

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**NOVEMBER 9, 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 September 14, 2010 and September 28, 2010 Cabinet Meetings.

(See Attachment 1, Pages 1-17)

**RECOMMEND APPROVAL**

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**Item 2 Astro Too, Inc. Acceptance of Bid/Offer/Determination**

**REQUEST:** Consideration of (1) a determination that the property is surplus pursuant to section 253.034(6), F.S.; (2) acceptance of a bid and offer in the amount of \$245,001 submitted by Astro Too, Inc., a Florida corporation for the purchase of a 2.03-acre, more or less, improved parcel of state-owned land; and (3) approval of a contract for sale and purchase of the 2.03-acre parcel of state-owned land to Astro Too, Inc.

**COUNTY:** Brevard  
Bid No. BPLA2010-003

**APPLICANT:** Astro Too, Inc., a Florida corporation

**LOCATION:** Section 11, Township 28 South, Range 37 East

**CONSIDERATION:** \$245,001 to be deposited in the Internal Improvement Trust Fund

		APPRAISED BY:		CLOSING
		W.H.Benson & Co.		
<u>PARCEL</u>	<u>ACRES</u>	<u>(05/17/10)</u>	<u>BID AMOUNT</u>	<u>DATE</u>
Palm Bay	2.03	\$350,000	\$245, 001	120 days after BOT approval

**STAFF REMARKS:**

**Background**

The Board of Trustees received this property by Chapter 67-269, Laws of Florida, Acts of 1967, as amended by Chapter 67-2236, which required the Department of Public Safety to transfer and convey to the Board of Trustees by properly executed deed, title to all real property owned by such Department and the officers thereof. The property is currently under Board of Trustees' Lease No. 2480 to the Department of Highway Safety and Motor Vehicles (DHSMV) and a sublease between DHSMV and Department of Management Services (DMS).

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**Item 2, cont.**

**Project Description**

The property contains a vacant commercial shell building constructed in 1948 consisting of approximately 2,247 square feet more or less. The building was vacated in 2004 after extensive damage from Hurricane Frances. Funding to repair a damaged roof and abate mold and asbestos was secured, but additional funding to reconstruct the facility to a working state was never approved. Due to the extensive amount of mold and asbestos damage, the interior has been gutted and is not useable in its current condition and will require renovation. The property is no longer occupied by DHSMV or DMS and currently has several violations of the Code of Ordinances of the City of Palm Bay. The initial violation notice was December 12, 2009, with a compliance date of January 1, 2010. Several extensions have been granted with the current compliance date extended until November 8, 2010. Due to the low contributory value of the building, DHSMV has requested to demolish the structure in order to reduce annual maintenance costs of approximately \$2,300 and eliminate estimated repair costs of \$11,000 necessary to correct the violations and bring the property into compliance. DHSMV provided an estimate of \$14,000 to demolish the building. Prior to making any decision or authorization to proceed with the demolition, the Department of Environmental Protection's Division of State Lands (DSL) staff noticed state agencies, state universities, local governments and marketed the property to the public by competitive bid.

**Noticing**

Pursuant to sections 253.034 and 253.111, F.S., state agencies, state universities and the local government were notified of the proposed sale. No interest in leasing this property was received from any state agency or state university. Brevard County and the City of Palm Bay showed some interest but after an inspection, determined the property did not suit their needs.

**Bid History**

Due to the current real estate market, the condition of the building and the time limitations for the pending code violations, DSL offered the property for sale by competitive bid with no minimum bid. A "For Sale" sign was placed on the property and brochures were sent out to surrounding property owners and local real estate offices. Advertisements were placed in the real estate section and the legal section of Florida Today newspaper in Melbourne, Florida and the property was advertised on the DSL website. One bid was received in the amount of \$50,000. The offer was rejected because it was significantly below the market value of the property. DSL staff continued to market and advertise the property and offered the property by competitive bid a second time with a minimum bid of \$245,000. The public bid opening was held September 28, 2010 at 11:00 am. One bid was received from Astro Too, Inc., in the amount of \$245, 001.

The offer of \$245,001 is below the appraised value; however, it is a reasonable amount considering the volatile recession affected real estate market. The appraised value is based on the concept of exposure and marketing efforts to potential buyers, likely by listing through the MLS or a commercial broker, for a period up to one year. The state's surplus process does not provide the same level of exposure as is the basis of the appraised value. Another factor to consider in the reasonableness of this offer from Astro Too is that the price is relatively close to the appraised value of the land itself, given the low contributory value of the building due to its poor condition. If the building was demolished as proposed by the DHSMV, the net proceeds of

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**Item 2, cont.**

selling the property as vacant land would be nearly the same as this offer. The projected net proceeds for this scenario are derived by deducting the estimated demolition cost of \$14,000 from the appraiser's opinion of the land value of \$265,000, giving net proceeds of \$251,000, which is close to the offer of \$245,001. Also, additional staff time, and marketing costs to sell the land as vacant would be incurred.

**Statute Requirements**

Pursuant to section 253.034(6), F.S., in order to surplus non-conservation land, the Board of Trustees must make a determination that the land is no longer needed. Due to the time limitations for the pending code violations, cost of repairs, and the lack of interest or need from state universities, state agencies and the local government, DEP recommends that the Board of Trustees find this as a reasonable offer to accept and make a determination that the property is no longer needed and is suitable for surplus.

**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 action is not subject to the local government planning process.

(See Attachments 2, Pages 1-35)

**RECOMMEND APPROVAL**

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**Item 3 DOT Public Easement/Little Lake Worth Bridge/Survey Waiver**

**REQUEST:** Consideration of an application for (1) a 50-year sovereignty submerged lands public easement containing 23,435 square feet (0.54 acre), more or less, for replacement of an existing public vehicular bridge; (2) authorization for the severance of 239 cubic yards of sovereign material; (3) authorization for the placement of approximately 195 cubic yards of rip rap; and (4) a waiver of the survey requirement.

**APPLICANT:** Florida Department of Transportation (DOT)

Application No. 100224-18

Easement No. 41260

BOT File No. 500234956

**LOCATION:** SR A1A

Village of North Palm Beach, Palm Beach County

Section 04, Township 42 South, Range 43 East

Aquatic Preserve: No

Waterbody/Classification: over channel connecting Lake Worth Lagoon and Little Lake Worth, Class III, not approved for shellfish harvesting

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**Item 3, cont.**

Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: 50-foot slow speed shoreline buffer

**CONSIDERATION:** No fees required for public rights-of-way pursuant to rule 18-21.004(1)(e), F.A.C. The project qualifies for a waiver of the severance fee pursuant to rule 18-21.011(3)(c)1, F.A.C., because the material will be placed on public property and used for public purposes.

