

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JULY 31, 2007
Substitute Page

Item 1 Minutes

Submittal of the Minutes from the May 15, 2007 and June 12, 2007 Cabinet Meetings.

(See Attachment 1, Pages 1-38)

RECOMMEND APPROVAL

Substitute Item 2 DEP Annual Performance Measures

REQUEST: Consideration of the Department of Environmental Protection's first annual performance contract.

STAFF REMARKS: At the April 17, 2007 Cabinet Meeting, it was requested that all agencies reporting to the Governor and Cabinet submit annual performance measures for acceptance. Accordingly, the Department of Environmental Protection (DEP) has established annual performance measures that reflect standards essential to effectively acquire lands for conservation, manage and protect resources, as well as provide public recreation on state-owned lands.

The Division of State Lands

DEP's Division of State Lands (DSL) oversees 3.3 million acres of upland conservation lands, 2 million acres of interior sovereignty submerged lands and thousands of acres of other, non-conservation state-owned public lands.

As staff to the Trustees, DSL is responsible for acquiring, reviewing management and authorizing activities on all state lands owned by the Board of Trustees. DSL oversees the Florida Forever conservation land acquisition program and manages activities on Trustees-owned and sovereignty submerged lands. The Division also maximizes funding to ensure best real estate and asset acquisition practices and leads the state's efforts to eliminate invasive exotic plant species on both state-owned uplands and aquatic systems. DSL's nine contract measures comprehensively evaluate and monitor the degree to which the Division is meeting these requirements.

Office of Greenways & Trails

DEP's Office of Greenways and Trails (OGT) offers hiking, biking, skating and equestrian activities for the citizens and visitors of Florida on more than 80,000 acres of state-owned land, including eight state trails, the 110-mile Cross Florida Greenway, as well as other conservation properties.

OGT is responsible for the management and restoration of these properties and receives \$4.5 million annually from Florida Forever to acquire lands to establish a state-wide system of trails in both urban and rural areas. OGT's five performance measures will monitor progress and

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also serve as a guide for future management and budget planning. Prescribed burning, mechanical treatment and removal of exotics are key natural resource management techniques. Measuring visitation indicates success in public awareness of state trails, and volunteer hours are important to supplement limited staffing and build community relationships.

Florida State Parks

Florida State Parks (FSP) manages 161 award-winning parks, spanning almost 700,000 acres with 100 miles of sandy white beaches. State parks include freshwater springs, beaches, aquatic preserves, ornamental gardens, forts, museums and lighthouses. FSP offers hiking, biking, swimming, horseback riding, canoeing and kayaking, primitive and cabin camping, picnicking, viewing threatened plant and animal species or quiet relaxation. This year, FSP announced a new attendance record with more than 19.5 million visitors, contributing almost \$900 million to Florida's economy.

FSP is responsible for providing resource-based public recreation while preserving, interpreting and restoring the state's natural and cultural resources. FSP's four performance measures evaluate and monitor the progress and management of state-owned lands for conservation and restoration, as well as public enjoyment. Prescribed burning, mechanical treatment and exotic invasive species removal are FSP's key natural resource management techniques. Measuring visitation is an indication of public awareness, and volunteers are important to supplement limited staffing and build community relationships.

Office of Coastal & Aquatic Managed Areas

DEP's Office of Coastal and Aquatic Managed Areas (CAMA) conducts stewardship, research and educational activities in 4 million acres of the most valuable submerged lands and select coastal uplands in Florida, including three National Estuarine Research Reserves, 41 aquatic preserves and the Florida Keys National Marine Sanctuary, as well as the Coral Reef Conservation Program.

CAMA is responsible for managing these protected coastal and aquatic areas to preserve wildlife habitats and protect waterways, while also inviting residents and visitors to explore Florida's natural environment. CAMA's four performance measures will evaluate and monitor their progress in conserving and restoring these valuable state lands. Visitation numbers and volunteer hours help to measure public awareness and community outreach efforts.

Siting Coordination Office

DEP's Siting Coordination Office (SCO) reviews applications for power plants, transmission lines, natural gas pipelines, as well as coordinates certification of these facilities. Certification is an umbrella permit for all affected state, regional and local agencies and includes any applicable regulatory activity. This is a life-of-the-facility approval and authorizes construction, operation and maintenance.

The purpose of the Power Plant Siting Act, as set forth by the legislature in section 403.502 F.S., is to meet the need for electrical energy while also assuring Florida's citizens that plant operation safeguards are technically sufficient for their protection and welfare, and to achieve a reasonable

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balance between the need for the facility and the environmental impact resulting from construction and operation, including air and water quality, fish and wildlife, as well as other natural resources.

