

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JUNE 16, 2005

Item 1 Minutes

Submittal of the Minutes from the April 19, 2005 and May 3, 2005 Cabinet Meetings.

(See Attachment 1, Page 1-24)

RECOMMEND APPROVAL

Item 2 Nuccio/Lazzara/Denker Option Agreement/Coupon Bight/Key Deer Florida Forever Project

REQUEST: Consideration of (1) an option agreement to acquire 9.25 acres within the Coupon Bight/Key Deer Florida Forever project from Francis Nuccio, Patricia A. Nuccio, Frances Jean Lazzara, and Mitchell Denker; and (2) the authority to waive the survey requirement.

COUNTY: Monroe

LOCATION: Section 26, Township 66 South, Range 29 East

CONSIDERATION: \$270,000

| | | APPRAISED BY: | | SELLER'S | | TRUSTEES' |
|--------|-------|---------------|-----------|------------|-------------|--------------|
| PARCEL | ACRES | Johnston | APPROVED | PURCHASE | PURCHASE | OPTION |
| | | (10/09/04) | VALUE | PRICE | PRICE | DATE |
| Nuccio | 9.25 | \$270,000 | \$270,000 | \$ 75,000* | \$270,000** | 120 days |
| after | | | | | | |
| | | | | | (100%) | BOT approval |

* Seller purchased property on 4/2/1982.
 ** \$29,189.18 per acre

Noted Features of Subject Property:
 Non-waterfront, unplatted residential site.
 Value based on potential sale as ROGO points.
 Adjacent to federal and state owned land on Big Pine Key.

STAFF REMARKS: The Coupon Bight/Key Deer project is an "A" group project on the Florida Forever Small Holdings Project List approved by the Board of Trustees on February 16, 2005. The project contains 3,638 acres, of which 1,489.79 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 2,138.96 acres, or 59 percent of the project, will remain to be acquired.

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

On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to The Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all

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chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy and an environmental site evaluation will be provided by the purchaser prior to closing. It is the opinion of DEP's Bureau of Survey and Mapping that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to its cost; therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C.

The subtropical pine forests of rapidly developing Big Pine Key and the islands around it are the home of the endangered Key deer and many Caribbean plants found nowhere else in the country. Rich coral reefs and other hardbottom communities flourish in shallow water around the islands. The Coupon Bight/Key Deer project will protect the remaining underdeveloped land on Big Pine and No Name Keys (without which the Key deer will not survive), protect water quality of the Coupon Bight Aquatic Preserve and the other waters surrounding the islands, and provide the public an area to appreciate the unique natural world of this part of Florida.

The property will be managed by the United States Fish and Wildlife Service as part of the National Key Deer Refuge.

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

(See Attachment 2, Pages 1- 25)

RECOMMEND APPROVAL

Item 3 Warner Option Agreement/St. Johns River Blueway Florida Forever Project

REQUEST: Consideration of an option agreement to acquire 231.80 acres within the St. Johns River Blueway Florida Forever project

from Robert and Jacqueline M. Warner.

COUNTY: St. Johns

LOCATION: Section 17, Township 07 South, Range 28 East

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CONSIDERATION: \$1,112,640.00

| PARCEL PRICE | ACRES | APPRAISED BY | | APPROVED (08/11/04) | SELLER'S PURCHASE VALUE | TRUSTEES' PURCHASE PRICE | OPTION |
|-----------------|---------------|-----------------------|----------------|------------------------|-------------------------------|--------------------------------|------------|
| | | Clayton (08/11/04) | Arline | | | | |
| Warner | | 231.80 | \$1,205,000 | (08/11/04) | \$1,160,000 | \$1,205,000 | \$399,000* |
| | \$1,112,640** | | 120 days after | | | | |

(93%) BOT approval

* Seller purchased the property in May 1997 and January 1998

** \$4,800 per acre

Noted features for subject property:

The subject property is located roughly ¼ mile west of County Road 13A in St. Johns County.

The property is irregularly shaped with 231.80 gross acres and contains 90% uplands (208.90 acres).

Access to the property is provided by Oscar Ashton Road, a paved county maintained right-of-way.

The site fronts roughly 500 feet on Oscar Ashton Road and approximately 1,314 feet on an unpaved road, which lies within an ingress-egress easement along the southern boundary.

The owner retained five acres within the boundary of the property, which contained improvements.

STAFF REMARKS: The St. Johns River Blueway Florida Forever project is a "B" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. At the time negotiations began and concluded, the Project was an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 26, 2004. The project contains 27,997 acres, of which 731.3 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 27,033.9 acres or 97 percent of the project will remain to be acquired.

All mortgages and liens will be satisfied at the time of closing. There is a right-of-way easement to St. Johns County and an ingress and egress easement to a five-acre out parcel owned by Mr. and Mrs. Maily. The managing agency determined they could not manage the property with the existing improvements, therefore, the owner requested a five-acre cutout where the improvements are located. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them

appropriately. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and, therefore, DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

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

This project is located in one of the fastest areas of growth in the state. The project is designed to preserve the last remaining shorelines of the St. Johns River and several of its

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tributaries. The project area has numerous recorded archeological and historical resources, and has the potential for many more.

The property will be managed by the Department of Agriculture and Consumer Services, Division of Forestry as an addition to the State Forest system.

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

(See Attachment 3, Pages 1-38)

RECOMMEND APPROVAL

Item 4 The Morgan Family Limited Partnership Option Agreement/Conservation Easement/Lake Wales Ridge Ecosystem/Lake-Walk-In-Water Florida Forever Project

REQUEST: Consideration of an option agreement to acquire a perpetual conservation easement over 877.93 acres within the Lake Wales Ridge Ecosystem/Lake-Walk-In-Water Florida Forever project from The Morgan Family Limited Partnership.