**STAFF REMARKS:**

**Project Synopsis**

DOT proposes to replace an existing three-span, two-lane vehicular bridge that was determined to be structurally deficient and functionally obsolete with a new three-span, two-lane vehicular bridge in the same alignment.

**Background**

The original Little Lake Worth Bridge was constructed in 1965, which was prior to any requirement to obtain an easement from the Board of Trustees. The existing bridge was rated structurally deficient and functionally obsolete on June 16, 2006.

On February 19, 2010, DOT applied for a Noticed General Permit to remove and replace the existing Little Lake Worth Bridge. On March 26, 2010, pursuant to rule 40E-400.443, F.A.C., the South Florida Water Management District (District) issued Noticed General Permit No. 50-09359-P for the removal and replacement of the Little Lake Worth Bridge.

On April 16, 2010, a petition was filed requesting an administrative hearing to review the Noticed General Permit, two permit letter modifications, the dewatering permit, and the sovereignty submerged lands easement for the Little Lake Worth Bridge. On May 3, 2010, the District issued an Order Dismissing Petition With Leave to Amend. The petition was found to be insufficient to grant the hearing because it failed to include disputed issues of material facts regarding the bridge replacement, permit letter modifications, and dewatering applications. The petition also failed to include a statement of specific rules or statutes that would require reversal or modification of the District's actions regarding the bridge replacement, letter modifications, and dewatering permit.

On May 24, 2010, the District received an amended petition requesting an administrative hearing regarding only the Noticed General Permit. On June 9, 2010, the District issued a Final Order Dismissing Amended Petition With Prejudice pursuant to section 120.569(2)(c), F.S. The amended petition did not cure the defects that were present in the initial petition and contains allegations that conclusively appeared from the face of the amended petition to be incurable.

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**Item 3, cont.**

**Project Description**

DOT proposes to replace an existing three-span, two-lane vehicular bridge with a new three-span, two-lane vehicular bridge. The existing bridge is 60 feet in length with a vertical clearance of 8.7 feet above mean high water (MHW).

The proposed bridge is designed to meet current engineering standards for structures in an aggressive (saltwater) environment. The proposed bridge is 90 feet in length with a minimum vertical clearance of 12 feet above MHW. The proposed bridge includes 12-foot-wide travel lanes, 8-foot-wide shoulders, and 6.6-foot-wide sidewalks. The sidewalks will be separated from the shoulder by concrete barriers to improve pedestrian safety.

Minor shaping of the side slopes at the bridge will require dredging of approximately 239 cubic yards of sovereign material prior to the placement of 195 cubic yards of rip rap to stabilize the four bridge abutments. The dredged material will be used as fill for the roadway embankments on either side of the bridge within the existing roadway right-of-way. The project qualifies for a waiver of the severance fee pursuant to rule 18-21.011(3)(c)1, F.A.C., because the material will be placed on public property and used for public purposes.

The proposed project will not impact any significant submerged or aquatic resources.

**Survey Waiver**

DOT qualifies for a survey waiver because this is a public project; however, there is no existing easement for the Little Lake Worth Bridge. DOT has provided a sketch and description that contains a metes and bounds legal description that provides enough information to locate the existing and proposed structures. Therefore, the District is of the opinion that the survey waiver is appropriate and thus recommends approval of the survey waiver.

**Noticing**

The proposed project was required to be noticed pursuant to section 253.115, F.S., and rule 18-21.005(3), F.A.C. DOT also published notice of the project in a newspaper of general circulation on April 7, 2010.

A total of 250 property owners were specifically noticed and 158 letters and emails objecting to the project were received by the District. The objections raised the following concerns:

- (1) potential increase in the size and number of boats transiting beneath Little Lake Worth Bridge because of the proposed vertical clearance;
- (2) impacts to manatees;
- (3) impacts to water quality and seagrass resources;
- (4) public safety and crime due to potential use of Little Lake Worth as a live-aboard mooring area; and
- (5) potential increase in public use of Little Lake Worth.

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**Item 3, cont.**

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

- (1) depths observed during a site visit on July 30, 2010 in the southern approach to the bridge were as shallow as -3 feet mean low water. Based on the observed bathymetry of the project area, these shallow depths will continue to constrain vessels larger than those currently navigating beneath the bridge. While the size of vessels transiting beneath the bridge will still be constrained by the shallow depths of the channel to the south, boating safety will be improved with additional vertical and horizontal clearance in the proposed bridge design compared to the existing bridge. Small outboard powered vessels (e.g. less than or equal to 3-foot draft) with console windshields and tops currently must transit through the bridge only at low tide. With the proposed vertical and horizontal clearances of the replacement bridge, these vessels will be able to safely pass through the bridge at most tide stages without the risk of striking the bridge that currently exists;
- (2) the District has coordinated review of the project with the Florida Fish and Wildlife Conservation Commission (FWC) to evaluate the potential for impacts to manatees from the project. FWC provided comments that, given the less frequent use of Little Lake Worth by manatees compared to other portions of Lake Worth Lagoon, the proposed vertical clearance of the bridge and any increase in the amount or type of boat traffic would not significantly increase risks to manatees;
- (3) the District has reviewed the project and determined DOT has provided reasonable assurances that impacts to water quality and seagrass resources will not result from the proposed project;
- (4) Ordinance No. 09-014 amended the Palm Beach County code on June 16, 2009 to prohibit liveaboard mooring within Little Lake Worth. Enforcement authority and potential punishments are described in the ordinance and include fines up to \$500 per day and up to 60 days in county jail for violating this ordinance. Another site visit was conducted on October 26, 2010 by boat to assess the current liveaboard use of northern Lake Worth Lagoon and evaluate the potential for these sizes and types of vessels to transit beneath Little Lake Worth Bridge considering the proposed vertical clearance. Over 90 percent of liveaboard vessels observed on October 26, 2010 could not make the transit beneath the proposed replacement bridge due to vessel draft, vertical clearance or both. Based on the observed bathymetry of the project area, the shallow depths in the southern approach to the bridge will continue to prevent liveaboard sailboats and motor yachts from accessing Little Lake Worth. The proposed bridge clearance will provide access to Little Lake Worth for Palm Beach County Sheriff, FWC, Coast Guard, and other law enforcement and emergency response vessels, which are currently unable to navigate beneath the bridge; and
- (5) boating, fishing, and traditional uses of public waters and navigational safety would be improved by the increased vertical clearance of the proposed bridge, as specified in chapter 18-21, FAC.