SCO's two performance measures accurately reflect the amount of certified electrical generation capacity and transmission capacity under Siting Act oversight.

If the Board of Trustees accepts these measurement standards, DEP will monitor its performance over the next fiscal year and provide a comprehensive evaluation of its progress.

(See Attachment 2, Pages 1-3)

RECOMMEND ACCEPTANCE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION'S ANNUAL PERFORMANCE MEASURES

Substitute Item 3 Neff/Pinder/Schmidt Sale and Purchase Agreements/Survey Waiver/ Florida Keys Ecosystem Florida Forever Project

REQUEST: Consideration of (1) three sale and purchase agreements to acquire 2.98 acres within the Florida Keys Ecosystem Florida Forever project from Thomas O. Neff, as Trustee of the Thomas O. Neff Trust Agreement, as to an undivided ½ interest, and Jayne G. Neff, as trustee of the Jayne G. Neff Trust Agreement, as to an undivided ½ interest; Heirs/Devises of the Estate of Donald S. Pinder, deceased; and Henry G. and Marie Rita Schmidt; and (2) the authority to waive the survey requirement on the Pinder and Schmidt parcels.

COUNTY: Monroe

LOCATION: Section 19, Township 65 South, Range 34 East; and Section 02, Township 66 South, Range 28 East

CONSIDERATION: \$1,012,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Pallardy (06/23/05)	APPROVED <u>VALUE</u>	SELLER'S <u>PURCHASE PRICE</u>	TRUSTEES' <u>PURCHASE PRICE</u>	CLOSING <u>DATE</u>
Neff	1.36	\$297,000	\$297,000	\$130*	\$ 382,000** (129%)	120 days after BOT approval
<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (04/10/05)	APPROVED <u>VALUE</u>	SELLER'S <u>PURCHASE PRICE</u>	TRUSTEES' <u>PURCHASE PRICE</u>	CLOSING <u>DATE</u>
Pinder	.69	\$216,000	\$216,000	\$419***	\$ 270,000**** (125%)	120 days after BOT approval

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<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (04/10/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	CLOSING <u>DATE</u>
Schmidt	.93	\$288,000	\$288,000	\$800*****	\$ 360,000***** (125%)	120 days after BOT approval
	<u>2.98</u>		<u>\$801,000</u>		<u>\$1,012,000</u>	

- * Property was purchased November 9, 1944.
- ** \$280,882 per acre-the Neff contract price is based on 8 lots valued at \$37,000 per lot x 125%, 1 lot valued at \$1,000 plus \$7,000 incentive, and 4 lots for \$1,000 per lot by delegated authority approved on December 16, 2003 and February 16, 2005.
- *** Property was purchased February 9, 1945.
- **** \$391,304 per acre.
- ***** Property was purchased July 5, 1960.
- ***** \$387,097 per acre.

Noted Features for Neff:

Subject is comprised of 13 platted lots in Crain's Subdivision within the City of Marathon. Of the 13 lots, eight lots are valued based on ROGO allocation, one lot is partially below the mean high water line and valued based on recreational use, and four lots are below the mean high water line and have no value.
Zoning is NA-Native Area, Residential.
Highest and best use for eight parcels is dedication for ROGO allocations; highest and best use for one parcel is recreational/buffer and the remaining four lots are below the mean high water line and were not appraised.

Noted Features for Pinder:

Subject is comprised of six platted lots in Rainbow Beach Subdivision on Big Torch Key.
Zoning is NA-Native Area, Residential.
Highest and best use for all parcels is dedication for ROGO allocations.
Unit of comparison is price per ROGO lot.

Noted Features for Schmidt:

Subject is comprised of eight platted lots in Rainbow Beach Subdivision on Big Torch Key.
Zoning is NA-Native Area, Residential.
Highest and best use for all parcels is dedication for ROGO allocations.
Unit of comparison is price per ROGO lot.

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 27, 2007. The project contains 11,854 acres, of which 5,281.77 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 6,572.23 acres or 55 percent of the project will remain to be acquired.

Project Detail

The Neff parcels include four lots below the mean high water line. On February 15, 2005, the Board of Trustees approved to pay \$1,000 per parcel for parcels below the mean high water line in lieu of possible litigation to resolve any potential ownership issues. Any part of the parcels below the mean high water line is not part of the value, but will be part of the conveyance.

