

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
APRIL 19, 2005
Substitute Page

Substitute Item 1 Stuart Cay Marina Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a modification of a five-year sovereignty submerged lands lease to increase the preempted area from 71,542 square feet to 85,147 square feet, more or less, to be used in conjunction with an upland, commercial boat sales facility; and (2) authorization for the severance of approximately 3,491 cubic yards of sovereign material.

COUNTY: Martin
 Lease No. 430373818
 Application No. 43-0196977-002

APPLICANT: Stuart Cay Marina

LOCATION: Section 32, Township 37 South, Range 41 East, in the North Fork of the St. Lucie River, Class III Waters, within the local jurisdiction of the city of Stuart
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, with an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes (Slow speed year-round)

CONSIDERATION: \$11,883.18, representing the initial lease fee computed at the base rate of \$0.1342 per square foot, and including the 25 percent surcharge payment for the additional 13,605 square feet of preempted area. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual rental value pursuant to section 18-21.011(1)(a)1, F.A.C. The project qualifies for waiver of the severance fee pursuant to section 18-21.011(3)(c), F.A.C.

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

The lessee is requesting to reconfigure an existing 51 slip docking facility within the existing sovereignty submerged lands lease, and expand the existing preempted area from 71,542

**Board of Trustees
Agenda - April 19, 2005
Substitute Page Two**

Substitute Item 1, cont.

square feet to approximately 85,147 square feet, for a total increase of 13,605 square feet. There will be a reduction of one slip as a result of the reconfiguration, for a total of 50 slips. The facility will accommodate commercial and recreational vessels ranging up to 40 feet in length with drafts up to 4 feet.

The lessee is also proposing to dredge 3,491 cubic yards of sovereign material to allow for sufficient depths for navigation within the existing marina. The spoil will be disposed of at the Okeechobee County landfill. Pursuant to section 18-21.011(3)(c), F.A.C., a waiver of the dredge fees may be granted if the materials are placed on public property and used for public purposes, or if the dredged material has no economic value. The dredged material tested above industrial levels for arsenic; therefore it has no economic value and is being disposed of at the Okeechobee County landfill, which would qualify the project for the waiver of dredge fees.

The proposed project does not meet the 25-foot setback to the north or south; however, waivers have been obtained from the affected adjacent property owners.

On June 7, 1983, the Board of Trustees approved a sovereignty submerged lands lease for a 30- slip docking facility, containing 40,119.65 square feet, to be used in conjunction with a commercial marina facility and for patrons of an upland restaurant. A lease modification was approved by the Board of Trustees on May 25, 1993 to expand the facility to 51 slips, with a preempted area of 65,650 square feet, to be used in conjunction with an upland boat sales facility.

A site inspection performed on April 23, 2002 revealed that the facility had unauthorized liveaboards and the bows of some of the vessels extended outside the lease boundary. The lessee was notified of these violations and requested to modify the lease to accommodate the activities. A report submitted on September 24, 2002, revealed that most of the vessels had been moored such that the bows did not extend outside the lease boundaries but the liveaboards remained at the facility. A site inspection was then performed on December 11, 2002, and revealed that the vessels were moored outside of the lease area and the liveaboards remained. DEP issued a Consent Order on January 17, 2003, which addressed the lease violations and cited penalties of \$2,500.00. The Consent Order was executed on February 7, 2003, and the penalties paid on February 14, 2003. A follow-up inspection on February 19, 2003, revealed that the facility was in compliance with the existing lease. On March 26, 2003, DEP, under delegation of authority, issued a lease modification to increase the preempted area from 65,650 square feet to 71,542 square feet and to allow for liveaboards subject to the standard lease condition, which defines a liveaboard as a vessel docked at the facility and inhabited by a person or persons for any 5 consecutive days or a total of 10 days within a 30 day period and in no event shall such "liveaboard" status exceed 6 months within any 12 month period, nor shall any such vessel constitute a legal or primary residence. Since that time the facility was damaged during the hurricane season of 2004. A field permit was issued to this facility, on

**Board of Trustees
Agenda - April 19, 2005
Substitute Page Three**

Substitute Item 1, cont.

October 20, 2004, under DEP's Emergency Order, to allow them to rebuild the existing structures in the same location and configuration.