COUNTY: Polk

LOCATION: Section 32, Township 31 South, Range 29 East; and Sections 05, 06 and 08, Township 32 South, Range 29 East

CONSIDERATION: \$1,264,220

| <u>PARCEL</u> | <u>ACRES</u> | <u>APPRAISED BY:</u> | | <u>APPROVED</u> | <u>SELLER'S PURCHASE</u> | <u>TRUSTEES' PURCHASE</u> | <u>OPTION PRICE</u> |
|---------------|----------------|----------------------|---------------|-----------------|--------------------------|---------------------------|---------------------|
| | | <u>Clayton</u> | <u>String</u> | | | | |
| Morgan | 877.93 | 01/04/05 | 01/04/05 | \$1,390,000 | \$1,390,000 | \$1,173,000* | \$1,264,220** |
| | 120 days after | | | | | (91%) | BOT |

approval

* Purchased date was 1990

** Price per acre \$1,440; Fee Value is \$2,295,000; Conservation Easement Value is 60 % of the Fee Value.

Noted Features of Subject Property:

The subject site contains 31% upland area and 69% jurisdictional wetlands. The property is described as slightly rolling with elevations ranging from 60 to 75 feet above sea level. A 33.5-acre citrus grove is centrally located along the east boundary.

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STAFF REMARKS: The Lake Wales Ridge Ecosystem project is an "A" group project on the Florida Forever Less Than Fee Project List approved by the Board of Trustees on February 16, 2005. The project contains 48,450 acres, of which 24,041 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 23,531.07 acres, or 49 percent of the project, will remain to be acquired.

Under the proposed conservation easement, the property will be restricted in perpetuity by the provisions of the easement, a summary of which includes, but is not limited to, the following prohibited uses:

- The dumping or placing of soil, trash, liquid or solid waste (including sludge), or unsightly, offensive, or hazardous materials, waste or substances, toxic wastes or substances, pollutants or contaminants on the property, will be prohibited;
- The exploration for and extraction of oil, gas, minerals, peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and similar substances by grantor, under and by virtue of the authority of a grant or reservation or other form of ownership of or interest in or control over or right to such substances, will be prohibited;
- Activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation unless otherwise provided in the easement, will be prohibited;
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portions of the property having historical, archeological or cultural significance, will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation except as otherwise specifically provided in this easement or in those areas designated for agricultural use in the Baseline Documentation Report, will

be prohibited;

- The cutting of cypress trees, will be prohibited;
- Commercial or industrial activity, or ingress, egress or other passage across or upon the property in conjunction with any commercial or industrial activity including but not limited to swine, dairy and poultry operations and confined animal feed lot operations, will be prohibited;
- New construction or placing of temporary or permanent buildings, mobile homes or other structures in, on or above the ground of the property except as may be necessary by grantor for maintenance or normal operations of the property or during emergency situations or as may otherwise be specifically provided for hereinafter, will be prohibited;
- The construction or creation of new roads or jeep trails, will be prohibited;

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- The operation of motorized vehicles except on established trails and roads unless necessary (i) to preserve or protect the purposes of the conservation easement; (ii) for emergency purposes; (iii) for cattle ranching purposes; (iv) to retrieve game that has been hunted legally; (v) for wildlife management, will be prohibited;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species, will be prohibited;
- Any subdivision of the land except as may otherwise be provided in this easement, will be prohibited; the grantor has reserved the right to subdivide the property for sale or other disposition by grantor into one lot for each residence allowed by this easement;
- Signs (except otherwise provided in the easement), billboards, or outdoor advertising of any kind erected or displayed on the property, will be prohibited;
- There shall be no commercial water wells on the property;
- There shall be no commercial timber harvesting on the property except as otherwise specifically provided in this easement (the grantor has reserved the right to engage in silviculture within the areas depicted in the Baseline Documentation as silvicultural or agricultural areas). Areas currently improved for agricultural activities as established by the Baseline Documentation may continue to be used for those activities. Lands that are depicted in the Baseline Documentations as being natural areas shall remain

natural areas; and

- If the property is in a spring recharge area, fertilizer use for agriculture activities shall be in accordance with agriculture best management practices recommended by the Natural Resources Conservation Service or the Florida Department of Agriculture and Consumer Services, whichever is more stringent, as those best management practices may be amended from time to time.

The proposed conservation easement will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- The right to observe, maintain, photograph, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding, so long as the same do not constitute a danger to grantee's employees, agents, officers, directors, and invitees, and so long as such activities do not violate any of the prohibitions applicable to the property or grantee's rights, as stated above;
- The right to conduct controlled or prescribed burning on the property;
- The right to mortgage the property;
- The right to contest tax appraisals, assessments, taxes and other charges on the property;
- The right to continue to use, maintain, repair, and reconstruct, but not to relocate, all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage

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ditches and such other facilities on the property as depicted in the Baseline Documentation;

- The right to exclusive use of the improvements depicted in the Baseline Documentation;
- Areas currently improved for agricultural activities as established by the Baseline Documentation may continue to be used for agricultural activities, other than row crops cultivated for commercial purposes, including the building of any necessary agricultural structures;
- The right to divide the property for sale or other disposition by grantor into one lot for each residence allowed by this easement;
- The right to engage in silviculture only within those areas

depicted on the Baseline Documentation as silviculture or agriculture areas;

- The right to conduct hiking, non-motorized biking and horseback riding tours over existing roads and trails; and
- The right to roller chop palmettos and gallberries no more than once every two years for plant control.