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

Substitute Item 3, cont.

Survey Waiver

It is the opinion of DEP's Bureau of Survey and Mapping that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to cost. Therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C. The waiver only applies to the Pinder and Schmidt parcels and the Neff parcels below mean high water line. A survey has been completed for the other Neff parcel.

Closing Information

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to 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. 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 environmental site evaluation will be provided by the purchaser prior to closing for each of the three parcels.

Management

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

The Pinder and Schmidt parcels will be managed by Florida Fish and Wildlife Conservation Commission (FWC) as part of the Florida Keys Wildlife and Environmental Area. FWC is cooperating with OGT, by entering into a Memorandum of Understanding to design and implement access facilities to support public access and use of the Florida Keys Overseas Heritage Trail and/or the Florida Circumnavigation Saltwater Paddling Trail, where it is appropriate for the parcels and consistent with the original purposes of the Florida Keys Ecosystem Florida Forever Project.

All three of these acquisitions are consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 3, Pages 1-61)

RECOMMEND APPROVAL

**Item 4 Cohen/Lark Option Agreements/Survey Waiver/Florida Keys Ecosystem
Florida Forever Project**

REQUEST: Consideration of (1) two option agreements to acquire 6.42 acres within the Florida Keys Ecosystem Florida Forever project from Harvey and Florence Cohen and George A. Lark and Christine M. Lark; and (2) the authority to waive the survey requirement on eight of the Lark parcels.

COUNTY: Monroe

LOCATION: Section 22, Township 67 South, Range 26 East; and Section 31, Township 66 South, Range 28 East

CONSIDERATION: \$997,900

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (08/29/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Cohen	.57	\$250,000	\$250,000	\$15,000*	\$250,000** (100%)	120 days after BOT Approval
<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Johnston (08/04/05)	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Lark	5.85	\$831,000	\$831,000	\$2,812,500***	\$747,900**** (90%)	270 days after BOT Approval
	<u>6.42</u>		<u>\$1,081,000</u>		<u>\$997,900</u>	

* Cohen parcel was purchased on January 21, 1980.

** \$438,596 per acre.

*** Lark parcels were purchased on November 21, 2003. This purchase included a waterfront 9.02-acre estate-type parcel with 4 buildings and approximately 8,096 square feet of living space, which is not included in the State's purchase.

**** \$127,846 per acre.

Noted Features of the Cohen Parcel:

The subject is a platted lot located in a residential subdivision on Big Coppitt Key (Mile Marker 10).
Zoning is IS (Improved Subdivision), which allows for residential uses. The value is based on residential usage.
The subject is valued based on "price per lot."

Noted Features of the Lark Parcels:

Platted lots located in a low-density residential neighborhood just south of U.S. Highway 1 (Mile Mark 20) on Sugarloaf Key.
Only parcel #12523 has water frontage.
Zoning is for residential use, and the property was valued as such.
Parcel #12523 was valued on a per-lot basis; the remaining 13 parcels were valued as ROGO lots.

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 27, 2007. The project contains 11,854 acres, of which 5,288.19 acres have been acquired or are under agreement to be acquired. If the Board of Trustees approves this agreement, 6,565.81 acres, or 55 percent of the project, will remain to be acquired.

Item 4, cont.

Project Detail

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

Survey Waiver

It is the opinion of DEP's Bureau of Survey and Mapping that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to cost. Therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C. The waiver only applies to eight of the Lark parcels. A survey will be provided by the purchaser prior to closing for the Cohen parcel and the remaining three Lark parcels.

Closing Information

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to 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. 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 environmental site evaluation will be provided by the purchaser prior to closing for both parcels.

Management

The properties will be managed by Monroe County.

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

Item 4, cont.

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

Item 5 Hardwick & Sons, LLC Acceptance of Bid/Offer/Murphy Act Parcel

REQUEST: Consideration of (1) acceptance of a bid and offer in the amount of \$257,000 submitted by Hardwick & Sons, LLC, for the purchase of a 3.50-acre parcel of state-owned land, more or less, in St. Johns County; and (2) approval of a contract for sale and purchase of the 3.50-acre parcel.

COUNTY: St. Johns

APPLICANT: Hardwick & Sons, LLC

LOCATION: Section 48, Township 08 South, Range 30 East

CONSIDERATION: \$257,000 to be deposited in the Internal Improvement Trust Fund.