Liveaboards were authorized in the March 26, 2003, lease modification based on the Lessee's ability to demonstrate that there were adequate pumpout services provided for the liveaboards. The Lessee provided a copy of the Martin County pumpout log from the mobile pumpout vessel supplied by Martin County and copies of the dockage agreements from Stuart Cay Marina, demonstrating that the liveaboards at this facility were using the mobile pumpout vessel and that a fixed pumpout system at the facility would not be required.

The existing lease prohibits fueling facilities but authorizes liveaboards and a sewage pumpout facility if it meets the regulatory requirements of the Department of Environmental Protection or local entity, whichever entity applies the more stringent criteria.

The environmental resource permit (43-0196977-002) does not authorize sewage pumpout facilities as the lessee asserts that the liveaboards are using the mobile pumpout vessel provided by Martin County. Fueling facilities are prohibited under this authorization. There are no seagrasses at the site and there shall be no impacts to the two locations of mangroves on the shoreline.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. Martin County is a designated manatee county with an approved manatee protection plan.

The modified lease request was not required to be noticed due to an exemption for lease modifications, pursuant to section 253.115(5)(i), F.S.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan was in compliance. The proposed action is consistent with the adopted plan according to a letter received from the city of Stuart. The applicant must obtain a local building permit for the marina reconfiguration and dredging upon issuance of all state and federal approvals.

(See Attachment 1, Pages 1-22)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$11,883.18**

Substitute Item 2 The Harbors Community Association, Inc./Centex Homes Lease Modification

WITHDRAWN FROM THE MARCH 1, 2005 AGENDA

REQUEST: Consideration of an application for the modification of a five-year sovereignty submerged lands lease to (1) change an 18-slip revenue-generating docking facility into an 18-slip private residential docking facility; (2) decrease the preempted area of the current lease from 49,329 square feet to 20,975 square feet, more or less; (3) waive the 40:1 ratio for square footage under section 18-21.004(4)(b)(5), F.A.C.; and (4) accept a donation of approximately one acre of privately-owned submerged lands.

COUNTY: Palm Beach
 Lease No. 500018816
 File Nos. 50-0229650-001 and -002

APPLICANTS: The Harbors Community Association, Inc., a Not-for-Profit Corporation and Centex Homes, a Nevada General Partnership

LOCATION: Section 15, Township 45 South, Range 43 East, in Lake Worth Lagoon, Class III waters, within the local jurisdiction of the city of Boynton Beach
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, without an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes (Slow speed year-round)

CONSIDERATION: \$11,259.39, representing (1) \$2,814.85 as the initial lease fee computed at the base rate of \$0.1342 per square foot; and (2) \$8,444.54 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the gross rental income pursuant to section 18-21.011(1)(a)1., F.A.C.

STAFF REMARKS: The applicants are requesting to convert an existing sovereignty submerged lands lease, covering 49,329 square feet, from a revenue-generating docking facility associated with a former upland restaurant and nightclub to a private residential multi-family docking facility associated with a 51-unit townhouse community on the adjacent uplands. The applicants plan to maintain the current 18-slip docking arrangement within the lease area, but are proposing to reduce the total square footage of the existing sovereignty submerged lands lease from its current 49,329 square feet down to 20,975 square feet, for a reduction of 28,354 square feet. The facility will accommodate private recreational vessels up to 45 feet in length, with average drafts between 2 and 6 feet.

**Board of Trustees
Agenda - April 19, 2005
Substitute Page Five**

Substitute Item 2, cont.

In 1964, the existing dock structures were constructed and operated as a revenue-generating docking facility, exclusively for use by patrons of the former restaurant and nightclub on the adjacent uplands. These docks provide space for up to 18 boat slips. However, the initial lease and an accompanying sketch of these structures did not specify the number of slips at the facility, and did not show the existing mooring piles located between the slips and waterward of an existing "L-shaped" terminus, thus not accurately reflecting the existing number of slips as 18. Upon subsequent renewals, the lease continued to contain this sketch, including the most recent renewal and transfer of ownership from Centex Homes to The Harbors

Community Association, Inc., a Florida nonprofit corporation. The current lease, issued February 4, 2004, erroneously states that the facility has 8 slips. This was the first time the number of slips was defined in the lease. The current proposed modification will show the lease facility with the 18 existing slips.

