

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**MARCH 23, 2010**

Attachments to the items below can be viewed at the following link:

[http://www.dep.state.fl.us/secretary/cab/public\\_notices.htm](http://www.dep.state.fl.us/secretary/cab/public_notices.htm)

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**Item 1 Minutes**

Submittal of the Minutes from the January 26, 2010 Cabinet Meeting.

(See Attachment 1, Pages 1-22)

**RECOMMEND APPROVAL**

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**Item 2 Venice Yacht Club, Inc. Recommended Consolidated Intent/Lease Modification**

**REQUEST:** Consideration of an application for a modification of a five-year sovereignty submerged lands lease to increase the preempted area from 30,815 square feet to 57,883 square feet, more or less, for a 58-slip private yacht club.

**APPLICANT:** Venice Yacht Club, Inc. (d/b/a Venice Yacht Club)

Lease No. 580021773

Application No. 58-0206990-003

**LOCATION:** 1330 Tarpon Center Drive

Venice, Sarasota County

Section 01, Township 39 North, Range 18 East

Aquatic Preserve: No

Waterbody/Classification: Roberts Bay, Class III, not approved for shellfish harvesting

Designated Manatee County: Yes, with an approved manatee protection plan

Manatee Aggregation Area: No

Manatee Speed Zone: Slow speed

**CONSIDERATION:** \$9,909.61, representing (1) \$8,872.36 as the initial annual lease fee computed at the base rate of \$0.153281 per square foot, and (2) \$1,037.25 as the 25 percent surcharge payment for the additional area. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C.

**STAFF REMARKS:** In accordance with rules adopted pursuant to sections 373.427(2) and 253.077(2), F.S., this "Recommended Consolidated Notice" contains a recommendation for the 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.

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**Item 2, cont.**

**Background**

On January 1, 2004, under delegation of authority, the Department of Environmental Protection (DEP) approved a 36-slip private yacht club preempting 30,815 square feet. This authorization included 22,798 square feet and 25-slips at the main facility and 8,017 square feet and 11-slips located approximately 280 feet south and separated from the main facility by Higel Park, a city managed park. The Venice Yacht Club has an additional 20 slips within an adjacent privately-owned canal.

On September 5, 2008, a compliance inspection found one vessel moored approximately 15 feet beyond the lease boundary and one piling situated approximately 16 feet beyond the lease boundary. Upon notification, Venice Yacht Club corrected the compliance issues in a timely manner and no fines were assessed. Based on the six percent of revenue paid, Venice Yacht Club was not required to pay lease fees in arrears for the additional preemption. A subsequent site inspection on September 18, 2008, determined the facility to be in compliance.

On September 30, 2009, under delegation of authority, DEP renewed and modified the lease. The modification was to clarify the number of slips authorized at the Venice Yacht Club facility by combining the 25 slips at the main facility and the 11 slips in the area to the south, separated by Higel Park, for a total of 36 slips in the lease.

**Project Details**

Venice Yacht Club, Inc., is proposing to modify the lease to reconfigure and expand the existing 36-slip private yacht club facility by constructing 22 additional slips for a total of 58 slips on sovereignty submerged lands. The expansion will also increase the preempted area by 27,068 square feet for a new total preemption of 57,883 square feet. This facility is a private yacht club with a pool, restaurant, tiki bar, meeting rooms and will not be open to the public. Of the 58 wet-slips at Venice Yacht Club, 53 will be used for permanent mooring and 5 for temporary mooring. Vessels at the facility will range from 20 to 50 feet in length, with drafts up to 6 feet.

**Noticing**

The project was noticed as required pursuant to section 253.115, F.S., and section 18-21.005(3), F.A.C. Approximately 45 property owners were specifically noticed and eight letters of objection were received, one of which was signed by 22 individuals. The objector's concerns are as follows:

1. size of the marina expansion/need for additional slips and its encroachment into the channel;
2. potential impacts to water quality caused by an increased number of vessels fueling at the facility;
3. potential impacts to manatees; and
4. potential impacts to personal docks (e.g., vessels hitting personal docks) caused by the increased number of large vessels in the project area.

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**Item 2, cont.**

DEP is of the opinion that the objector's concerns have been addressed as follows:

1. size, location and configuration of the proposed marina expansion was addressed by the consideration of secondary and cumulative impacts in the minimization and avoidance of the proposed structure to the adjacent channel and the City of Venice's proposed mooring field location. This minimization resulted in a reduction of the size of the proposed structure and preempted area at the terminal end of the dock. The United States Coast Guard has provided a letter of no objection to the proposed project with regard to the structure as a possible navigation hazard;
2. potential impacts to water quality have been addressed by a special lease condition and specific permit conditions that require sewage pump-out facilities, slip rental agreements requiring regular pump-outs of vessels, and an updated fuel spill contingency plan;
3. potential impacts to manatees have been addressed through specific permit conditions recommended by the Florida Fish and Wildlife Conservation Commission (FWC); and
4. regarding the potential impacts to personal docks, DEP staff, in consultation with FWC, Division of Law Enforcement Boating and Waterways Section, determined that the proposed dock expansion does not pose a navigational hazard to the single family docks in the area.

