legal public access to the uplands portion and public access to the park is by boat only. Access for management of the park is granted by verbal agreement from the adjacent private property owner. The park was found not to be in compliance with the management plan primarily because of very limited public access and lack of progress towards meeting management goals of natural resources, specifically fire-adapted natural communities. DRP evaluates it priorities on a regular basis to provide safe access to the public. In this case, the park is located in an area where there is already substantial public lands that offer ample recreation opportunities, therefore, while DRP still recognizes this as very important, it has listed this park as a lower priority for restoration and access purposes.

Substitute Item 4, cont.

Doris Leeper Spruce Creek Preserve, managed by Volusia County, was found not to be in compliance with the management plan primarily because of a lack of prescribed burning in fire dependent natural communities, and concerns about protection of sensitive archaeological resources from traditional recreational uses. The County has since taken steps to protect significant archaeological resources and is in the process of developing plans to improve, management of pyrogenic communities, endangered and threatened species, and visitor use.

Pursuant to section 259.036, F.S., if the land management review team determines that reviewed lands are not being managed for the purposes for which they were acquired, or managed in compliance with the adopted land management plan, DEP shall provide the review findings to the Board of Trustees, and the managing agency must report to the Board of Trustees its reasons for managing the lands as it has.

On this tenth anniversary of the Land Management Review Teams we note the following accomplishments:

- Teams have conducted 258 land management reviews and evaluated over 4 million acres of conservation lands. Nearly 1¼ million acres have been evaluated twice;
- 97 percent of sites reviewed are being managed in accordance with the purposes for which they were acquired and in compliance with their approved management plans;
- Of the 379 management units, 156 sites are over 1,000 acres. All but 23 of these sites have been reviewed at least once. Though not statutorily required to do so, teams have reviewed 59 of the 223 sites that are less than 1,000 acres. Management plans for all sites are reviewed by DSL and ARC. Site reviews are generally not conducted on sites less than 1,000 acres;
- Management agencies are doing a very good job developing comprehensive land management plans for protecting the state's natural and cultural resources and for identifying potential public uses, but are not doing as well implementing these plans, primarily due to insufficient funding, staffing and to some degree equipment;
- State agencies generally manage conservation lands in a manner that reflects their primary missions, i.e., DOF scores high in fire management, FWC scores high in species management, DRP scores high in public access and education, while CAMA scores high in water resource protection; and
- Overall, land management in nearly all categories appears to have improved in the last decade despite insufficient funding, staffing and equipment.

The report of the annual review team findings is submitted in accordance with section 259.036, F.S., and is consistent with the Natural Systems and Recreation Lands' section of the State Comprehensive Plan.

(See Attachment 4, Page 1)

RECOMMEND ACCEPTANCE

Item 5 DEP Conservation Lands Funding Discussion

**DEFERRED FROM THE OCTOBER 16, 2007 AGENDA
DEFERRED FROM THE OCTOBER 2, 2007 AGENDA**

REQUEST: Discussion of innovative and prudent ways to acquire additional conservation lands.

LOCATION: Statewide

STAFF REMARKS: At the August 28, 2007 Cabinet Meeting, the Governor and Cabinet directed the Department of Environmental Protection (DEP) staff to explore innovative and creative ways to fund acquisition of additional conservation lands. Many real estate markets around the state have experienced a recent down-turn, resulting in more affordable acquisition opportunities. However, DEP's Florida Forever funding through the program's sunset in Fiscal Year 2009-2010 is currently allocated for targeted conservation land acquisitions.

In keeping with the direction from the Governor and Cabinet, DEP staff presents the following items for discussion:

- Explore a request for accelerated funding under the existing Division of State Lands' (DSL) Florida Forever acquisition program:

Explore a request for a legislative appropriation for an additional \$200 million to supplement the \$105 million current annual appropriation for DSL. This additional funding would allow the state to take advantage of the current, favorable real estate market. DEP staff currently has \$98.4 million in approved commitments, fully utilizing the standard appropriation through Fiscal Year 2007-2008. DSL has another \$621 million in potential acquisitions, which could be pursued with this additional appropriation through Fiscal Year 2009-2010.

This appropriation would require proviso language in the General Appropriations Act (GAA) such as: Notwithstanding the distribution formula set forth in section 259.105(3), F.S., \$200 million in Specific Appropriation XXXX of the 2008-2009 General Appropriation Act shall be used by DEP's, DSL for the purposes of land acquisition under the Florida Forever program authorized under chapter 259, F.S.