The proposed conservation easement grants certain rights to the grantee. The summary of grantee's rights includes, but is not limited to, the following:

- The right to enforce protection of the conservation values of the property;
- The right to enter upon the property at reasonable times in order to monitor compliance with and otherwise enforce the terms of the easement;
- The right to prevent any activity on or use of the property that is inconsistent with the purpose or provisions of the easement and to require the restoration of or to restore such areas or features of the property that maybe damaged by any inconsistent activity or use, at grantor's cost;
- The right of ingress and egress to the property;
- The right to have the ad valorem taxes, assessments and any other charges on the property paid by grantor;
- A right to notice of intent to sell;
- The right to be indemnified by grantor for any and all liability, loss, damage, expense, judgment or claim arising out of any negligent or willful action or activity resulting from the grantor's use and ownership of or activities on the property or the use of or activities of grantor's agents, guest, lessees or invites on the property;
- The right to be indemnified by grantor for any liability for injury or property damage to persons on the property arising out of any condition of the property known to the grantor to the best of grantor's knowledge;
- The right to have the property maintained as reflected on the Baseline Documentation, as the property may develop through the forces of nature hereafter, subject only to the exercise of grantor's reserved rights, and the rights granted to the grantee, as described

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in the easement;

- If the grantor fails to cut and remove timber damaged by natural disaster, fire, infestation or the like, then the right, but not the duty, of grantee, in its sole discretion

to cut and remove said timber; and

- All future residential, commercial, industrial and incidental development rights that are now or hereafter allocated to, implied, reserved, or inherent in the property except as may be specifically reserved to grantor in this easement.

All mortgages and liens will be satisfied or subordinated at the time of closing. Alico Inc., has a reservation to one-half of all oil, gas and mineral rights. However, The Morgan Family Limited Partnership and Alico Inc., have come to an agreement on a buy-out price and are currently working on preparing a deed for settlement. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Because these issues were discovered during preliminary due diligence further research may change the facts and scope of each issue and, therefore, DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy, a survey, an environmental site assessment and baseline documentation report will be provided by the purchaser prior to closing.

The high, sandy, Lake Wales Ridge, stretching south from near Orlando almost to Lake Okeechobee, was originally covered with a mosaic of scrub, flatwoods, wetlands and lakes. The scrub is unique in the world - it is inhabited by many plants and animals found nowhere else - but it has almost completely been converted to citrus groves and housing developments. The Lake Wales Ridge Ecosystem project is designed to protect the best remaining tracts of this scrub and the ecosystems associated with it, thereby preserving numerous endangered species and allowing the public to see examples of the unique original landscape of the ridge.

The property will be monitored by DEP's Office of Environmental Services.

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

(See Attachment 4, Pages 1-59)

RECOMMEND APPROVAL

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**Item 5 The Conservation Fund Assignment of Option
Agreement/Fee/Conservation Easement/Letchworth Mounds
Florida Forever Project**

REQUEST: Consideration of an assignment of (1) an option agreement to acquire 109.6 acres; and (2) a perpetual conservation easement over 1,281.6 acres for a total of 1,391.2 acres, both within the Letchworth Mounds Florida Forever project from The Conservation Fund, as trustee of The Conservation Fund Charitable Trust.

COUNTIES: Jefferson and Leon

LOCATION: Sections 01, 02, 11 and 12, Township 01 North, Range 03 East; Section 36, Township 02 North, Range 03 East.

CONSIDERATION: \$5,216,500 (\$5,150,000 for the acquisition; \$66,500 for the purchase of the option agreement from The Conservation Fund).

| <u>PARCEL</u> | <u>ACRES</u> | APPRAISED BY Goodman Arline (11/17/04) | APPROVED (11/17/04) | SELLER'S PURCHASE VALUE | TRUSTEES' PURCHASE PRICE | OPTION |
|-------------------|---------------|--|------------------------|-------------------------------|--------------------------------|--------------|
| <u>PRICE</u> | | <u>DATE</u> | | | | |
| Osceola | 1,391.2 | \$4,810,000 | | \$5,450,000 | \$5,450,000*** | \$5,871,960 |
| | \$5,216,500** | 60 days after | | | | |
| Property Holdings | | | | | (96%) | BOT approval |

* Seller purchased the property on 01/05/04
** \$3,750 per acre
*** Conservation Easement is 76% of fee value

Noted Features of Subject Property:
Property is located twelve miles east of Tallahassee and seven miles west of Monticello.
Approximately 4,137 feet of frontage on US Hwy 90; 2,395 feet frontage on Sun Ray Road; 974 feet frontage on CR158A.
Parcel contains rolling topography with elevations ranging between 80 to 150 feet above sea level.
The 109.6 acres fee portion (valued at \$5,000/acre) is contiguous to east and south boundaries of Letchworth Mounds State Park.

STAFF REMARKS: Letchworth Mounds is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16, 2005. The project contains 1,469 acres, of which 77.8 acres have been acquired. After the Board of Trustees approves this agreement, the project will be complete.

Pursuant to a multi-party acquisition agreement between the Department of Environmental Protection's (DEP) Division of State Lands and The Conservation Fund (TCF), as trustee of The Conservation Fund Charitable Trust, TCF has acquired an option to purchase the property from Osceola Property Holdings II, LLC. After this acquisition is approved, the Board of Trustees will acquire the option from TCF for \$66,500, which represents agreed upon compensation to TCF for overhead associated with acquiring

the option and conservation easement. The assignment of the option agreement provides that payment to TCF is contingent upon the Board of Trustees successfully acquiring the property from the owner.