**Permit Summary**

DEP's environmental resource permit requires sewage pump-out facilities, authorizes fueling facilities and prohibits liveboards.

**Commenting Agency**

The recommendations of FWC regarding protection of manatees have been addressed in the permit. Sarasota County is a designated manatee county with an approved MPP. FWC stated the proposed project is consistent with the MPP.

**Comprehensive Plan**

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 is in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City of Venice.

(See Attachment 2, Pages 1-28)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,  
THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$9,909.61**

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**2<sup>nd</sup> Substitute Item 3 Merlin Entertainments Group Florida LLC/Legoland Florida/  
Cypress Gardens/Use Authorization/Sovereignty Submerged Land  
Easement**

**REQUEST:** Consideration of (1) an approval to allow the use of approximately 2 acres of the Protected Parcel containing Cypress Garden's Historic Gardens for a portion of the proposed LEGOLAND<sup>®</sup> Florida facility; and (2) a request for a five-year sovereignty submerged land private exclusive easement, with an automatic five-year renewal, containing approximately 665,126 square feet for an existing commercial facility in conjunction with the proposed LEGOLAND<sup>®</sup> Florida facility.

**APPLICANT:** Merlin Entertainments Group Florida LLC (Merlin Entertainments)  
Sovereignty Submerged Land Easement No. 41253

**LOCATION:** 6000 Cypress Gardens Boulevard  
Winter Haven, Polk County  
Sections 02 and 03, Township 29 South, Range 26 East and Section 35,  
Township 28 South, Range 26 East  
Aquatic Preserve: No  
Waterbody/classification: Lake Eloise, Class III, not approved for shellfish  
harvesting  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Speed Zone: No

**CONSIDERATION: Sovereignty Submerged Land Easement:** \$20,176.96 as the annual private exclusive easement fee. The annual fee for the remaining years of the easement shall be revised annually based on the fluctuations of the Consumer Price Index (CPI) with a 10 percent cap on annual adjustments.

**STAFF REMARKS:**

**(1) Upland Portion**

On January 27, 2004, the Board of Trustees approved the acquisition of a conservation easement within the Cypress Gardens Florida Forever project from the Trust for Public Land. The Department of Environmental Protection's (DEP) Division of State Lands (DSL) was appointed to monitor the easement, which was executed on February 24, 2004. The conservation easement covers the entire 149.8-acre property, more or less, and is divided into two sections. The northwest portion consists of approximately 29.52 acres and contains the Historic Gardens (Protected Parcel), with the underlying fee being held by Polk County. The rest of the property, consists of approximately 120.28 acres (Remainder Parcel). The Remainder Parcel was purchased on January 7, 2010 by Merlin Entertainments for the construction of the LEGOLAND<sup>®</sup> Florida (Legoland) facilities. Part of the proposed development involves the building of a "Miniland" attraction, which would extend into approximately 2 acres of the Protected Parcel within the conservation easement. As owners of the fee interest on the Protected Parcel, Polk County officials have expressed their support for this project. If the Board of Trustees agrees to permit this use, it will not be necessary to amend the conservation easement to allow for construction.

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**2<sup>nd</sup> Substitute Item 3, cont.**

**Project Description**

Merlin Entertainments has purchased the Remainder Parcel and is planning to build and operate a Lego-themed amusement park similar to the Legoland parks in Carlsbad, California; Billund, Denmark; Windsor, England; and Guenzberg, Germany. Legoland will feature numerous attractions based on the Lego building blocks.

The Miniland section of this attraction will feature various historical landmarks and famous vistas rendered to scale in actual Lego bricks. The similar facility in California features around 450,000 model buildings and figures, all recreated to scale entirely out of Legos.

Due to the size and shape of Legoland, the Miniland attraction will extend into approximately 2 acres of the Historic Gardens within the Protected Parcel. The impacted area is relatively small, and DEP does not believe the proposed use will be detrimental to the Historic Gardens.

The conservation easement states that “The use of the Historic Gardens shall not be changed nor shall easements or other property rights be granted, sold or transferred within said area without the prior written consent of Grantee (the Board of Trustees)”. The conservation easement does not need to be amended, provided that the Board of Trustees is willing to give its consent for the use of this portion of the Historic Gardens for the Miniland facility.

Concerning the Remainder Parcel, the Legoland facility will conform to the terms of the conservation easement. The conservation easement provides that this area “...promotes the purposes of operating the Easement Property as an economically viable theme park.”

**Management**

DSL will continue to monitor the Conservation Easement subject to the additional permitted use. The Protected Parcel will be maintained by Merlin Entertainments in accordance with the lease agreement originally entered into between Polk County and Cypress Gardens Adventure Park, LLC, on February 24, 2004.

**(2) Sovereignty Submerged Lands Portion**

**Background**

On August 8, 1985, the Board of Trustees approved a 30-year sovereignty submerged land easement [No. 26627 (3600-53)], preempting 98,890 square feet, to Florida Cypress Gardens, Inc., for the construction and operation of seven floating breakwaters and a ski jump.