An additional \$200 million appropriation could be authorized and funded through the sale of bonds. The Florida Forever program is funded with a combination of bond proceeds and cash. In order to minimize the cash balance in the Florida Forever Trust Fund, bonds are sold on a cash-needs basis to support projected expenditures. Florida Forever funds are spent on a first-in, first-out basis; all cash and proceeds are spent before selling additional bonds. Based on the current rate of expenditures by each of the receiving entities, it is possible that the additional \$200 million in bonds would not be sold until Fiscal Year 2009-2010.

Item 5, cont.

Bond funding could be accomplished utilizing the \$3 billion bonding authority of the Florida Forever program as provided in sections 259.1051(1) F.S and 215.618 F.S. Through Fiscal Year 2007-2008, \$1.7 billion of the \$3 billion has been authorized and used.

- Explore a request for a legislative change to Florida Statutes to allow for Murphy Act land sales' proceeds to be used for purchasing conservation lands within the Florida Forever boundary;
- Explore the use of a structured-sale annuity to lower the purchase price of conservation lands. This would involve directing purchase proceeds to a third party assignment company (assignor), if so directed by a seller, to enable the seller to spread receipt of payments over time and to enable the state to enjoy a discounted purchase price for the annuity. The contract would not obligate the Board of Trustees for any payments to the seller beyond closing. In addition, the Board of Trustees would receive title to the property at closing. No change in the law is required to accomplish this. DEP staff and the Board of Trustees would not endorse any company in this line of business;
- DSL will proactively work with the Acquisition and Restoration Council and managing agencies to identify parcels that are no longer needed for conservation purposes, due to land management impediments and low resource values. These properties could be utilized for exchanges to acquire in-holdings and parcels that would enhance property manageability;
- Explore a request for a legislative change to Florida Statutes to allow local governments to hold sole title, with a transfer clause, to conservation lands acquired in part with state funding. This would focus on both large conservation land purchases, which may require multiple partners and funding sources, and smaller sites, not normally encompassed by other land conservation programs, with unique environmental, historic or archaeological resources. This will leverage conservation dollars and restore cooperative relationships with local governments. The state would work with local governments to acquire properties with the state contribution, not to exceed 50 percent of the purchase price. This would stretch state dollars for targeted conservation lands. If the property is not managed as stipulated, the property would transfer to the state. Monitoring mechanisms would need to be developed;
- Coordinate with local governments and the Department of Community Affairs through Sector Plans, Rural Land Stewardship proposals, and other options to protect Florida Forever conservation lands;
- Encourage private acquisition and private ownership of conservation lands within Florida Forever project areas for uses such as mitigation projects and potential carbon sequestration; and

Item 5, cont.

- Encourage applicants who need private easements over state lands to acquire conservation lands rather than paying fees.

RECOMMEND WITHDRAWAL

Substitute Item 6 Palmer Ranch, LLC Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for a five-year sovereignty submerged lands lease to contain 22,014 square feet, more or less, for a proposed private docking facility (13 slips over sovereignty submerged lands and 6 slips in an adjacent man-made canal).

COUNTY: Collier
Lease No. 110032365
ERP File No. 11-0196577-001

APPLICANT: Palmer Ranch, LLC, an Illinois Limited Liability Company

LOCATION: Sections 18 and 19, Township 52 South, Range 27 East, in Coon Key Pass, Class II Outstanding Florida Waters, not approved for shellfish harvesting, within the local jurisdiction of Collier County.
Aquatic Preserve: Rookery Bay-Cape Romano, Resource Protection Area 1 and 3
Outstanding Florida Waters: Class II
Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Idle/slow speed zone

CONSIDERATION: \$3,887.13, representing (1) \$3,109.70 as the initial lease fee computed at the base rate of \$0.14126 per square foot; and (2) \$777.43 as the initial 25 percent surcharge payment. 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.

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.

Substitute Item 6, cont.

Project Synopsis

The applicant is proposing to construct a 19-slip private docking facility, with 13 slips over 22,014 square feet of sovereignty submerged lands and 6 slips in the man-made canal, adjacent to an undeveloped upland property. The proposed docking facility will accommodate private recreational vessels ranging in lengths from 20 to 60 feet with a maximum draft of 3.5 feet. These vessel limits are included as special lease conditions.