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The assignment of option agreement further provides that in no event, will the purchase price for the option and the purchase price of the property exceed the approved value of the property.

Under the proposed conservation easement, the property will be restricted in perpetuity by the provisions of the easement, a summary of which includes, but is not limited to, the following prohibited uses:

- Dumping of trash, waste, hazardous materials or soil, will be prohibited;
- The exploration for and extraction of oil, gas, minerals, limestone, etc., by the grantor, except as necessary to combat erosion or flooding, will be prohibited;
- Acts detrimental to water conservation, fish and wildlife habitat preservation, natural water courses, extraction of existing surface or subsurface water that would be detrimental to natural water level or flow, or water purity, will be prohibited;
- Acts or uses detrimental to the preservation, structural integrity or physical appearance of any portions of the property having historical or archeological significance, will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation except in areas designated for agricultural or silvicultural use in the Baseline Documentation Report, will be prohibited;
- The cutting of cypress trees, will be prohibited;
- Commercial or industrial activity, (except for grantor's reserved silviculture rights), including but not limited to, swine, dairy, poultry operations, confined animal feed lot operations, and signs, billboards, or outdoor advertising of any kind, will be prohibited;
- New construction, (except for grantor's reserved rights to construct four new residential structures), mobile homes or other structures, except as may be necessary for maintenance, normal operations or emergency situations, will

be prohibited;

- Temporary roads may be built to facilitate authorized logging activities and must follow Best Management Practices. Motorized vehicles will be prohibited except on established trails and roads, unless necessary: (1) to protect or enhance the purposes of the easement, (2) for emergency purposes, and (3) to retrieve game that has been hunted legally;
- Natural areas shall remain natural areas;
- Actions or activities that may reasonably be expected to adversely affect threatened or endangered species, will be prohibited;
- Any subdivision of the land except as may otherwise be provided in this easement, will be prohibited; and

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- Commercial water wells on the property will be prohibited.

The proposed conservation easement will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- The right to observe, maintain, photograph, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding, so long as the same do not constitute a danger to the grantee's employees, agents, officers, directors and invitees, and so long as such activities do not violate any of the prohibitions applicable to the property or the grantee's rights, as stated above. The grantor reserves, and shall continue to own, the hunting and fishing rights on, or related to, the property and the grantor may lease and sell privileges of such rights.
- The right to conduct controlled or prescribed burning with proper authorization;
- The right to continue to use, maintain, repair, and reconstruct all existing buildings, barns, dog pens, outbuildings, fences, roads, ponds, drainage ditches and such other facilities on the property as depicted in the Baseline Documentation. Those structures existing along the southern entrance to the property may be relocated or reconstructed as part of a redesign and beautification of the entrance area. If any of the now existing facilities on the property requires reconstruction or replacement due to

depreciation, obsolescence, destruction or severe damage, the replacement structures may be increased in size no larger than 150 percent of the size of the original structure it replaces, as such size is documented in the Baseline Documentation, and shall be situated at the same site.

- The right to divide the property into four five-acre lots and construction of four new residential structures, along with access driveways and appropriate-sized outbuildings such as barns. Each of the four residential structures shall be limited to 5,000 square feet of heated and cooled area and 1,500 square feet of overhangs, porches and other such non-heated or cooled areas; and have no more than two related outbuildings limited to 2,000 square feet each, and shall include the right to construct new access driveways serving each lot, all of which shall be located at least 150 feet from any wetland area as identified in the Baseline Documentation;
- The right to convert an additional one-hundred acres of improved pasture adjacent to the existing improved pasture, as indicated on the Baseline Documentation Report, and to keep only horses on the improved pasture;
- The right to silviculture within areas depicted on the Baseline Documentation as silvicultural or agricultural;
- The right to convert any improved pasture or hay area to a timber plantation, which may then be harvested by the owner;

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- The right to manage the property for recreational duck and quail hunting. Management may include use of herbicides for habitat restoration; temporary structures such as tree stands, quail pens, feeders, picnic areas and duck blinds;
- The right to maintain existing game food plots as indicated on the Baseline Documentation Report; and
The right to maintain and enhance the existing ponds and streams on the property. The owner may continue to operate, maintain, or replace existing ground water wells incident to allowed uses on the property. The owner will be allowed to dig one well for each new residence as allowed in grantor's reserved rights.

The proposed conservation easement grants certain rights to the grantee. The summary of grantee's rights includes, but is not limited to, the following:

- The right to enforce protection of the conservation values of the property;
- The right to ensure that no future residential, commercial, industrial or incidental development rights except as may be specifically reserved to the grantor in this easement. No development rights or density credits can be transferred onto the property from other property;
- Upon 14 days prior notice, twice annually, the grantee, has the right to enter the property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this easement;
- The right to prevent any activity or use of the property that is inconsistent with the purpose or provisions of this easement;
- The right to ingress and egress to the property, which shall not include public access except for the purpose of scientific and educational exploration and study;
- The right of first refusal to purchase the property if the grantor proposes to sell the property or any interest therein or portion thereof to a third party other than a lineal descendant or an entity in which grantor owns a controlling interest;
- The right to have the property maintained as reflected in the Baseline Documentation, as the property may develop through the forces of nature;
- The right to allow qualified personnel from the Division of Historical Resources (DHR) of the State of Florida, or its successor; (1) to protect against destruction of all burial mounds and other archaeological sites (Sites) identified in the Baseline Documentation Report or discovered in the future; (2) at times mutually agreeable to DHR and grantor to conduct appropriate archaeological investigation of the Sites, and (3) to allow limited public access to the Sites, under the control of DHR and grantee, for the purpose of scientific and educational exploration and study, for not more than 12 outside visitors per visit for up to four such visits each year; and
- The right to cut and remove timber if grantor fails to cut and remove timber damaged by natural disaster, fire and/or infestation. Any such cutting and removal by grantee

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shall be at the expense of grantee and all proceeds from the sale of any such timber shall inure to the benefit of grantee.