A total of 263 letters were received supporting the replacement of the Little Lake Worth Bridge with the proposed vertical clearance. Residents supporting the vertical clearance cite support for the proposed DOT design to reduce maintenance and repair costs to taxpayers and improved navigational safety for the public and for law enforcement vessels.

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**Item 3, cont.**

**Commenting Agency**

The recommendations of FWC regarding protection of manatees have been addressed by project design. Palm Beach County is a designated manatee county with an approved manatee protection plan.

**Comprehensive Plan**

Pursuant to section 339.135, F.S., the Department of Community Affairs has determined that this project is not inconsistent with the local comprehensive plan for the affected area.

(See Attachment 3, Pages 1-12)

**RECOMMEND APPROVAL**

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**Substitute Item 4 Port Dolphin Energy, LLC Recommended Consolidated Intent/Public Easement**

**REQUEST:** Consideration of (1) an application for a 100-foot-wide, 25-year, non-exclusive, sovereignty, submerged lands public easement containing 8,303,774 square feet (190.629 acres), more or less, for a proposed subaqueous natural gas transmission pipeline across approximately 15.91 statute miles of sovereignty submerged lands; and (2) the use of sovereignty, submerged lands for the purpose of (a) a 3,000-foot-wide temporary construction corridor containing approximately 240,809,446 square feet (5,528.224 acres); and (b) two potential mitigation sites, including one within the temporary corridor containing 4,241,437 square feet (97.37 acres) and one outside the temporary corridor containing a total of 1,937,984 square feet (44.49 acres).

**APPLICANT:** Port Dolphin Energy, LLC (Port Dolphin)

Application No. 41-0286121-005

Easement No. 41202

BOT No. 410234373

**LOCATION:** Project originates in Section 01, Township 33 South, Range 17 East, and crosses Class II and Class III waters of Tampa Bay and the Gulf of Mexico within the local jurisdiction of Manatee and Hillsborough Counties, including Class II Outstanding Florida Waters of the Sarasota Bay Estuarine System, near the City of Anna Maria.

Aquatic Preserve: No

Conditionally-Approved for Shellfish Harvesting

Designated Manatee County: No

**CONSIDERATION:** (1) \$5,037,982.72, for a 100-foot-wide easement as a one-time easement value and enhanced value fee at the rate of \$6.0671 per linear foot (based on a minimum width of ten feet) that crosses sovereignty submerged lands and prorated for any increases in width. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The easement fee will be deposited into the Internal Improvement Trust Fund.

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**Substitute Item 4, cont.**

**STAFF REMARKS:**

In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this “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.

**Project Synopsis**

Port Dolphin is requesting a 25-year public easement over a 100-foot-wide area of sovereignty submerged lands on which to construct and operate a 36-inch, approximately 50.56-mile natural gas transmission pipeline (pipeline), including 25.21 miles of subaqueous pipeline within state coastal waters.

**Background**

Port Dolphin is wholly-owned by Höegh LNG, a Norway-based corporation. Although the applicant is not a public entity, nor regulated by the Public Services Commission, it is the recommendation of staff that the proposed easement be processed as a public easement with assessed fees as specified in rule 18-21.011(2)(c), F.A.C. The Board of Trustees has used this approach in the past with similar offshore subaqueous natural gas pipeline projects within state waters.

**Project Description**

Under the federal Deepwater Port Act of 1974, the construction of the pipeline will be necessary for the offshore delivery and regasification of liquefied natural gas (LNG) from the proposed Port Dolphin Deepwater Port (DWP). The DWP will be located in the federal waters of the Gulf of Mexico, approximately 28 miles offshore from Tampa Bay in approximately 100 feet of water.

The DWP will consist of a permanently-moored unloading buoy system with two submersible buoys, separated by a distance of approximately three miles. Each buoy will serve as a mooring for shuttle and regasification vessels. Natural gas will be unloaded from the vessels, through the buoy system, into the pipeline which will transport the natural gas through federal and state waters of the Gulf of Mexico and into Tampa Bay, making landfall at Port Manatee. The pipeline will then continue onshore and connect to existing natural gas systems operated by Gulfstream Natural Gas Systems, LLC (Gulfstream) and Tampa Electric Company.

The pipeline is proposed over approximately 21.55 statute miles (18.73 nautical miles) of federal waters of the Exclusive Economic Zone (EEZ), approximately 25.21 statute miles (21.91 nautical miles) of Florida state coastal waters, which includes approximately 15.91 statute miles within sovereignty submerged lands and approximately 9.3 statute miles within the non-sovereignty lands of Hillsborough County, and approximately 3.8 miles onshore in Manatee County.

The proposed easement will cross the existing Department of Transportation easement for the Bob Graham Sunshine Skyway Bridge and will also cross the Gulfstream easement at two locations. The reason cited for the width of the easement is to protect the “integrity of



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**Substitute Item 4, cont.**

the...pipeline” from potential future activities which, because of their nature and/or proximity could impact, expose, undermine or otherwise damage the pipeline.

At full operation, the pipeline will be capable of delivering 228 billion cubic feet of natural gas per year to markets within Florida. The DWP will be designed to normally supply from 400 million to 1.2 billion cubic feet of natural gas per day. The existing Florida Gas Transmission and Gulfstream pipelines currently supply up to 3.3 billion cubic feet per day to south and central Florida markets. The project will provide a competitive, alternative source of clean-burning natural gas to markets in Florida. The Florida Public Services Commission has predicted a continued growth in Florida’s demand for natural gas, particularly for use by electric power generation facilities. The natural gas supplied by the project will become increasingly important as older power plants are converted to natural gas to meet more stringent air emission standards.

The Department of Environmental Protection (DEP) is recommending an easement term of 25 years with the following conditions: (1) if the grantee (a) does not begin construction of the pipeline within five years after the regulatory permit is issued, this easement shall automatically and immediately terminate; and (b) qualifies for a permit extension for the construction phase beyond the initial five-year period, and Grantee wishes to retain this easement for its original 25-year term, that request must be presented to the Board of Trustees for its consideration and approval prior to the expiration of the initial five-year period; and (2) any future assignment of the easement must be approved by the Board of Trustees. These conditions are reflected as special easement conditions, as well as specific conditions of the permit.