Background

As originally proposed, the project entailed nineteen 60-foot-long boat slips on sovereignty submerged lands along with the other activities on the uplands and in the man-made canal that are presently proposed. Six of those slips would have been located over sponges and other resources that constitute a Resource Protection Area 1 pursuant to chapter 18-20, F.A.C. The project was redesigned to eliminate those six boat slips (the area between Lease Areas A and B on the lease survey), thereby reducing impacts to sovereignty submerged land resources. The project has also been designed to minimize impacts to mangroves along the shoreline.

The upland property is commercially zoned and presently undeveloped except for a wastewater lift station that operates under a DEP wastewater collection permit. Upland development will include two restrooms, a swimming pool and deck, a 16-space paved parking lot, and a gravel cart path.

Project Detail

The docks will be floating concrete docks attached to fixed wooden access walkways by aluminum gangways. The boat slip mix at the leased docking facility will include 11 private recreational vessels up to 60 feet long, one up to 30 feet long, and one up to 20 feet long. Vessel drafts will not exceed 3.5 feet. An additional six slips will be located in an adjacent man-made canal (not sovereignty submerged lands). Those slips will be for private recreational vessels up to 20 feet long with drafts not to exceed 3.5 feet. The applicant intends to sell the right to use all of the boat slips on sovereignty submerged lands. A special approval condition requires the applicant to develop and implement a DEP-approved wet slip user agreement disclosing the lease requirements to slip users. Another special lease condition specifies that the docking facility will be subject to modification, including a reduction in size and associated lease area, if the upland use changes from commercial to residential.

The applicant proposes to dredge 325 cubic yards of material in the adjacent man-made canal. Since none of the dredging will be located on sovereignty submerged lands, no dredge fee is required.

The portion of the docking facility on sovereignty submerged lands is located in an aquatic preserve; therefore, the proposed lease must be shown to be in the public interest, pursuant to section 258.42, F.S., and section 18-20.004(1)(b), F.A.C. DEP is of the opinion that the project is in the public interest in light of the following proposals by the applicant: (1) donation of \$320,000 worth of public access improvements and public land management improvements, tentatively divided as follows: (a) \$200,000 worth of design, permitting and site development

Substitute Item 6, cont.

(including construction) for a proposed public educational/recreational facility within the Rookery Bay National Estuarine Research Reserve (RBNERR). The facility will include a public canoe/kayak launch that will provide non-motorized boating access to the Rookery Bay Aquatic Preserve at the northwest corner of County Road 951 and Capri Boulevard; (b) \$120,000 worth of side scan sonar mapping services to RBNERR to map seagrasses in the vicinity of the project; and (2) installation and maintenance of educational displays at the site regarding the aquatic preserve and marine ecosystems. Item (1) includes flexibility for DEP to assign a portion of either donation to the other half of Item (1) if all funds from (a) or (b) are not required to complete the respective portion of the applicant's public interest proposal. Item (1) is addressed as a special approval condition and item (2) is addressed as a specific condition in the environmental resource permit (ERP).

Noticing

The proposed lease was noticed pursuant to section 253.115, F.S. Forty-eight property owners were specifically noticed and nine objections were received. The objections received raised the following concerns:

- (1) the proposed canal dock's potential interference with navigation in the canal;
- (2) disagreement over the location of the applicant's northern riparian line;
- (3) the project's potential inconsistency with the setback requirement in section 18-21.004(3)(d), F.A.C.;
- (4) potential adverse impacts to manatees;
- (5) potential adverse impacts to shoreline mangroves and nearby sponges, seagrass, shrimp and fish species, eagles and other birds;
- (6) potential noise and lighting impacts to neighbors and the lack of upland screening/buffering;
- (7) potential change in upland use;
- (8) the potential use of the boat slips for overnight mooring, commercial tour boats, and other uses;
- (9) how sewage will be removed from the site;
- (10) stormwater runoff from the adjacent upland property if it is developed;
- (11) the potential lack of adequate water depth at and adjacent to the proposed docking facility;
and
- (12) the lack of a public meeting to explain the project to area residents.

Additionally, Save the Manatee Club has provided a written objection to the proposed project based on its opinion that the proposed project is inconsistent with the federal Marine Mammal Protection Act. In light of the objections received, DEP determined that the proposed lease requires Board of Trustees' consideration pursuant to the heightened public concern provision of section 18-21.0051(4), F.A.C.