Although originally eligible for grandfather registration, the predecessor in title of the adjacent uplands failed to register the structure prior to the state's deadline of September 30, 1984. In 1997, the Department of Environmental Protection, under delegation of authority, issued a Temporary Use Agreement for the docking facility to the then upland owner, Schgai, Inc., and ultimately issued a lease (Lease No. 500018816) for the docking facility to Schgai, Inc. Staff has determined that past agency action, including the 1997 Temporary Use Agreement and lease issued to Schgai, Inc., did not constitute a grandfather from, or other waiver of, the requirements for private residential multi-family docks contained in 18-21.004(4)(b), F.A.C., including the unit:slip and 40:1 ratios, because at the time of these authorizations the upland land uses were not residential.

Schgai, Inc., the immediate predecessor in title, had operated a restaurant and nightclub on the adjacent uplands. Over the years, the surrounding uplands have been developed for residential usage, and the restaurant and nightclub became a source of frequent complaints from adjacent homeowners concerning noise and traffic. On January 13, 2003, Centex Homes acquired the uplands, subsequently changed the land use to residential, and obtained approval for, and developed, a 51-unit townhouse development on the uplands. The restaurant and nightclub were demolished and removed from the property. The applicants seek to continue the use of the existing dock structure and 18 slips, with minor dock reconfigurations within the existing footprint as proposed under Environmental Resource Noticed General Permit File No. 50-0229650-001 and 002. The docking facility would be associated with an upland residential development and would be subject to the slip and square foot limitations of private residential multi-family docks, pursuant to section 18-21.004(4)(b), F.A.C.

Also, pursuant to 18-21.004(4)(b), F.A.C., the number of slips allowed for 51 residential units is 21. Thus, no waiver of this rule is required for the continued use of the existing 18 slips. With regard to the preempted area limitation of the 40:1 ratio as stated in section 18-21.004(4)(b)5, F.A.C., the applicants' frontage is approximately 158 feet, thereby limiting the applicants to a lease area of approximately 6,320 square feet of sovereignty submerged lands.

Substitute Item 2, cont.

This limitation requires the destruction of a portion of the existing dock structure and allows no more than 8 slips. Accordingly, the applicants seek a waiver of the 40:1 ratio to authorize the existing structure based on the following considerations:

(a) The applicants have reduced the amount of preempted area to the minimum necessary for the existing structures. This has resulted in a square footage reduction from the existing lease amount of 49,329 square feet to a total of 20,975 square feet. This is more than a 57 percent reduction in preempted area; however, this is still more than three times the amount allowed under the 40:1 rule.

(b) Centex Homes will donate to the Board of Trustees approximately one acre of formerly sovereignty submerged lands in Lake Worth Lagoon, now owned by Centex Homes and located less than 1½ miles north of the project site. These submerged lands contain viable, high quality seagrass communities consisting of shoal grass (*Halodule wrightii*) and Johnson's seagrass (*Halophila johnsonii*). These seagrasses provide important habitat and food resources for marine organisms and provide soil stabilization and nutrient uptake. The Final Recovery Plan for Johnson's Seagrass, National Marine Fisheries Service, September 2002, page 3.2-22, recommends the identification and acquisition of privately-owned submerged lands vegetated with Johnson's seagrass. The applicants contend that it is clearly in the public interest to reacquire former sovereignty submerged lands containing viable seagrass communities in an urbanized area such as Lake Worth Lagoon. Public acquisition ensures greater protection of the seagrass communities, which serve as habitat and/or food for crustaceans, fish and manatees, and provides greater protection of compatible public uses of those lands.

(c) The applicants seek only to continue usage of a dock structure that has been in existence and use since 1964, with the exception of the non-water dependent deck, which will be removed. The applicants contend that it would constitute an extreme hardship on the applicants and the 51 residential unit owners to have to destroy existing, usable structures in order to meet the 40:1 ratio, which was adopted after the existing structures had been built and operated.