The 25-year term is consistent with the design service life of the proposed pipeline, which is approximately 25 years. The applicant will be solely responsible for the long-term maintenance of the proposed facility. At the termination of service, the pipeline will be capped and left in place.

Security and protection of the operational facility within state and federal waters will be administered by the U.S. Coast Guard, pending successful issuance of the Deepwater Port License. The proposed facility and pipeline is located outside of all established shipping lanes and fairways, and will not interfere with navigation in state waters. The Deepwater Port License will establish a No Anchoring Area around the DWP moorings and along the constructed pipeline to prevent damage to these systems.

**Temporary Construction Corridor and Mitigation Sites**

In addition to the proposed easement, the applicant is requesting consent to use a 3,000-foot-wide temporary construction corridor, containing approximately 240,809,446 square feet centered on the proposed pipeline. The purpose of this temporary corridor is to accommodate the construction vessels and anchoring systems associated with the selected construction methods, which include plow-trenching, horizontal directional drilling (HDD) and clamshell dredging in limited areas. All proposed pipeline construction activities will be accommodated within this corridor. The temporary construction corridor will be abandoned upon completion of construction.

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**Substitute Item 4, cont.**

Four potential mitigation sites, including two on sovereignty submerged lands, have been identified for the offset of construction impacts. Two of the sites, including approximately 1,937,984 square feet of sovereignty submerged lands, may be required as part of the mitigation to offset all anticipated construction impacts and will be located outside of the temporary construction corridor. The remaining two sites, including approximately 4,241,437 square feet of sovereignty submerged lands, have been identified as contingency mitigation sites. The contingency sites will be used only in the case that additional mitigation is necessary and will be located within the temporary construction corridor. Construction of the mitigation sites qualifies for a Letter of Consent for use of sovereignty submerged lands pursuant to rule 18-21.005(c)(15), F.A.C.

**Offshore Construction**

Construction within Florida state coastal waters shall begin near Port Manatee and proceed waterward. The shallow water depths and the presence of Terra Ceia Aquatic Preserve nearby preclude the use of plow-trench methods at the nearshore approach to Port Manatee. Pipeline construction in this area shall be constructed by a combination of trenching and HDD. The trench will be approximately 3,000 feet in length and will be dug to a depth of 10 feet below mean low water. This will be necessary to provide sufficient cover for the completed pipeline once the area has been restored to pre-construction grades and elevations. The trench will also be used as a floatation ditch for a large barge that will be used to pull the HDD carrier pipe waterward. This configuration was selected as it eliminates the need to stage the drill string through the Terra Ceia Aquatic Preserve and the proposed trenching will be required to bury the pipeline. The HDD entry pit will be located within Port Manatee on uplands owned by the Manatee County Port Authority and the exit pit will be located between Manbirtee Key and the Terra Ceia Aquatic Preserve. The HDD will be pulled a total of 4,900 feet, of which 3,573 feet are in coastal waters. Turbidity curtains will be used during all proposed trenching and HDD operations within this area to protect adjacent resources and the Aquatic Preserve.

The two segments of the pipeline route which cross beneath the existing Gulfstream pipeline within state coastal waters will also be installed via HDD methods. Because of the limited space between bridge supports, a 1,100-foot section of the proposed pipeline located under the Bob Graham Sunshine Skyway Bridge will be constructed by trenching using a clamshell dredge. The remaining 23.62 statute miles of the pipeline within state waters will be installed via plow-trenching. In areas where adequate burial is not achieved by the plow, the pipeline will be left at grade and additional physical protection will be provided by the use of flexible concrete mattresses. Concrete mattress protection will also be required at the transition areas where the HDD crossings of the Gulfstream pipeline connect with the adjoining sections of the pipeline and at the crossing below the Sunshine Skyway Bridge to provide extra physical protection in the event of particularly heavy objects falling from or off the bridge.

**Onshore Construction**

Construction within uplands and onshore wetlands and surface waters will begin at Port Manatee. The HDD shore approach section will begin approximately 1,327 feet east of the face of the existing seawall at Port Manatee. From there, pipeline installation will continue eastward, being constructed by joint-by-joint stalking below grade within a conveyance ditch on Port Manatee property. The pipeline will then turn south and parallel the west side of the CSX railroad. The pipeline will be installed via HDD underneath an existing Florida Power and Light

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**Substitute Item 4, cont.**

Company storage facility. The pipeline will again turn eastward, being installed beneath the CSX railroad and Tamiami Trail (U.S. Highway 41) by slick bore methods, as it parallels the southern edge of properties owned by FPL. The pipeline will continue eastward, running parallel to the south side of Reeder Road until crossing under O'Neil Road, turning north, and terminating at the proposed interconnection station.

Aside from the special methods to be used at the specific sections described above, the remainder of the onshore pipeline will be installed via open-cut trenching. Best management practices will be used at all work locations to prevent erosion, sedimentation or turbid discharges into wetlands or surface waters.

**Public Interest Determination**

In accordance with rule 18-21.004(1)(g), F.A.C., activities on sovereignty lands shall be limited to water-dependent activities only unless the Board of Trustees determines that it is in the public interest to allow an exception as determined by a case by case evaluation. Water dependent activity is defined per rule 18-21.003(71), F.A.C., to mean an activity which can only be conducted on, in, over or adjacent to water areas because the activity requires direct access to the water body or sovereign submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or sovereign submerged lands is an integral part of the activity. The Deepwater Port Act was implemented specifically to accommodate large petroleum (and under a subsequent amendment, natural gas) transport vessels while minimizing the risks inherent with the operation of such large vessels in shallow, busy, inshore waters where navigation is more difficult, and the consequences of collisions, groundings or other incidents are more severe. Construction of Port Dolphin, a privately-funded system, will allow for the supply of large quantities of natural gas at little additional cost or risk to public infrastructure, including existing roads, railways, airports or seaports.

**Environmental Impacts**

Pursuant to rule 18-21.004(2)(b), F.A.C., activities which would result in significant adverse impacts to sovereignty lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed. The chosen primary method of pipeline construction, plow-trenching, was selected as the most efficient technology currently available for the proposed work, and the one which will minimize the duration of construction activities and associated environmental disturbances. Environmental impacts from construction of the project will be reduced by the use of modified anchoring procedures, including lighter composite anchor cables, mid-line buoys and selective anchor placement. Potential impacts have been assessed, and mitigation designed, assuming that no such modified procedures will be used. Actual impacts from construction activities will be assessed by post-construction surveying and mitigation requirements adjusted accordingly, providing a significant financial incentive for the grantee to minimize those impacts.