All mortgages and liens will be satisfied or subordinated at the time of closing. There are outstanding oil, gas and mineral (OGM) interests that encumber some 80 acres of the property in favor of a third party. Additional due diligence is being performed to determine if the right of entry has been barred by the Marketable Records Title Act. DEP's Bureau of Geology has indicated that the prospects of oil and gas discovery on the subject parcel are considered to be low. Furthermore, due to the lack of active reserve extraction in the area, the outstanding OGM's primarily reflect a nuisance value and do not impact the property.

The appraisal map denotes easements on the property that include a 100-foot electrical transmission line easement to Florida Power Corporation and an ingress/egress easement for a portion of Sunray Road South. DEP's Bureau of Appraisal found both easements to be typical of large agricultural tracts within the neighborhood with no specific adverse impact to value. At closing, the seller will reserve ownership of a 30-foot-wide corridor (approximately 1.3 acres) for ingress and egress to its adjacent property. The seller will grant the Board of Trustees an access easement over the corridor. DEP's Division of Recreation and Parks (DRP), the future managing agency, has determined that the property can be managed and/or monitored with these outstanding interests and easements in place. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and, therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing.

A title insurance policy, a survey, and an environmental site assessment and baseline documentation report will be provided by the purchaser prior to closing.

Letchworth Mounds is one of the highest priority archaeological sites on the Florida Forever list. The project is located along the Leon and Jefferson county lines just below Lake Miccosukee, east of Tallahassee. This property is within the southeastern extension of the "Red Hills" region, an area of special conservation interest to regional and national conservation groups attempting to preserve the wildlife and watershed values still present within historic plantation properties. Due to proximity to a growing state capital, this area is an agricultural landscape that is gradually being converted to development tracts. The Letchworth Mounds project will help protect the adjacent Letchworth Mounds State Park and additional mounds and village sites of the subject property, giving researchers an opportunity to examine the site and the public a chance to learn the history of this area. The conservation easement also protects high quality nature areas that are the

primary watershed of the Lake Miccosukee southern stream outlet
consisting of bottomland hardwood, cypress and gum

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forest, adjacent hardwood hammocks, and rolling upland pine woodlands.

The primary goal of management of the Letchworth Mounds project is to preserve significant archaeological or historical sites.

The fee portion of this acquisition will be managed by DRP and the easement portion will be monitored by DEP's Office of Environmental Services.

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

(See Attachment 5, Pages 1- 68)

RECOMMEND APPROVAL

**Item 6 City of Pahokee/Everglades Ventures Company, L.L.C.
Recommended Consolidated Intent**

REQUEST: Consideration of an application for a modification of a five-year sovereignty submerged lands lease to (1) increase the preempted area from 401,362 square feet to 535,309 square feet, more or less; and (2) authorize the construction of a breakwater and fishing pier, to be used in conjunction with an upland public recreation development, including a campground, restaurant, and boat repair facilities.

COUNTY: Palm Beach
 Lease No. 500224016
 Application No. 50-019049-010

APPLICANTS: City of Pahokee and Everglades Ventures Company, L.L.C. (d/b/a Everglades Adventures RV & Sailing Resort)

LOCATION: Section 13, Township 37 South, Range 41 East, in Lake Okeechobee, Class I Waters, within the local jurisdiction of the city of Pahokee
 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: No

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Item 6, cont.

CONSIDERATION: Six percent of the annual rental value from the wet slip rental area as approved by the Board of Trustees on May 13, 2003.

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 construct a permeable rock breakwater for protection of the existing marina and to rebuild a portion of a previously existing fishing pier, and expand the existing preempted area from 401,362 square feet to approximately 535,309 square feet, for a total increase of 133,947 square feet. There will be no addition of slips as a result of the proposed breakwater or fishing pier. There shall be no mooring authorized along the breakwater or fishing pier, and this requirement has been addressed as a special lease condition.

A minimum of 90 percent of all of the slips will continue to be maintained on an open to the public, first-come, first-served basis, which is a special condition of the existing lease and will remain in the proposed lease modification.

On May 7, 1956, the Board of Trustees issued a Use Permit to the City of Pahokee (City) to use and control a parcel of Lake Okeechobee bottom related to an existing breakwater. The Use

Permit authorized the City to "occupy, use, and control, for the benefit of the public" a parcel of lake bottom in and around the breakwater to afford protection to boats and other craft for navigation, refuge, wharfage, mooring, docking, and servicing. No lease fees were assessed to the City under the subject Use Permit. The adjacent state-owned uplands were also leased to the City on December 15, 1986, for the development and management of public outdoor recreation and related purposes.

On October 30, 2001, the City requested and obtained approval from the Board of Trustees to sublease the state-owned uplands to Everglades Ventures Company L.L.C. (EVC). The

Item 6, cont.

October 2001 approval of the upland sublease referenced the City's plans to request a submerged lands lease for the marina facility and for the subsequent sublease (or reassignment) of the submerged lands to EVC for operation of the marina.