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY ROBERT S. SUTTE <u>12/15/2006</u>	MINIMUM ACCEPTABLE <u>BID AMOUNT</u>	BUYERS' PURCHASE <u>PRICE</u>	CLOSING <u>DATE</u>
Hardwick & Sons	3.50	*\$85,000	\$225,000	\$257,000	120 days after BOT approval

- *Land Value "as is" no access \$85,000
- *Land Value with assumed access \$170,000

STAFF REMARKS:

Background

The Board of Trustees originally acquired this parcel of land pursuant to chapter 18296, 1937 Laws of Florida, known as the Murphy Act. The act provided for statutory forfeiture of lands for nonpayment of taxes. Tax certificates unredeemed as of June 9, 1939, were automatically converted to fee simple title in the name of the state.

Pursuant to section 253.82(2)(b), F.S., land to which is vested in the Board of Trustees by the Murphy Act, which is 10 acres or less in size and has an appraised market value of \$250,000 or less is declared surplus, except for lands determined to be needed for state use, and may be sold in any manner provided by operation of law.

Item 5, cont.

The Department of Environmental Protection (DEP), Division of State Lands (DSL) received several requests to purchase this property. Section 18-2.020(2)(b), F.A.C., states in part, "disposal of surplus land shall be competitively bid except that parcels five acres or less in size or with a market value of \$100,000 or less may be sold by any reasonable means, including open or exclusive listing with real estate sales services, competitive bid, auction, and negotiated direct sales."

Bid Offers

The property was offered for bid by DSL and two bids were received, both were bona fide offers over the minimum bid amount and included the required 10 percent deposit. The bids submitted are as follows:

<u>Name</u>	<u>Amount Bid</u>
Mark E. Lambert and Elizabeth B. Lambert	\$235,000
Hardwick & Sons, LLC	\$257,000

DSL is of the opinion that this sale will be in the state's best interest and recommends approval of this bid to Hardwick & Sons, LLC. The company's lawful attorney-in-fact, Mr. Kevin Partel, has advised DSL that the company's intended use of the property will be for storage warehouses.

Advertising/Noticing

Advertisements were placed in the St. Augustine Record of St. Johns County (County) and the DEP website.

Pursuant to section 18-2.020(7), F.A.C., the property was advertised at least once a week for three consecutive weeks in the St. Augustine Record on the following dates: April 8, 15 and 22, 2007.

Pursuant to sections 253.034(6)(f) and 253.111, F.S., state agencies and the County were notified of the proposed sale. No interest in purchasing this property was received from the state agencies or the County.

Comprehensive Plan

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

(See Attachment 5, Pages 1-22)

RECOMMEND APPROVAL

Substitute Item 6 City of West Palm Beach Lease/Determination/Conveyance

SUBSTANTIALLY REWRITTEN

DEFERRED FROM THE JUNE 12, 2007 AGENDA

REQUEST: Consideration of (1) a determination that an extended term 25-year lease, with three automatic 25-year renewals, at the option of the City of West Palm Beach, is not contrary to public interest; (2) an application for a 25-year extended term sovereignty submerged lands lease containing approximately 23.5 acres, with three automatic 25-year renewals at the option of the City of West Palm Beach, contingent upon the facility being in compliance with terms and conditions of the sovereignty submerged lands lease at the time of renewal, for a 160-slip docking facility (Parcel A); (3) acceptance of the conveyance of approximately 8.94 acres of adjacent submerged lands in Lake Worth (Parcel B) from the City of West Palm Beach to the Board of Trustees as partial payment of lease fees; and (4) Any lease fees in arrears will be negated as a result of recognizing a credit for the agreement of the proposed special lease conditions.

COUNTY: Palm Beach
Lease No. 501708759

APPLICANT: City of West Palm Beach (City)

LOCATION: Section 22, Township 43 South, Range 43 East, in the Lake Worth Lagoon,
Class III Waters within the local jurisdiction of the City
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, without an approved Manatee Protection Plan,
but with significant progress
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Yes, slow speed year-round

CONSIDERATION: Approximately 8.94 acres of submerged land in Lake Worth Lagoon and \$600,000 dedicated towards improvements to public water access facilities for canoes and kayaks at Grassy Water Preserve in Palm Beach County.

STAFF REMARKS: The State of Florida Department of Environmental Protection (DEP) has received an application from the City to lease Parcel A in Lake Worth Lagoon. Parcel A abuts Parcel B which is a portion of a larger parcel conveyed to the City by Board of Trustees' Deed No. 22754 (801-40) in 1961 and Board of Trustees' Deed No. 23049(801-50) in 1962.