**Reasonable Assurance**

Because of the risk of inadvertent environmental impacts during HDD operations, the ERP requires the applicant to perform additional pre-construction geotechnical hydrofracture risk analyses of the HDD sites. In the event that analyses show heightened risk of frac-out, additional procedural modifications will be required.

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**Substitute Item 4, cont.**

**Financial Assurance**

The total cost of all required mitigation, including construction and monitoring of all impact and mitigation sites, has been estimated at \$3,963,153. In order to establish financial assurance for the mitigation payment, the applicant is required to provide a satisfactory financial assurance mechanism to fully cover 110 percent of the total cost, or \$4,359,468. The financial assurance mechanism is required to be reviewed and approved by DEP's Office of General Counsel. This has been addressed as a special approval condition.

**Federal Authorizations**

Port Dolphin submitted an application (Docket No. CP07-191) to the Federal Energy Regulatory Commission (FERC) for a determination of Public Convenience and Necessity on April 27, 2007. The FERC Order to Issue Certificates for the project was issued on December 3, 2009. Port Dolphin submitted an application to the U.S. Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) for a Deepwater Port License March 29, 2007. A Final Environmental Impact Statement was issued in March 2010. The MARAD Deepwater Port License was issued on October 26, 2009. The U.S. Army Corps of Engineers has not yet issued final authorization.

**Local Authorities**

During initial reviews of the application, letters of objection to the proposed project were received from several local governments including the Cities of Anna Maria, Holmes Beach and Longboat Key, as well as Pinellas and Sarasota Counties. Those objections were based primarily on the fact that the proposed pipeline route will cross, and thereby restrict the use of, offshore sand deposits that were potentially suitable for use in future beach renourishment activities.

In part to address those objections, a Memorandum of Agreement (MOA) between Port Dolphin, DEP and the Florida Fish and Wildlife Conservation Commission was executed on September 17, 2009. The MOA identifies specific financial obligations of the applicant, including marine fisheries impact studies, renewable energy development, design modifications to the SRVs, extraction of beach-compatible sand resources from the pipeline route on behalf of local communities, and cultural, recreational and marine educational enhancements within local communities. The provisions of the MOA are not required conditions of permit, with the exception that the permit requires the applicant to submit a plan for Department review if they wish to use all or part of the \$500,000 specified in the MOA to fund "...cultural, marine education and recreational activities in the local communities adjacent to the project", toward the Public Interest requirements for work within Outstanding Florida Waters.

**Noticing**

The project was noticed to all parties within 500 feet of the project and all persons on the statewide mailing list for Manatee County, pursuant to section 253.115, F.S. To date, no objections have been received.

**Permit Summary**

The ERP prohibits sewage pumpout facilities, liveaboards, and fueling facilities.

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**Substitute Item 4, cont.**

**Commenting Agencies**

Recommendations from the Florida Fish and Wildlife Conservation Commission regarding protection of manatees, sea turtles and other listed species, and regarding protection of significant aquatic resources have been addressed in the ERP. The recommendations of the Division of Marine Resources have been addressed in the ERP. Protection of seagrasses near the project site has been addressed in the ERP. Mitigation for unavoidable impacts to significant livebottom habitats within state waters of Tampa Bay and the Gulf of Mexico have been addressed in the permit. Mitigation for impacts to submerged resources (both on sovereignty and non-sovereign submerged lands) consists of five years of monitoring of natural recovery at the impact sites, as well as the construction of approximately 28.9 acres of new hardbottom/live bottom habitat outside the construction impact corridor. The Department of Agriculture and Consumer Services, Shellfish Environmental Assessment Section had no comment or objections to the project. The temporary, turbidity-generating activities in Class II, conditionally-approved waters, including associated expanded mixing zones, would be located well outside of any shellfish lease or harvesting areas.

**Comprehensive Plan**

A Comprehensive Plan for Manatee County has been adopted pursuant to section 163.3167, F.S. The proposed action is consistent with the adopted plan according to a letter received from the Manatee County Planning Department.

(See Attachment 4, Pages 1-62)

**RECOMMEND APPROVAL SUBJECT TO THE (1) SPECIAL APPROVAL CONDITIONS; (2) SPECIAL EASEMENT CONDITIONS; AND (3) PAYMENT OF \$5,037,982.72**

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**Item 5 Ocean Harbor Yacht Club, Inc. Lease Modification**

**REQUEST:** Consideration of an application for modification of (1) an existing conservation easement to allow for the expansion of the lease boundary; and (2) a 25-year sovereignty submerged lands lease to (a) increase the preempted area from 26,983 square feet to 28,556 square feet, more or less, for an existing 34-slip private residential multi-family docking facility; (b) exceed the preempted area to shoreline ratio; and (c) reduce the term to 5 years.

**APPLICANT:** Ocean Harbor Yacht Club, Inc.  
Lease No. 361744235

**LOCATION:** 4741 Estero Boulevard  
Fort Myers Beach, Lee County  
Section 28, Township 46 South, Range 24 East  
Aquatic Preserve: No

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**Item 5, cont.**

Waterbody Classification: Matanzas Pass, Class II, not approved for shellfish harvesting

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

Manatee Aggregation Area: No

Manatee Protection Speed Zone: Slow speed

**CONSIDERATION:** \$4,437.37, representing: (1) \$4,377.09 as the initial lease fee computed at the base rate of \$0.153281 per square foot; and (2) \$60.28 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 rule 18-21.011(1)(a)1, F.A.C.

**STAFF REMARKS:** The applicant proposes to expand the lease to provide additional assurance that the vessels mooring at the docking facility will be entirely within the lease area, thereby ensuring lease compliance. No additional slips are proposed at the facility.

**Background**

On February 18, 1992, the Board of Trustees approved a 5-year sovereignty submerged lands lease containing 26,308 square feet to Manfred E. Shatz for the construction of a 34-slip docking facility to be used in conjunction with a 150-unit upland condominium. The lease subsequently issued by the former Department of Natural Resources (DNR) authorized 26,900 square feet because DNR received an acceptable survey depicting a 26,900 square foot lease area. A special lease condition limited the docking facility to 7 power boat slips, and the lessee granted the Board of Trustees a one-foot-wide proprietary deed of conservation easement (CE) along the shoreline to prevent future expansion of the docking facility.