On May 13, 2003, the Board of Trustees approved (1) the conversion of a use permit to a five-year sovereignty submerged lands lease, with a five-year renewal option subject to the Board of Trustees approving the additional five years; and (2) the modification of the fee structure to be leased strictly on six percent of the annual rental value from the wet slip rental area because the city of Pahokee is designated as a Rural Area of Critical Economic Concern. The current lease was executed on April 6, 2004.

In September 2004, the marina was severely damaged by Hurricanes Frances and Jeanne. The facility applied for a standard general permit to reconfigure the previously existing marina within the existing lease boundaries with no addition of slips. The environmental resource permit (50-0129049-008) was issued on May 18, 2005. The lease modification was approved by DEP under delegation of authority.

An April 29, 2005 site visit confirmed that the facility was still recovering from the damage. The majority of the docks were destroyed with only the pilings remaining, the T-dock along the shoreline was the only dock still intact. There were vessels mooring parallel along the existing breakwater at the time of the inspection. All of the vessels were within the lease area and the lease was in compliance.

DEP's Southeast District Office has another application (50-0129049-009) for this facility in house, which proposes to construct additional docks within the proposed lease expansion area to accommodate an additional 108 vessels. The breakwater was separated from this application in order to receive authorization for the breakwater before the upcoming hurricane season. However, the lease modification for the additional 108 slips will be presented to the Board of Trustees for its consideration.

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. Palm Beach County is a designated manatee county without an approved manatee protection plan, but deemed to be

making significant progress by FFWCC. 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.

Item 6, cont.

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 in compliance. The applicant must obtain a local building permit for the marina reconfiguration and dredging upon issuance of all state and federal approvals.

(See Attachment 6, Pages 1-25)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS

Item 7 **Hawkins Avenue Corporation Recommended**
Consolidated Intent

REQUEST: Consideration of an application for a modification of a five-year sovereignty submerged lands lease to change the use from a proposed 6-slip commercial/industrial docking facility to a 68-slip private residential multi-family docking facility and a private boat ramp.

COUNTY: Duval
 BOT No. 162245689
 Application No. 16-147715-008-EI

APPLICANT: Hawkins Avenue Corporation, a Georgia corporation

LOCATION: Section 24, Township 01 South, Range 27 East, in the
 St. Johns River, Class III Waters, within the local
 jurisdiction of the city of Jacksonville
 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
 Minimum Wake within 300 feet of shore, Channel Exempt

CONSIDERATION: \$69,292.29, representing (1) \$17,323.07 as the
initial lease fee computed at the base rate of \$0.1342 per square
foot; and (2) \$51,969.22 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. Fees may be adjusted based on six percent of the annual rental value pursuant to section 18-21.011(1)(a)1, F.A.C.

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Item 7, cont.

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

On November 16, 2000, the Board of Trustees approved a sovereignty submerged lands lease containing 129,084 square feet, more or less, for a proposed commercial/industrial docking facility to be used in conjunction with a proposed upland marine contracting company. Activities on sovereignty submerged lands included the construction of 495 linear feet of bulkhead at the approximate mean high water line, the dredging of 2.53 acres of river bottom, and the installation of a 350-foot-long by 75-foot-wide concrete dock. The dock was designed to moor six vessels consisting of tugboats and barges.

The lessee originally proposed to dredge 17,205 cubic yards of sovereign material to create water depths sufficient for mooring tugboats and barges. Berths (mooring and maneuvering areas) were to be dredged to a depth of -20 feet NGVD. The dredging operation commenced in June 2004 and approximately 5,129 cubic yards of material had been removed from a 420-foot-long by 60-foot-wide nearshore area when the applicant proposed to change the upland use from industrial to residential. The average depth of the dredged area is -7 to -9 feet below mean low water. No additional dredging is required for the new proposal. The bulkhead and industrial dock have not been constructed.

The lessee now proposes to construct a 68-slip private residential multi-family docking facility, bulkhead, and boat ramp to serve a 468-unit subdivision proposed for the uplands known as the Nichols Creek Planned Unit Development (PUD). The Jacksonville City Council, under Ordinance 2004-313-E, approved the PUD on May 11, 2004. The new docking facility, bulkhead, and boat ramp will be constructed within the existing approved lease area.

The Nichols Creek PUD has 468 approved upland units. Pursuant to section 18-21.004(4)(b), F.A.C., the number of slips allowed for 468 units is 125.

The lessee proposes 68 slips. Section 18-21.004(4)(b), F.A.C., also requires the facility to cumulatively preempt no more than forty square feet of sovereignty submerged land for each linear foot of the lessee's common riparian shoreline along sovereignty submerged land.

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Item 7, cont.

The lessee needs 3,227 linear feet of shoreline in order to accommodate a 129,084-square-foot lease area and not exceed the 40:1 restriction. The lessee has approximately 2,200 linear feet of riparian shoreline along the St. Johns River and approximately 5,500 linear feet of riparian shoreline along Nichols Creek.

Section 18-21.004(4)(f), F.A.C., requires the lessee to provide a conservation easement or other similar recorded restrictive covenant in favor of the Board of Trustees over the riparian waterfront footage used for the calculation of the preempted area to subordinate or waive any further riparian rights of ingress and egress for additional docks and piers. The lessee has agreed to place 966 linear feet of shoreline along the St. Johns River in the immediate vicinity of the proposed docking facility and 2,261 linear feet of shoreline along Nichols Creek for a total of 3,227 linear feet of shoreline under a conservation easement. This has been included as a special approval condition.