(d) The applicants contend that the project's elimination of commercial uses on the uplands, in favor of residential use, has eliminated a land use that is incompatible with the adjacent residential neighborhoods and has eliminated a source of complaints from the adjacent residential neighborhoods objecting to the noise and traffic generated by the restaurant and nightclub. The applicants suggest that such conversion to residential use at this location should be encouraged rather than penalized by administration of the sovereignty submerged lands rules.

(e) Finally, maintenance of the existing docking facility serves to meet the significant demand for slips from the 51 unit owners.

Substitute Item 2, cont.

Although the project exceeds the 40:1 rule by approximately 14,655 square feet, the applicants are proposing to reduce the existing lease's overall square footage of preempted area by approximately 57 percent and are not proposing to exceed the unit:slip ratio. Since all available shoreline is being used and the 40:1 ratio is being exceeded, a conservation easement will be granted along the entire shoreline of 158 linear feet. In addition, this proposal includes converting the existing 18 slips from transient use associated with an upland restaurant and nightclub, to permanent use by upland townhouse residents. Coupled with the donation of a parcel of privately-owned submerged land, this project would be consistent with the proposed rule revisions to chapter 18-21, F.A.C., concerning the 40:1 ratio. Therefore, staff recommends approval of this project.

The existing lease prohibits fueling facilities and liveaboards but authorizes a sewage pumpout facility if it meets the regulatory requirements of the Department of Environmental Protection or local entity, whichever entity applies the more stringent criteria.

The proposed project meets the 25-foot setback to the north and a waiver has been obtained from the affected adjacent property owner to the south.

The modified lease request was not required to be noticed due to an exemption for lease modifications, pursuant to section 253.115(5)(i), F.S.

The Environmental Resource Noticed General Permit (50-0229650-001 and 002) does not authorize sewage pumpout facilities, liveaboards, or authorize fueling facilities. There are no seagrasses/resources at the site. Federal authorization for the minor dock modification was obtained under the State Programmatic General Permit and no further Corps of Engineers' permitting authorization is necessary.

The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees are included as special lease conditions. Palm Beach County is a designated manatee county without an approved manatee protection plan. FFWCC stated in a letter, dated April 5, 2004, that Palm Beach County is considered to be making significant progress towards the development of a manatee protection 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 the City of Boynton Beach.

(See Attachment 2, Pages 1-11)

Substitute Item 2, cont.

RECOMMEND APPROVAL SUBJECT TO (1) THE SPECIAL APPROVAL CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF \$11,259.39; AND (2) THE DONATION OF APPROXIMATELY ONE ACRE OF PRIVATELY-OWNED SUBMERGED LANDS

Substitute Item 3 Basil Street Partners, LLC Recommended Consolidated Intent

REQUEST: Consideration of an application for authorization to modify an existing 5-year sovereignty submerged lands lease to (1) reduce the number of authorized boat slips at the ownership-oriented docking facility; (2) increase the preempted area from 36,415 square feet to 37,834 square feet, more or less; (3) convert the use of the ownership-oriented docking facility to a private yacht club facility; (4) modify special lease conditions; and (5) add special lease conditions.

COUNTY: Collier
 Lease No. 111404055
 ERP File No. 11-0179315-005

APPLICANT: Basil Street Partners, LLC (Basil)

LOCATION: Section 03, Township 50 South, Range 25 East, in the Gordon River/Naples Bay, Class II waters not approved for shellfish harvesting, within the local jurisdiction of the city of Naples
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, with an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: Yes, idle/slow speed zone

CONSIDERATION: \$5,124.93 as the initial lease fee computed at the base rate of \$0.1342 per square foot, and including the initial 25 percent surcharge payment for the additional area. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the gross rental income pursuant to section 18-21.011(1)(a)1, F.A.C.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., the attached "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board

Substitute Item 3, cont.

of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

Basil is requesting authorization to modify an existing 5-year sovereignty submerged lands lease by: (1) reducing the number of authorized boat slips at the ownership-oriented docking facility from 16 to 14; (2) increasing the preempted area from 36,415 square feet to 37,834 square feet, more or less; (3) converting the use of the docking facility to a private yacht club facility; (4) modifying special lease conditions; and (5) adding special lease conditions.