On January 8, 1993, under delegation of authority, DEP assigned the lease to Ocean Harbor of Fort Myers Beach Condominium Association, Inc., and modified the lease to a 25-year term, expiring January 8, 2018.

On August 18, 1995, under delegation of authority, DEP modified the lease to reflect as-built surveys for the docking facility showing 26,982.61 square feet of preempted area.

On February 21, 2001, under delegation of authority, DEP modified the lease to adjust the square footage to 26,983 square feet and eliminate the special lease condition with the power boat restriction. The power boat restriction was removed after the Florida Fish and Wildlife Conservation Commission (FWC) determined that removal of the condition was consistent with the FWC-approved manatee protection plan for Lee County.

On September 29, 2006, an inspection by DEP revealed: (1) the terminal platform in lease parcel A had been expanded; (2) the access walkways to all three docks (lease parcels A, B and C), were wider than shown on the lease survey; (3) boatlifts had been installed partially outside of the lease at lease parcels A and C; (4) unauthorized modifications to finger piers in lease parcel A; (5) "No Mooring" signs required by the lease were not in place on the terminal platform in

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**Item 5, cont.**

lease parcel A; (6) vessels mooring partially outside five slips in lease parcel A and one slip in lease parcel B; and (7) mooring capacity was increased by seven vessels by placement of multiple boat lifts in slips in lease parcel C. To resolve the non-compliance, DEP and the lessee entered into a consent order and a Temporary Use Agreement (TUA) on July 7, 2010. The consent order required payment of \$1,500 as an administrative fine, \$1,000 as a regulatory penalty, \$1,000 for DEP costs and expenses, and \$1,605 as lease fees in arrears. The amount to be paid by the applicant totaled \$5,105, and payment, in full, was received on July 1, 2010. The TUA authorized an increase in length of seven existing 27-foot long wet slips to 31 feet and an increase in the length of seven existing 31-foot long wet slips to 35 feet. An October 21, 2010 inspection by DEP revealed that the lessee is in compliance with the TUA.

On December 2, 2009, the applicant obtained an upland access easement from Ocean Harbor of Fort Myers Beach Condominium Association, Inc., along 655.72 linear feet of riparian shoreline adjacent to the docking facility, which satisfies the requirement for sufficient upland interest in order to obtain the modified lease. This amount of shoreline excludes approximately 20 feet of the northernmost shoreline that remains under ownership of Ocean Harbor of Fort Myers Beach Condominium Association, Inc., and which remains encumbered by the original CE granted to the Board of Trustees in 1992.

**Project Detail**

**(1) Conservation Easement Modification**

The applicant is requesting a modification of the existing CE to allow for the expansion of the existing lease boundary. A special approval condition requires the applicant to grant the Board of Trustees a modified CE to reflect the modified lease. If the Board of Trustees approves this request to modify the CE, the recorded CE will be referenced in, and attached to, the lease modification.

**(2) Lease Modification**

The proposed project will include 34 permanent boat slips that will be used by members of the yacht club that are also owners of residential units in the adjacent upland condominium as required by the recorded Declaration of Condominium documents. The docking facility will accommodate private recreational vessels up to 55 feet in length, with a maximum draft of up to 4.5 feet.

Because the applicant has 655.72 linear feet of shoreline, rule 18-21.004(4)(b)2, F.A.C., limits the preempted area to 26,228.8 square feet of sovereignty submerged lands (the "40:1" rule). The applicant proposes to preempt 28,556 square feet, which would exceed the rule by 2,327.2 square feet.

**Net Positive Public Benefit**

The docking facility exceeds the 40:1 ratio and, pursuant to rule 18-21.004(4)(b)2.e., F.A.C., is required to provide a Net Positive Public Benefit (NPPB). As an NPPB, the applicant has proposed to contribute \$26,000 to the Lee County Board of County Commissioners to assist in the County's removal of derelict vessels. The amount is based on 10 percent of the net value of increased slip sizes, plus a 10 percent surcharge to modify the CE. The donation is addressed as a special approval condition.

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**Item 5, cont.**

**Noticing**

The current modified lease request was not required to be noticed pursuant to section 253.115(5)(i), F.S. Adjacent property owners were not required to be noticed pursuant to rule 18-21.004(1)(m), F.A.C.

**Permit Summary**

There is no DEP environmental resource permit associated with this proposed lease modification.

**Commenting Agency**

The recommendations of FWC, regarding protection of manatees, have been addressed as special lease conditions. Lee County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated that the proposed project is consistent with the MPP in a letter received on October 4, 2010. In addition to FWC's recommendations, a special lease condition will require the lessee to ensure that the user of any slip at the docking facility enters into a signed agreement between the lessee 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 Lee County and approved by FWC, and/or any speed zones established by Lee 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. 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 Town of Fort Myers Beach.

(See Attachment 5, Pages 1-18)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, SPECIAL LEASE CONDITIONS, AND PAYMENT OF  
\$4,437.37**

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**Substitute Item 6 Chapter 18-14, F.A.C., Notice of Proposed Rulemaking/  
Administrative Fines for Damaging State Lands or Products Thereof**

**WITHDRAWN FROM AUGUST 10, 2010 AGENDA**

**REQUEST:** Approval to publish a Notice of Proposed Rule regarding amendments to Chapter 18-14, F.A.C., Administrative Fines for Damaging State Lands or Products Thereof, regarding assessing and collecting administrative fines for violations on state-owned submerged lands.

**APPLICANT:** Department of Environmental Protection (DEP)

**LOCATION:** Statewide



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**Substitute Item 6, cont.**

**STAFF REMARKS:** Pursuant to Section 120.54(3)(a)1., F.S., approval of the Board of Trustees, as the agency head, is required before DEP may publish a proposed rule for eventual adoption. If the Board of Trustees approves publication, DEP will publish the rule in the *Florida Administrative Weekly* (FAW). The notice will include a date for a hearing to be held, if requested. There will be a 21-day period following publication for anyone to comment on or challenge the proposed rules. The hearing, if one is requested, is another opportunity for the public to comment and propose amendments. DEP will consider all comments to determine if the rule should be revised and will publish a Notice of Change, if needed. However, if the changes are significant, DEP will present a revised proposed rule to the Board of Trustees before publishing a Notice of Change. DEP will bring the final rule back to the Board of Trustees for adoption.