The existing lease prohibits fueling facilities and liveaboards but authorizes a sewage pumpout facility. The lessee does not propose fueling facilities, liveaboards, or a sewage pumpout facility for the private residential multi-family docking facility. The environmental resource permit and modified lease will not require a sewage pumpout facility.

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 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. In addition, Duval County has adopted and implemented a manatee protection plan that has been approved by FFWCC. The FFWCC has determined that the proposed project complies with the requirements of the 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 Ordinance 2004-313-E of the Jacksonville City Council.

(See Attachment 7, Pages 1-32)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,
SPECIAL LEASE CONDITIONS AND PAYMENT OF \$69,292.29**

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Item 8 St. Johns Center, LLC Recommended Consolidated Intent

REQUEST: Consideration of an application for a ten-year sovereignty submerged lands lease containing 202,291 square feet, more or less, for the purpose of constructing a 75-slip commercial marina.

COUNTY: Duval
 Lease No. 160336512
 Application No. 16-222488-001-EI

APPLICANT: St. Johns Center, LLC

LOCATION: Section 44, Township 02 South, Range 26 East, in the St. Johns River, Class III Waters, within the local jurisdiction of the city of Jacksonville
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, 600-foot slow
speed, channel exempt

CONSIDERATION: \$25,790.07, representing the initial lease fee computed at the base rate of \$0.1342 per square foot, discounted 30 percent because of the first-come, first-served nature of the facility and including the 25 percent surcharge payment. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable. The lease fee may be may be adjusted based on six percent of the annual rental value pursuant to section 18-21.011910(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 of Trustees is requested to act on those aspects of the activities, which require authorization to use sovereignty submerged lands.

The applicant is proposing to construct a 75-slip commercial marina in downtown Jacksonville on the southbank of the St. Johns River. The marina will accommodate recreational vessels ranging 40 to 70 feet in length, with typical drafts of 4 to 7 feet. This section of the St. Johns River provides sufficient water depths for the intended boat drafts and does not contain any wetland or other submerged aquatic vegetation. No dredging is proposed and the floating docks will be secured in place by anchored cables. An access walkway will connect from the boardwalk to the floating docks and boatslips.

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Item 8, cont.

The marina will have at least 90 percent of the slips available for rent to the public on a first-come, first-served basis. This has been addressed as a special lease condition.

The city of Jacksonville (City) maintains a pedestrian boardwalk along the southbank of the St. Johns River located between the upland property, owned by the applicant, and the river. The City's right to maintain the boardwalk is established in a grant of easement executed between the applicant and the City. The grant of easement however preserves the applicant's right to moor boats, have access to those boats, and to install utilities and fixtures for use in conjunction with the boats. Further, the

grant of easement preserves the applicant's right in common with the public to use and cross the boardwalk for access to such boats.

The original upland property adjacent to the proposed marina was previously divided into three distinct properties with separate ownerships. Two of the properties now owned by St. Johns Phase I, LLC., and St. Johns Phase 2, LLLP., are to be utilized for the development of a 234-unit residential condominium, and commercial office spaces with supporting services. The applicant retains fee-simple ownership of the third property. The applicant's property includes the land riparian to the proposed marina, a corridor of land lying between the properties owned by St. Johns Phase I, LLC., and St. Johns Phase 2, LLLP, and a portion of land upon which the applicant will construct the parking garage. The parking garage will provide parking for the condominium development and commercial offices as well as for patrons of the marina. The applicant will retain ownership of the riparian upland property including the corridor of land lying between the parking lot of the proposed marina. Patrons of the marina will utilize this corridor of land to access the marina. As stated above the marina shall be open to the public on a 'first-come, first-served' basis and this has been addressed as a special lease condition.

Further, staff recommends that this condition specify that 'first-come, first-served' means any water dependent facility operated on sovereignty submerged lands of the state, the services of which are open to the general public with no qualifying requirements such as club memberships, stock ownership, or equity interest, with no longer than one-year rental terms, and with no automatic renewal rights or conditions. The applicant has also agreed to a special lease condition which will state that the applicant can not sell a boat slip to the owners of the upland condominium units nor any other individual and that the purchase of an upland condominium unit shall not provide any greater right or privilege to rent a boat slip than that offered to the greater general public.

DEP's environmental resource permit does not authorize liveaboards or fueling facilities. A portable sewage pumpout is authorized in DEP's environmental resource permit. In a letter dated April 4, 2005 the Florida Fish and Wildlife Conservation Commission states that the project appears to be consistent with the Duval County Manatee Protection Plan, and its

Item 8, cont.

recommendations regarding protection of manatees are being addressed in the environmental resource permit and as special lease conditions.

The project was noticed to 11 property owners within 500 feet of the proposed lease area as required by section 253.115(1), F.S. No objections or comments have been received to date.

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 on February 23, 2005.

(See Attachment 8, Pages 1-25)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS
AND PAYMENT OF \$ 25,790.07

Item 9 Basil Street Partners, LLC Recommended Consolidated
Intent

WITHDRAWN FROM THE APRIL 19, 2005 AGENDA

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 ~~commercial~~; (2) increase the preempted area from 36,415 square feet to 38,649 square feet, more or less; (3) convert the use of the 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

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Item 9, cont.

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: \$11,408.57, representing: (1) \$5,249.57 as the initial lease fee for the water dependent portion of the project computed at the base rate of \$0.1342 per square foot, and including the initial 25 percent surcharge payment for the additional area; (2) \$2,880.00 as the initial lease fee computed at a negotiated rate of \$32.00 per square foot for the area of filled formerly submerged sovereignty lands, and including the initial 25 percent surcharge payment for the additional area; (3) \$2,732.50 as an administrative fine for the unauthorized use of sovereignty submerged lands, which has been paid; and (4) \$546.50 as a corrected additional administrative fine for the unauthorized use of sovereignty, submerged lands, which has been paid. 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. The lease fee may be adjusted upon receipt of an acceptable survey and legal description of the area of filled formerly submerged sovereignty lands.