Parcel A: Background and Project Detail

Parcel A encompasses approximately 23.5 acres which extends from the existing bulkhead on the western boundary to the legal limit of the channel on the eastern boundary, and approximately 1,500 feet south from the Flagler Memorial Bridge. A portion of Parcel A is currently being leased by the City to the Palm Harbor Marina which has 160 wet slips, none of which are owned by individual owners in the Waterview Towers Condominiums on the nearby upland property.

Substitute Item 6, cont.

In 1948 the City dredged the area in Parcel A which was permitted by the Army Corps of Engineers. In the 1990s, the City sought ownership of the dredged sovereignty submerged lands surrounding the Marina through the Butler Act. The claim was denied by the Florida Supreme Court in City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund, et al., 746 So. 2d 1085 (Fla. 1999); however, the existing 41,842-square-foot footprint of the docks qualifies for a disclaimer under the Butler Act. The City has never requested a disclaimer and DEP's Office of General Counsel recognizes that the Board of Trustees could not assert title to this portion of the submerged land. The 41,842 square feet are not included in the calculation of Parcel A's acreage and will be excluded from the lease area.

The City proposes to reconfigure, update and expand the existing facility in the future to a total of 165 wet slips and has agreed to a special lease condition on Parcel A requiring that at least 50 percent of the total wet slips be open to the public on a first-come, first-served basis pursuant to chapter 18-21, F.A.C. on both current and future slips. This proposed action will require additional authorization and permitting prior to implementation. Any fees associated with the Palm Harbor Marina in arrears will be negated as a result of recognizing a credit for the agreement of the proposed special lease conditions.

Parcel B: Project Detail

Parcel B is part of a larger tract that is partially filled and improved, and lies immediately south of Parcel A in Lake Worth. Parcel B is to be part of the City's proposed waterfront revitalization project in this area known as Waterfront Commons (Commons) which will create one mile of waterfront accessible to the public for recreation, education and public events. The upland portion of the Commons will provide the public with extensive sidewalks; a beach area with stair steps leading to a landing at water level; a 3,000-square-foot pavilion; and approximately 25,000 square feet of lawns, gardens and fountains. The submerged land portion of the Commons will have three floating day-docks with 33 total slips, all of which will be open daily to the public on a first-come, first-served basis only for the purpose of being able to access the uplands. Two of the proposed docks would extend beyond the boundary of Parcel B thus requiring a sovereignty submerged lands lease. Construction is scheduled to begin in September, 2007 with an anticipated completion date of November, 2008.

The City has proposed to transfer title to Parcel B to the Board of Trustees as part of this transaction. If the extended term lease is approved on Parcel A and title to Parcel B is transferred to the Board of Trustees, the City will need and has requested a fee-waived sovereignty submerged lands lease which will encompass the Commons three day-docks and associated preempted area which will be 100 percent open to the public on a first-come, first-served basis. The request for the lease for the Commons is a separate companion item on this agenda. The estimated cost of the Commons will be \$22,500,000. The City anticipates that its share of the revenues from the marina facility to be constructed on Parcel A will be earmarked for the maintenance and operations of the Commons.

Additional Requirements

An additional component of this transaction will have the City dedicate \$600,000 towards improvements to public water access facilities for canoes and kayaks in Grassy Water Preserve

Substitute Item 6, cont.

(Preserve). The Preserve, which is located in the Loxahatchee Slough, consists of wet pine flatwoods, swamps, marshes, wet prairies and cypress domes. It is part of the Northeast Everglades Natural Area (NENA), which is a network of conservation lands, natural areas and parks extending from the Atlantic Ocean to Lake Okeechobee in Martin and Palm Beach Counties. The \$600,000 worth of water access improvements will include a canoe/kayak facility and canoe portages, boardwalks and non-dredged canoe trails. Preserve improvements will be centrally located within the NENA where paddlers can launch to reach Jonathon Dickinson State Park to the north and Lake Okeechobee to the west.

Lease Conditions

A 25-year extended term lease, with three automatic 25-year renewals, at the option of the City, contingent upon the facility being in compliance with terms and conditions of the sovereignty submerged lands lease at the time of renewal, is being recommended in this isolated situation for two distinct reasons related to public access of the waters. The first reason is that the lease is being granted to the City which is a municipality of the State of Florida. The City will manage the property for the benefit of the public and will require the facility to be at least 50 percent open to the public on a first-come, first-served basis. The second reason relates to the existing underlying lease that the City now has with Palm Harbor Marina for its current configuration for a term of over 60 years at a fee substantially below market value. The expansion of the marina area allows the City to renegotiate the lease terms and conditions that will result in increased revenue to the City. The City will then use the revenue to maintain and operate the Commons immediately south of the marina for the public's use.