**Background**

Chapter 18-14, F.A.C., was first adopted in 1985 and has not been amended since then. In December 2008, DEP began reviewing the procedures for collection of fines and fine amounts in Chapter 18-14, F.A.C., to determine if rule revisions were appropriate. DEP realized that changes were needed and the rule must be amended with the goal to achieve greater compliance. Additionally, over the past year, DEP has been conducting process improvement efforts and this rule was identified as needing improvement.

The proposed changes are needed to encourage compliance, allow staff to resolve issues more quickly, and help streamline the process. This streamlining also will allow non-compliant owners time to make corrections immediately and avoid penalties. These changes will benefit the public and DEP.

**Noticing and Public Workshop**

Pursuant to delegation from the Board of Trustees to initiate rulemaking and hold public workshops, DEP published a "Notice of Development of Rulemaking" in the FAW on October 2, 2009, which included announcing the October 23, 2009, public workshop. DEP mailed the notice to 358 potential interested parties. To make the workshop as available to the public as possible, it included a teleconference number so that anyone around the state could call in. A preliminary draft rule was distributed to all on the interested parties mailing list for discussion at the workshop.

The public had minimal issues and concerns with the initial amendments to the rule. Comments from the public were taken into consideration and concerns were addressed by changes to the rule. Subsequently, DEP made additional revisions warranting the need for a second workshop, which was announced in a notice published in the FAW March 19, 2010. The workshop was held April 16, 2010, in Tallahassee, also with a call in number. There were no additional concerns. Notices of both workshops also were published on DEP's Public Notices Calendar.

**Summary of the Rule**

The purpose of the amendments is to revise and clarify the process for assessing administrative fines for violations on state-owned submerged land. The proposed amendments will allow DEP,

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**Substitute Item 6, cont.**

on behalf of the Board of Trustees, to first issue a warning letter to a suspected responsible party instead of a Notice of Violation if it is deemed more appropriate to begin with an informal action with a party in a particular case. Currently, Chapter 18-14, F.A.C., mandates that DEP must immediately issue a Notice of Violation, a formal administrative action, against a suspected responsible party to provide initial notice of unresolved violations and potential fines. The proposed amendments remove this mandate, which allows DEP to streamline this process to one document that notifies the suspected responsible party of potential violations and allows for DEP to thereafter collect fines through a formal administrative proceeding if the suspected responsible party refuses to comply with required corrections. Additionally, proposed amendments will also allow DEP to settle matters in accordance with Section 120.57(4), F.S., without being required to first issue a Notice of Violation to do so. This change will allow for a process that is more efficient for DEP and more transparent and accessible for the public. Further, the amendments make it a violation of the rule to fail to comply with an order of the Board of Trustees or to fail to comply with a condition of authorization to locate a structure or vessel on state land. Lastly, the amendments allow DEP to impose zero fines upon a responsible party that has no history of prior violations, ceases the violations immediately, and completes corrective measures within 20 days of receipt of a warning from DEP of potential violations.

**Commenting Agencies**

This rule does not affect other agencies and no comments were received from any on the interested parties mailing list.

**Comprehensive Plan**

A consideration of the status of the local government comprehensive plan was not made for this item. DEP has determined that rulemaking is not subject to the local government planning process.

(See Attachment 6, Pages 1-4)

**RECOMMEND APPROVAL**

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**Additional Item 7 City of Kissimmee Recommended Consolidated Intent/Lease Modification**

**REQUEST:** Denial of a modification of a 10-year sovereignty submerged lands lease containing 264,676 square feet, more or less, for an existing 69-slip public docking facility.

**APPLICANT:** City of Kissimmee (City)  
Lease No. 490003974  
Application No. 49-300030-001

**LOCATION:** 101 Lakeshore Boulevard  
Kissimmee, Osceola County  
Sections 27 and 28, Township 25 South, Range 29 East

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**Additional Item 7, cont.**

Aquatic Preserve: No  
Waterbody/Classification: Lake Tohopekaliga, Class III  
Outstanding Florida Waters: No  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: No

**STAFF REMARKS:** In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this "Recommended Consolidated Notice" contains a recommendation for denial of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

**Project Synopsis**

The City is proposing to reconfigure the layout of its existing over the water structures within the lease area at Lakefront Park in conjunction with its Lakefront Park Redevelopment project.

**Background**

On April 6, 1978, the Board of Trustees approved a 25-year lease for a public marina facility preempting 185,565 square feet of sovereignty submerged lands.

On June 18, 1985, the Board of Trustees approved (1) major design modifications within the existing lease area; (2) the severance of 9,500 cubic yards of sovereignty material; and (3) the placement of approximately 5,700 cubic yards of bridge rubble constituting breakwater material.

A site inspection by the former Department of Environmental Regulation (DER), on October 8, 1992, revealed that the constructed docking facilities and breakwater structures did not conform with DER's wetland resource permit (No. 49-104364-4).

On October 25, 1993, the Department of Environmental Protection (DEP) and the City entered into a consent order (CO) authorizing the structures as built. The CO stipulated that the City would seek authorization for the unauthorized use of sovereignty submerged lands.

On June 15, 1995, the Board of Trustees approved a modification of the existing 25-year lease to incorporate the structures authorized by the CO and the unauthorized use of sovereignty submerged lands. The modified lease contained 195,982 square feet of preempted area.

On April 4, 2003, under delegation of authority, DEP issued a 5-year lease renewal. On February 29, 2008, under delegation of authority, DEP issued a 10-year lease renewal and modification to increase the square footage to 264,676 to reflect the addition of three structures along the City's waterfront that have been in existence since 1978, but not shown in the lease.

The existing lease consists of four separate lease areas. The facilities within these lease areas include: (1) a 58-slip docking facility with two adjacent concrete boat ramps; (2) an 11-slip

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**Additional Item 7, cont.**

docking facility with an approximately 880-square-foot, non-water dependent, bait shop/restaurant (Big Toho Marina); (3) an approximately 1,518-square-foot, non-water dependent, yacht club facility (currently vacant); and (4) a fishing pier with an adjacent concrete boat ramp. These facilities are used in conjunction with the City's upland public park.