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."

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~~commercial~~; (2) increasing the preempted area from 36,415 square feet to 38,649 square feet, more or less; (3) converting the use of the docking facility to a private yacht club facility~~clarifying that the upland use will change from a commercial marina to a mixed use (residential and commercial) development~~; (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~~commercial~~ 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

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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~~at~~ 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 ~~a~~ special lease conditions 31b and 31d requiring that ~~provided to DEP.~~ 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.

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

Item 9, cont.

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 38,649 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 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 ~~commercial~~ 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.

Item 9, cont.

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. This area is to include the slips described in items (1) and (2); 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. ~~regulation, Division of Land Sales, Condominiums and Mobile Homes ST. However~~taff 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~~the~~ complete copy of the recorded Master Declaration of Covenant 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~~ing~~ 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.

An April 18, 2005 inspection by DEP staff revealed that Basil had commenced construction of the replacement seawall on sovereignty submerged lands. A portion of the seawall and associated backfill was installed consistent with the requirements of permit no. 36-0179315-001 issued by DEP on January 14, 2003. That permit included a consent of use pursuant to section 18-21.005(1)(c)5, F.A.C. However, approximately 891.1 linear feet of replacement seawall was installed approximately three feet beyond the location authorized by that permit,

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in the location proposed to be authorized by the pending permit modification. Therefore, that portion of the seawall is unauthorized. This violation resulted in the filling of an additional 1,093 square feet of sovereignty submerged lands, of which 72 square feet exceeds the consent of use threshold for seawall replacements. Basil had instructed the contractor to install the seawall because of concerns about the potential failure of the seawall. However, neither Basil nor the contractor notified DEP of the installation activities. DEP and Basil have executed a Consent Order (no. 05-0754-11-DF) to address this violation. That Consent Order requires payment of \$3,000.00 in regulatory civil penalties, \$2,732.50 as administrative fines, and \$1,000.00 for costs and expenses incurred by DEP. These penalties/fines/costs have been paid. The Consent Order requires Basil to follow a compliance inspection and reporting procedure to minimize the likelihood of future construction violations. Pursuant to that procedure, Basil will employ a professional engineer to make on-site visual observations at least twice a day and file a certified engineering report each week with the DEP's South District Office. This report shall be prepared by a professional engineer, registered in the State of Florida, and shall include any information relevant to the project's specific compliance with the lease and the DEP permit. The report format will be in a manner as required by the DEP and will include site photos.

Pursuant to section 18-21.013(3), F.A.C., the Board of Trustees may pursue the following options in regard to sovereignty submerged lands filled without authorization after June 11, 1957: (1) direct the fill be removed by or at the expense of the applicant; (b) direct the fill remain as state-owned; or (3) sell the filled land. The first option is not recommended because removal of the fill could entail water quality impacts resulting in environmental damage to the area. The second option is typically not recommended by DEP because the location, size and configuration of the parcel as a narrow strip bordering private uplands is not suitable for management by the state for public use. The third option is typically recommended by DEP. However, Basil has requested that the Board of Trustees approve the second option.

The 72 square feet of unauthorized fill for the as-built seawall constitutes a non-water dependent activity. Section 18-21.004(1)(f), F.A.C., provides that 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. If the Board of Trustees approves the second option as requested by Basil, DEP recommends that the area be included in the modified lease.

Section 18-21.011(1)(b)6, F.A.C., provides that the annual lease fees for non-water dependent uses shall be negotiated. The negotiated annual lease fee must consider the appraised market rental value of the riparian upland property and the enhanced property value, benefits, or profit gained by Basil if the proposed lease is approved. Basil has not provided DEP with an appraisal showing these values. However, the 2004 Final Tax Roll from the Collier County Property Appraiser shows that Basil's riparian upland property (less improvements) was

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assessed at approximately \$32.00 per square foot. If the Board of Trustees assessed the annual lease fee for the filled area at \$32.00 per square foot, the annual lease fee for this area would be \$2,304.00. In light of the benefit to Basil from the Board of Trustees allowing the fill to remain, DEP recommends that the Board of Trustees assess the annual lease fee for the 72 square foot unauthorized fill at \$32.00 per square foot, to be adjusted annually based on the change in the Consumer Price Index. If the Board of Trustees allow the fill to remain, a special approval condition will require Basil to provide an acceptable survey and legal description of that area.

To demonstrate its good faith efforts, Basil proposes to provide \$45,000 to the City of Naples or Collier County to create a marine compliance staff person to be employed by the City of Naples or Collier County for one year. That staff person will review marine construction projects in Naples Bay and the Gordon River and will notify DEP if violations of DEP permits have occurred. That staff person will also work with local marina operators to provide appropriate information and support for best management practices and to encourage the marinas to participate in the State's Clean Marina program. If the City of Naples or Collier County is unable to create that position, Basil will cooperatively work with DEP staff and provide an equivalent sum for an alternate compliance project mutually agreed upon by Basil and DEP within 60 days of written notice by DEP. This is addressed by a special approval condition.

The existing lease authorizes sewage pumpout facilities and fueling facilities, but will continue to prohibit liveboards. 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.

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(See Attachment 9, Pages 1-55)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITIONS,
THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF
\$8,129.57**