In 1998, DEP issued a five-year lease (No. 530025073), preempting 53,879 square feet, for the former registered grandfathered facility (GSR No. 530002) to Florida Cypress Gardens, Inc., pursuant to a delegation of authority.

On February 24, 2004, DEP renewed and modified the lease to reflect a change in upland interest to Cypress Gardens Adventure Park, LLC, and to increase the square footage, pursuant to a delegation of authority. The lease authorized the operation of a 20-slip docking facility for

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**2<sup>nd</sup> Substitute Item 3, cont.**

commercial cruise and recreational vessels exclusively to be used for tours of botanical gardens and water-ski activity in conjunction with an upland theme park, preempting 57,810 square feet of sovereignty submerged lands, with fueling and sewage pumpout facilities.

**Park Historical Information**

Cypress Gardens is known as Florida’s first theme park and has been an integral part of central Florida’s history since it opened as a botanical garden in 1936. In the early years, the beauty of Cypress Gardens was discovered by movie producers and celebrities and it became the background for several TV specials and films throughout the 1950’s and 1960’s. Eventually, the park was transformed into a full scale theme park and became famous not only for the beautiful botanical gardens but also for its famous ski shows. Cypress Gardens became the birthplace of performance water skiing in 1941 and is commonly known as the “Water Ski Capital of the World”. The park was closed for the first time in April 2003 because of the significant decrease in attendance. In November 2004, the park re-opened under the ownership of Adventure Parks Group. Adventure Parks Group filed bankruptcy in September 2006 and the park was later purchased by Land South Adventures in October 2007. Again, because of decreased attendance, the park was closed in September 2009. In January 2010, the park was purchased by Merlin Entertainments, who announced plans to construct and operate its fifth Legoland, known as Legoland Florida.

Despite the fact that ski-shows are not typically part of Legoland theme parks, Merlin Entertainments has indicated that it understands the importance and significance of the shows to the community and has agreed to incorporate them into its plans.

Based on the historical significance of the park and the ski shows that have occurred within the area of the proposed easement area since 1941, DEP has determined that a private easement is the proper authorization for this activity. In addition, pursuant to section 18-21.010(3), F.A.C., “Applications shall be granted upon such terms and conditions, including payment of the value of the easement if any, that the board sees fit.” Therefore, because of the historical importance of the park and the ski shows to the community and to the State of Florida, DEP recommends that the payments remain similar to that of the previous lessee/grantee, despite the increase in square footage.

**Project Detail**

Merlin Entertainments is requesting a five-year sovereignty submerged land private exclusive easement, with an automatic five-year renewal. The renewal is subject to Merlin Entertainments being in compliance with the easement. The easement contains approximately 665,126 square feet for ski-show activities and the mooring of ski-show vessels and cruise boats at an existing commercial facility in conjunction with an upland theme park. Also, included in the easement area will be the existing docking structures, ski jumps, floating tire barrier and the Florida pool. Merlin Entertainments has explained that eventually additional structures will be placed within the easement area as part of its ski shows.

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**2<sup>nd</sup> Substitute Item 3, cont.**

The entire easement will be open to the public for passive recreational uses including, but not limited to, boating, kayaking and fishing. However, the public will be precluded from the ski-show cove area between the hours of 7:00 a.m. and 8:00 p.m. The public may also be precluded from the ski-show cove area during special events with prior written approval from DEP.

The total square footage of the proposed easement (665,126 square feet) is approximate and may be subject to change once Merlin Entertainments submits a signed and sealed survey to DEP for review and approval. If the actual square footage, based on the survey, exceeds 698,382 square feet (five percent increase), DEP will notify the Board of Trustees in the form of a negative response memo.

If the Board of Trustees approves this proposed easement, the existing easement and lease will be terminated.

**Noticing**

The project was noticed pursuant to section 253.115, F.S. Other than Polk County, there are no property owners within a 500-foot radius of the proposed easement area. All interested parties on the county and statewide mailing lists were noticed. To date, no objections have been received.

**Permit Summary**

Upon receipt of a complete application, DEP will process an environmental resource permit for all existing structures. The permit will authorize fueling and sewage pumpout facilities and will prohibit liveboards.

**Comprehensive Plan**

A consideration of the status of the local government comprehensive plan was not made for this item. DEP has determined that the proposed easement is not subject to the local government planning process because no additional structures are proposed and the activities will remain consistent with past uses.

(See Attachment 3, Pages 1-41)

**RECOMMEND (1) APPROVAL OF THE USE OF APPROXIMATELY 2 ACRES OF THE PROTECTED PARCEL FOR A PORTION OF THE PROPOSED LEGOLAND FACILITY; AND (2) APPROVAL OF THE FIVE-YEAR EASEMENT, WITH AUTOMATIC FIVE-YEAR RENEWAL SUBJECT TO COMPLIANCE, SUBJECT TO THE SPECIAL APPROVAL CONDITIONS, THE SPECIAL EASEMENT CONDITIONS, AND ANNUAL PAYMENT OF \$20,176.96, AS ADJUSTED BY CPI**