The following special lease conditions will be required as part of the terms of the 25-year sovereignty submerged lands lease:

- At least 50 percent of the wet slips will be to be open to the public on a first-come, first-served basis as defined in section 18-21.003(23), F.A.C.;
- The Lessee will expend \$600,000 towards improvements to public water access facilities for canoes and kayaks in Grassy Water Preserve on or before June, 2011, at which time the Lessee will provide DEP, Division of State Lands (DSL), with a complete accounting of the expenditures;
- The leased premises shall be used solely for water dependent activity as defined in section 18-21.003(66), F.A.C.;
- The Lessee shall submit an annual certification along with an annual wet slip certification to DSL stating that the Lessee is in compliance with all lease conditions;
- No fill of any kind shall be placed on the leased premises;
- Lessee shall obtain an Environmental Resources Permit prior to any reconfiguration and/or expansion of the leased premises;
- Lessee shall not discriminate; and
- Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships or vessels.

Substitute Item 6, cont.

- The Lessee shall use all revenues from the marina facility for the maintenance and operations of the Lessee's proposed waterfront revitalization project in this area known as Waterfront Commons.

Staff is recommending that the Board of Trustees: (1) determine the 25-year extended term lease, with three automatic 25-year renewals, is not contrary to the public interest; (2) approve the 25-year extended term lease; (3) accept the conveyance of 8.94 acres of submerged land as payment of lease fees; and (4) credit any lease fees in arrears because the overall transaction will benefit the public with improved and expanded water access by: (a) the expanded marina facilities on Parcel A with 50 percent of the total wet slips open to the public on a first-come, first-served basis; (b) the 33 wet slips at the Commons' day-docks being 100 percent open to the public on a first-come, first-served basis; (c) the conveyance of 8.94 acres of submerged land in Lake Worth; (d) better Preserve facilities for canoe and kayak paddlers, funded as part of the transaction; and (e) the creation of one mile of waterfront accessible to the public for recreation, education and public events.

All structures are setback 25 feet from the City's riparian rights lines. The proposed project is in compliance with section 18-21.004(3)(d), F.A.C.

In accordance with section 253.115, F.S., property owners within 500 feet of the subject property were notified and one objection has been received related to upland development.

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.

(See Attachment 6, Pages 1-7)

RECOMMEND APPROVAL SUBJECT TO SPECIAL LEASE CONDITIONS

Substitute Item 7 City of West Palm Beach Lease

DEFERRED FROM THE JUNE 12, 2007 AGENDA

REQUEST: Consideration of an application for (1) a ten-year sovereignty submerged lands lease containing 114,350 square feet, more or less, for a 33-slip public day docking facility, used in conjunction with upland public facilities and boardwalk; and (2) waiver of lease fees.

COUNTY: Palm Beach
 Lease No. 500337516
 Application No. 50-0228398-002

Substitute Item 7, cont.

APPLICANT: City of West Palm Beach (City)

LOCATION: Section 22, Township 43 South, Range 43 East, in the Lake Worth Lagoon, Class III Waters, within the local jurisdiction of the City
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: Yes, without an approved Manatee Protection Plan, but making significant progress
Manatee Aggregation Area: No
Manatee Protection Speed Zone: slow speed year-round

CONSIDERATION: The project qualifies for a waiver of lease fees pursuant to section 18-21.011(1)(b)7, F.A.C., which states that fees may be waived for government entities that are either not-for-profit or non-profit uses when the revenues are used for operation and maintenance of the structure and the activity is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor.

STAFF REMARKS:

Project Synopsis

The City is proposing to construct a 33-slip public day docking facility consisting of three piers and a marginal floating walkway along a portion of the shoreline, which will preempt 114,350 square feet. The docking facility will provide temporary day docking and access to upland public amenities including sidewalks, lawns, gardens, fountains, and a pavilion known as the West Palm Beach Commons.