Substitute Item 6, cont.

DEP is of the opinion that the objections received are addressed as follows:

- (1) although the man-made canal is not sovereignty submerged lands and is thus not subject to chapter 18-21, F.A.C., navigation in the canal will be maintained by marginal mooring of vessels along the canal dock and by the proposed maintenance dredging of the canal by the applicant at the proposed marginal boat slips in the canal, and by the docking facility in the canal extending less than 25 percent of the width of the canal. Additionally, navigation is an issue that must be addressed by the U.S. Army Corps of Engineers (Corps) prior to any permit being granted for the project by the Corps;
- (2) the riparian line was established after extensive discussion between the applicant's surveyor and DEP's Bureau of Survey and Mapping, and the project is within the applicant's riparian area;
- (3) the northernmost portion of the project is within 25 feet of the mouth of the canal. DEP has not been able to conclusively determine the ownership of the man-made canal, other than the canal's dedication to the public as part of the recorded subdivision plat. Therefore, there is no entity to provide a setback waiver other than Collier County, which has provided a local comprehensive plan consistency letter for the project;
- (4) concerns regarding potential manatee impacts have been addressed through the Florida Fish and Wildlife Conservation Commission (FWC) recommendations that will be incorporated into the ERP;
- (5) the project has been designed to minimize impacts to shoreline mangroves to the greatest extent practicable, and the project has been modified to avoid nearby sponges and seagrass, and shrimp and fish species will be protected through maintenance of water quality through the general and specific conditions of the ERP, and the FWC has not raised any concerns regarding adverse impacts to bird species;
- (6) potential noise and lighting impacts to neighbors and the lack of upland screening/buffering are local land development code issues to be addressed by local governments;
- (7) any change in upland use depends in part on the zoning of the property by the local government regulatory agency, and will require a lease modification. If such changes include upland development activities, such changes will also require a modification to the ERP to address stormwater issues;
- (8) overnight occupancy of boats will be authorized by the lease and ERP, although liveaboards will be prohibited. Although the applicant desires commercial tour boats to be authorized, the lease and ERP prohibit commercial tour boats and other commercial vessels to address the objection received. Other uses of boat slips not specifically authorized by the lease and ERP will require a modification to those authorizations;
- (9) the ERP requires installation, use and maintenance of a sewage pumpout facility, and the facility will be connected to the upland sewage system, and the local sewage treatment entity has provided written verification that it has the capacity to accept such sewage;
- (10) stormwater runoff from the upland development will be treated prior to discharge, and is addressed in the ERP. Any potential future upland development that may generate additional stormwater runoff beyond that which is addressed through the ERP will require a modification to the lease and the ERP;

Substitute Item 6, cont.

- (11) the applicant has provided bathymetric data showing adequate water depth on sovereignty submerged lands at the project site, and adequate water depths in the canal will be provided by the proposed maintenance dredging that qualifies as an exempt activity pursuant to section 403.813(2)(f), F.S. Additionally, quadrangle maps and navigational charts show navigation aides and depths of at least six feet between the project site and Gullivan Bay to the south and the Big Marco River to the north; and
- (12) the project was noticed pursuant to section 253.115, F.S., and entities receiving notice were provided adequate opportunity to review the application file.

Additionally, Save the Manatee Club's concerns have been addressed through FWC recommendations that will be incorporated into the ERP.

Permit Summary

DEP's ERP will prohibit liveaboards and fueling facilities and authorize a sewage pumpout facility. The ERP will incorporate several requirements designed to prevent and/or reduce water quality impacts, including stormwater management for the proposed upland parking lot and golf cart paths and implementation of a marina operations plan. As a result, DEP is of the opinion that the project has addressed long-term secondary and cumulative impacts from this project.

Commenting Agency

The recommendations of FWC regarding the protection of manatees have been addressed in the ERP and/or lease. Collier County is a designated manatee county with an approved manatee protection plan (MPP). FWC has stated that the proposed project is consistent with the MPP. A special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between the applicant and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Collier County and approved by FWC, and/or any speed zones established by Collier County and approved by FWC.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. In accordance with 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 Collier County.

(See Attachment 6, Pages 1-47)

RECOMMEND WITHDRAWAL