The City currently receives a waiver from payment of annual lease fees pursuant to rule 18-21.011(1)(b)7, F.A.C. However, DEP is of the opinion that since the bait shop/restaurant (Big Toho Marina) is leased to Big Toho Enterprises, Inc., a Florida Profit Corporation, the structures and associated preempted area do not qualify for the lease fee waiver pursuant to rule 18-21.011(1)(b)7.b., F.A.C. DEP is in the process of working with the City to address this issue.

DEP received the City's environmental resource permit application on March 16, 2010. DEP is in the process of reviewing the application and has requested the City provide additional information in order to complete the application. This item is being submitted on the November 9, 2010 agenda at the request of the Commissioner of Agriculture.

**Project Details**

The City's proposed modifications, as part of its proposed redevelopment, include the following:

- (1) demolition of the existing 1,518-square-foot, non-water dependent, yacht club facility and construction of a public multi-purpose recreational pier in the same footprint as the existing building; and
- (2) relocation and expansion of the existing Big Toho Marina to an area adjacent to the two existing concrete boat ramps located on the southwest side of the City's park. The City proposes to: (a) demolish the existing 11-slip docking facility and 880-square-foot, non-water dependent, bait shop/restaurant; and (b) relocate and construct a 10-slip docking facility and an approximately 3,744-square-foot, non-water dependent, bait shop/restaurant. At 3,744 square feet, the proposed new, non-water dependent, bait shop/restaurant would be over four times the size of the existing, non-water dependent, bait shop/restaurant.

The portion of the project that includes relocation and expansion of the non-water dependent bait shop/restaurant is contrary to rule and inconsistent with Board of Trustees' policy and previous actions. Rule 18-21.004(1)(g), F.A.C., limits activities on sovereignty lands to water dependent activities only unless the Board of Trustees determines that it is in the public interest to allow an exception as determined by a case-by-case evaluation.

**History of Water-Dependent Criteria**

Since the 1970s, the Board of Trustees' policy has been to restrict the use of sovereignty submerged lands to water related activities. This policy was reiterated and incorporated into the Conceptual State Lands Management Plan adopted by the Board of Trustees on March 17, 1981 and adopted into rule on March 27, 1982, stating activities on sovereignty lands shall be limited to water dependent activities only unless the Board of Trustees determines that it is in the public interest to allow an exception as determined by a case-by-case evaluation.

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**Additional Item 7, cont.**

The rule was further modified, on August 1, 1983, to allow public projects which are primarily intended to provide access to and use of the waterfront to contain minor uses which are not water dependent if they are: (1) located in areas along seawalls or other non-natural shorelines; (2) located outside of aquatic preserves or class II waters; and (3) the non-water dependent uses are incidental to the basic purpose of the project, and constitute only minor nearshore encroachments on sovereign lands.

DEP is of the opinion that the proposed bait shop/restaurant does not constitute an incidental use to the basic purpose of the project as it is a commercial venture located within a public marina and it does not constitute minor nearshore encroachments as the building is proposed to extend 65 feet from shore.

**Public Interest**

The City asserts the proposed project is in the public interest in light of its plan to:

- (1) reduce the area of preemption along the City's waterfront;
- (2) remove derelict structures (i.e. pilings, piers) from the current lease area;
- (3) reduce the number of chromate copper arsenate treated pilings from the water; and
- (4) construct a stormwater management system to eliminate direct discharge to the lake.

However, DEP maintains that (1) and (2) are a requirement of the current lease and (3) and (4) are required as part of the permitting for the Lakefront Park Redevelopment and should not be considered in the public interest assessment.

Should the proposed project be conceptually approved, DEP will negotiate with the City regarding appropriate approval and lease conditions. The City will be required to complete the currently incomplete environmental resource permit application and lease modification, as well as satisfy the rule requirements of the environmental resource permit.

**Noticing**

The proposed project is required to be noticed pursuant to rule 18-21.004(1)(m), F.A.C. DEP is unable to provide the notice at this time because the City has not provided the required lease surveys.

**Regulatory Authorization**

DEP's preliminary regulatory recommendation is denial because the City has not provided reasonable assurance that the construction and operation of the activity, considering the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. Specifically, the activity does not meet the Conditions for Issuance or Additional Conditions for Issuance of an environmental resource permit, pursuant to Part IV of Chapter 373, F.S., Chapters 62-330, and Rules 40E-4.301 and 40E-4.302, F.A.C., because the City has not provided reasonable assurance that the project will not:

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**Additional Item 7, cont.**

- a. adversely affect the quality of receiving waters such that the water quality standards set forth in chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including any antidegradation provisions of rules 62-4.242 (1)(a) and (b), 62-4.242(2) and (3), and 62-302.300, F.A.C., will be violated; and
- b. cause unacceptable cumulative impacts upon wetlands and other surface waters (section 40E-4.302(1)(b), F.A.C.)

In addition, pursuant to section 373.414, F.S., DEP must consider cumulative impacts in deciding to grant or deny a permit for an activity which will affect State waters. The cumulative impact evaluation is conducted using an assumption that reasonably expected future applications with like impacts will be sought, thus necessitating equitable distribution of acceptable impacts among future applications. Cumulative impacts are considered unacceptable when the proposed system, considered in conjunction with the past, present and future activities would result in unacceptable impacts to water quality or the function of surface waters. The City has not provided reasonable assurance that the proposed activity and future projects of a similar nature will not degrade water quality, or adversely impact the function of surface waters.

**Proprietary Authorization**

DEP recommends denial of the request for authorization to use sovereignty submerged lands because the City has not met all applicable requirements for proprietary authorizations to use sovereignty submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, chapter 253, F.S., associated Chapter 18-21, F.A.C., and the policies of the Board of Trustees. Specifically, the construction of the activity is inconsistent with rule 18-21.004(1)(g), F.A.C. The authorization to use sovereignty submerged lands cannot be approved, in accordance with rules 18-21.00401 and 63-343.075, F.A.C., because the activity does not meet the conditions for issuance of a standard general or individual permit under Part IV of Chapter 373, F.S., as described above.

Submission of the information requested in a letter dated July 1, 2010 and the relocation of the bait shop/restaurant to the available uplands may enable DEP to grant a consolidated permit and authorization to use sovereignty submerged lands.

**Comprehensive Plan**

Section 163.3194(3)(b), F.S., in summary, states that a local development approved or undertaken by a local government shall be consistent with the comprehensive plan if it meets all criteria of the plan and all other criteria enumerated by the local government. The City has not provided the requested information regarding consistency with the comprehensive plan.

(See Attachment 7, Pages 1-10)

**RECOMMEND DENIAL**