Background

The Department of Environmental Protection (DEP), Division of State Lands, has received a request from the City for a 25-year extended term sovereignty submerged lands lease, with three automatic 25-year renewals, to encompass approximately 23.5 acres of sovereignty submerged lands (Parcel A) in Lake Worth Lagoon. In consideration, the City will deed back to the state approximately 8.94 acres of City-owned submerged lands (Parcel B) immediately south of Parcel A, and dedicate \$600,000 towards improvements to public water access facilities for canoes and kayaks at Grassy Water Preserve in Palm Beach County. Parcel B is part of a larger parcel conveyed to the City by Board of Trustees' Deed No. 22754 (801-40) in 1961 and Board of Trustees' Deed No. 23049(801-50) in 1962.

On September 21, 2006, DEP issued an environmental resource permit and intent to issue sovereignty submerged lands lease (under delegation of authority) to the City for the installation of a public docking facility within the above described Parcel B. The lease was only for the area of the docks which extended beyond the currently deeded area. The lease has not been executed due to the proposed conveyance. The originally proposed lease area must be modified to incorporate the entire permitted day docking facility as the docks will now be located completely over state-owned submerged lands within Parcel B.

Substitute Item 7, cont.

Project Detail

One hundred percent of all of the slips will be maintained on an open to the public, first-come, first-served basis, and this requirement has been included as a special lease condition. Overnight mooring will not be allowed at the facility and a special lease condition will be included in the lease to ensure compliance.

All structures are setback 25 feet from the riparian line. The proposed project is in compliance with section 18-21.004(3)(d), F.A.C.

Noticing

The original lease request was noticed, pursuant to section 253.115(5)(i), F.S., and no objections were received.

Permit Summary

DEP's environmental resource permit (50-0228398-002) does not authorize sewage pumpout facilities and fueling facilities, and prohibits liveaboards.

Commenting Agency

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) 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 FWC.

Comprehensive Plan

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs determined that the plan was in compliance. The proposed action is consistent with the adopted plan according to a letter received from the City.

(See Attachment 7, Pages 1-7)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS

Item 8 Harborwalk, Inc. Recommended Consolidated Intent

DEFERRED FROM THE JUNE 12, 2007 AGENDA

REQUEST: Consideration of an application for (1) a modification of an existing 10-year sovereignty submerged lands lease to (a) combine two existing leases into one new lease; (b) reflect a change in upland ownership; (c) change the use from an open-to-the-public docking facility to a mixed use of private residential multi-family docking facility and a commercial

Item 8, cont.

facility; (d) decrease the term from 10 years to 5 years; and (e) increase the preempted area from 107,651 square feet to 143,260 square feet; and (2) authorization for the severance of 5,000 cubic yards of sovereignty material.

COUNTY: Okaloosa
Lease No. 460002031
Application Nos. 46-0195322-002-DF & 46-0182742-003-DE

APPLICANT: Harborwalk, Inc. (d/b/a Harborwalk, East Pass Investors, Inc., Pelican Point Harbor, Inc. and Kelly Boat Services, LLC)

LOCATION: Section 00, Township 02 South, Range 22 West, in Choctawhatchee Bay (Old Pass Lagoon), Class III Waters, within the local jurisdiction of the city of Destin
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speeding Zone: No

CONSIDERATION: \$22,494.36, representing: (1) \$21,494.45 as the initial annual lease fee computed at the base rate of \$0.141260 per square foot, and including the initial 25 percent surcharge payment for the additional area; (2) \$6,250.00 for the severance of sovereignty material at a rate of \$1.25 per cubic yard; and (3) \$5,250.09 credit for billing errors for East Pass Investors. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)l, 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 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."

Project Synopsis

The applicant is proposing to merge two existing leases: a 13-slip commercial marina containing 13,631 square feet and a 43-slip charter boat docking facility containing 89,820 square feet, plus 4,086 square feet of non-water dependent structures. The proposed new lease will combine the existing two leases and include a new 47-slip facility containing 35,609 square feet to be used in

Item 8, cont.

conjunction with a 218-unit condominium complex. The total existing and proposed preempted area will contain 143,260 square feet and 103 slips, with 19 of these slips open to the public on a first-come, first-served basis.

The applicant is also proposing to dredge 5,000 cubic yards of spoil material from the marina basin to -10 feet mean low water. The dredging is due to material that washed in during several hurricanes.

Background

The site consists of five parcels of property, Lot Nos. 8-11, and currently has two sovereignty submerged lands leases. Lease No. 460002031 is a 10-year lease, known as East Pass Investors, for a 13-slip commercial marina and is currently closed due to construction. The current lease allows a sewage pumpout facility, but prohibits fueling facilities and liveaboards. The marina was originally brought under lease in 1990. As the upland was considered to be commercial and now is mixed use, the change in upland usage is considered to be a lease modification. The change in upland usage was processed under file number 46-0182742-003-DE. East Pass Investors has been billed in error with the 30 percent discount and billed in error for a 906-square-foot non-water dependent structure which no longer exists. These two billing errors result in a credit of \$5,250.09.