On December 11, 2002, the Board of Trustees authorized: (1) a modification to an existing 25-year sovereignty submerged lands lease to: (a) replace the previously existing one-slip commercial docking facility with a 16-slip ownership-oriented docking facility; (b) increase the preempted area from 11,082 square feet to 36,415 square feet, more or less; (c) reduce the term of the lease from 25 to 5 years; (d) terminate a proprietary conservation easement from the lessee's shoreline; (e) place a new proprietary conservation easement along the lessee's shoreline; and (f) authorize, after-the-fact, the preemption of 13,994 square feet of sovereignty submerged lands; and (2) the severance of 2,657 cubic yards of sovereignty material.

The 2002 request to modify the lease resulted from a pending sale of the facility by its then owner, Blackwater Manor, Limited, (Blackwater) to a developer, who proposed to upgrade the facility from a commercial marina to a mixed-use residential and commercial development. Final details pertaining to the relationship of the residential use and the docking facilities to be constructed on sovereignty submerged lands and in the man-made basin and man-made canal were not completed when the Board of Trustees considered the lessee's request. Therefore, the Board of Trustees approved special lease conditions 31b and 31d requiring that prior to commencement of any construction activities on sovereignty submerged lands associated with the leased facility, the lessee shall remit to DEP a complete copy of the recorded Declaration of Condominium documents to be submitted to the Florida Department of Business and Professional Regulation, Division of Land Sales, Condominiums and Mobile Homes (DBPR). Those condominium documents were to specify the relationship of all pertinent aspects of the condominium to the proposed docking facilities on sovereignty submerged lands. The 2002 Lease further provides that the condominium documents shall clearly specify the relationship of all pertinent aspects of the condominium to the proposed docking facilities on the sovereignty submerged lands and that the Lessee may not commence construction of new docking facilities on the sovereignty submerged lands until DEP has provided written notification to the Lessee that the condominium documents comply with this requirement.

**Board of Trustees
Agenda - April 19, 2005
Substitute Page Ten**

Substitute Item 3, cont.

The sale that Blackwater had planned to make to the developer never occurred. In September 2003, Blackwater sold the property to Basil. As a result, DEP modified the 2002 lease to reflect this change of ownership pursuant to a delegation of authority. Basil's proposed development plans are different than those that were the basis for the 2002 lease. The changes affect the upland development, the man made marina basin and the dock configuration authorized by the lease. Basil plans to develop the uplands consistent with applicable city of Naples zoning for its Waterfront Commercial District. Those plans include: (1) an 85-room hotel and typical amenities; (2) 30 residential condominiums; (3) retail commercial space including a private yacht club (The Club at Naples Bay Resort) serving all residential units, the hotel and the docks as well as other outside members; (4) 97 boat slips, of which 83 will be located in the man-made basin and the man-made canal and 14 to be located on sovereignty submerged lands; and (5) related parking. The plans include a one-slip publicly-available fuel dock, provision for easements for public access to the waterfront, and provision for up to nine slips to be made available for use by charter boats to provide such service to the public at large. Two of the charter boat slips are proposed to be located on sovereignty submerged lands, and the remaining seven will be located on privately-owned submerged lands in the man-made canal. These changes will require a modification of the lease and the environmental resource permit. These changes will: (1) reduce the permitted slip count from 105 to 97 slips (overall, including the man-made basin), with the number of slips on sovereignty submerged lands decreasing from 16 to 14; and (2) increase the preempted area associated with the lease from 36,415 to 37,834 square feet to accommodate floating docks rather than fixed docks and as a result of replacing the seawall (entombing the existing seawall rather than removing it because of contaminated soils on the uplands landward of the seawall).

In compliance with the requirements of the 2002 lease and the proposed lease modification, Basil has submitted to the DEP the condominium documents for the planned development that Basil has been required to file with DBPR. Upland uses will include three different condominiums, only two of which are required to be filed with the Division of Condominiums as residential condominiums. The third, a condominium regime for the planned hotel, is not required to be filed with the DBPR. Due to the multiple number of condominiums to be developed on the uplands, plus the docks, Basil has created a Master Declaration of Covenants with a Master Property Owners Association for the entire property. The Master Declaration of Covenants, not the individual condominium documents for the three condominiums, establishes the legal relationships between the upland uses and condominiums and the marina slips. The Master Declaration of Covenants provides that acquisition of the right to use a slip in the man-made basin, the man-made canal, or on sovereignty submerged lands must not be linked to ownership of a hotel or residential condominium unit on the uplands, and the initial boat slip offering must be available to the general public wanting to acquire boat slips. The Master Declaration of Covenants further provides that each person that acquires ownership of a condominium unit, or the right to use one of the 97 slips, becomes a member of the private yacht club that will have facilities located on the uplands and other

Substitute Item 3, cont.

property owned or controlled by Basil and affiliates. The yacht club will also have other outside members that are not property or slip owners. A standard lease condition prohibits Basil from discriminating with respect to any activity occurring within the lease or upon lands adjacent to and used as an adjunct to the leased facility.

The Board of Trustees' December 11, 2002 action authorized the docking facility to be an ownership-oriented (private residential multi-slip) docking facility. Since Basil proposes to make the initial offering of all 14 slips on sovereignty submerged lands available for sale to the general public wanting to acquire boat slips without regard to ownership of any residential property, the modified docking facility will no longer be considered to be an ownership-oriented (private residential multi-slip) docking facility. However, since this docking facility is associated with uplands having a residential component, special lease conditions 31b and 31d

of the existing lease will continue to be included in the modified lease. Those conditions will be modified to reflect the authorized activities that have already been completed pursuant to environmental resource permit no. 11-0179315-001.

Special lease conditions will require: (1) one boat slip on sovereignty submerged lands to be kept open to the general public without regard to ownership of any residential property at the site for temporary mooring for fueling; (2) two slips on sovereignty submerged lands to be used by commercial charter boats servicing the general public without regard to ownership of any residential property at the site; (3) a minimum of 2,114 square feet of sovereignty submerged lands preempted by the boat slips at this docking facility to be leased, rented or otherwise used by members of the general public having no ownership interest in any residential condominium units in the Naples Bay Resort development (the one-slip for fueling and two slips for charter boats are included in this 2,114 square foot area); and (4) DEP approval of wet slip rental/lease/sales agreements and the collection of revenues due from the rental/lease/sale of such wet slips to ensure compliance with pending revisions to chapter 18-21, F.A.C., regarding fees for the use of sovereignty submerged lands.

Special lease condition 31d requires recorded Declaration of Condominium documents to be submitted prior to commencement of any construction activities on sovereignty submerged lands associated with the leased facility. Basil has attempted to comply with this requirement by submitting unrecorded draft documents. Basil has therefore requested that the unrecorded documents be accepted, and the special lease condition 31d be modified, to require that the documents be recorded in the public records when construction of the upland project is completed. Basil's attorneys have explained that condominium documents are not normally recorded in the public records until the improvements to which they relate have been completed, and they have requested that the special condition be modified in this respect. Staff is of the opinion that potential concerns pertaining to that request can be sufficiently addressed through a new special lease condition requiring: (1) no slip occupancy on sovereignty submerged lands until a complete copy of the recorded Master Declaration of Covenant

Substitute Item 3, cont.

documents, and all of the condominium documents for the upland project, whether or not those condominium documents are required to be filed with DBPR, are submitted for review by DEP to confirm that they are consistent with the unrecorded and draft copies that Basil has previously submitted to FDEP; and (2) if any changes to the foregoing documents substantively change the relationship of any pertinent aspects of the project Master Declaration of Covenants and condominium to the proposed docking facilities on sovereignty submerged lands from the relationships shown in the unrecorded and draft documents that have been submitted, such changes shall be submitted for Board of Trustees consideration as a request for a lease modification.

The existing lease authorizes sewage pumpout facilities and fueling facilities, but will continue to prohibit liveaboards. The modified permit will continue to incorporate several requirements designed to prevent and/or reduce water quality impacts, thereby resulting in a net improvement to water quality at the site.

On December 30, 2003, the Florida Fish and Wildlife Conservation Commission (FFWCC) stated no objection to the proposed project contingent upon compliance with the standard manatee protection construction conditions. Those conditions will remain in the modified environmental resource permit.

The current modified lease request was not required to be noticed due to an exemption for lease modifications, pursuant to section 253.115(5)(i), F.S.

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

(See Attachment 3, Pages 1-47)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$5,124.93**