Lease No. 460022481 is a 25-year lease, known as Kelly Boat Services, LLC, for a 43-slip commercial marina, open to the public on a first-come, first-served basis. The current lease allows a sewage pumpout facility and fueling facilities but prohibits liveaboards. The dock was originally grandfathered under the name of Coleman L. Kelly Trust, under GSR number 460038. The facility was then licensed under the name Kelly Boat Services in 1975 under number 46-30-2248 and was brought under lease in 1987. Lease No. 460002031 will be used for the entire project and Lease No. 460022481 will be cancelled by the Division of State Lands prior to issuance of the merged leases.

DEP and Kelly Boat Services, LLC, entered into a Consent Order and Temporary Use Agreement (TUA) on May 30, 2007 for the following two areas:

- non-water dependent structure (4,086 square feet) which has been associated with the facility prior to 1970. Therefore, lease fees in arrears at 10 times the base rate are not required. However, Kelly Boat Services, LLC, has not been paying lease fees on the non-water dependent structures and has now been assessed lease fees in arrears, including interest, in the amount of \$3,286.41 from 2003 to 2008; and
- the current lease does not include an area in the center and an area on the western side of the docking facility, a total of 34,117 square feet, which are used as a fairway for boats to ingress and egress. The entrance to the facility was changed from the western to the eastern end of the dock via a hurricane emergency permit issued after Hurricane Opal in 1995. The majority of the slips face north/south. However, a DEP permit and a letter of consent were issued in 1997 for the addition of two slips located on the western end, which faces east/west. Lease fees in arrears in the amount of \$22,332.13, including interest, have been assessed for this area from 2003 to 2008.

Item 8, cont.

Kelly Boat Services, LLC, has paid all fees associated with the TUA and the Consent Order. The Consent Order fees totaled \$1,500, which includes \$1,000 for penalties, \$250 for violation of section 253.77, F.S., and \$250 for administrative costs.

Lot Nos. 10A and 11 contain the remnants of a "T" shaped dock, historically known as the "Boogies" dock, which had TUA number 46-0023991. Fees amounting to \$13,560.66 were paid in 2003 as lease fees in arrears. The dock was substantially damaged by Hurricanes Ivan in 2004 and Dennis in 2005 and is not considered to be functional. As such, the dock was not brought under lease and will be removed. In addition, the eastern end of the property contains the remnants of a platform, which will also be removed.

Project Detail

The applicant is proposing to construct a new 47-slip structure on Lot Nos. 10A and 11, containing 19 boat slips, an 8-slip pontoon boat rental and a 20-slip jet ski rental. Of the 19 boat slips, the applicant is proposing to use 9 slips for the proposed condominium, 4 slips will be used by the charter boat fisherman and 6 slips will be open to the public on a first-come, first-served basis. The 9 slips proposed for condominium usage will encompass a total of 190 linear feet of shoreline and approximately 8,685 square feet. Using the 585 feet of shoreline for Lot Nos. 10A and 11 to calculate the preempted area, the condominium slips will be over 10 to 1, but not over 40 to 1. As such, a proprietary conservation easement is required for Lot Nos. 10A and 11, pursuant to section 18-21.004(4)(g), F.A.C. This requirement has been added as a special approval condition. The rest of the slips on all five parcels will be rented as commercial slips or will offer daily jet ski or pontoon boat rentals. However, since a portion of the dock is for condominium usage, the project does not qualify for a 30 percent discount of the lease fees and is not considered to be open to the public on a first-come, first-served basis.

The applicant is also proposing to dredge 5,000 cubic yards of spoil material from the marina basin to -10 feet mean low water adjacent to the bulkhead and in the nearshore area. The spoil material came from Norreigo Point, located across from the site, during numerous hurricanes from 1995 to 2005. This depth is two feet less than the water depths in the channel adjacent to the marina and is the minimum depth needed for boats ranging from 35 to 60 feet in length. As the material was the result of hurricane deposition, additional maintenance dredging should not be required on a frequent basis. No private easement is required for the dredging, since the entire volume of dredging is contained within the marina basin and lease boundaries.

The proposed upland development for Lot Nos. 8 through 11 includes a 218-unit condominium complex and a 199,999 square foot commercial shopping center. The submerged lands will contain the proposed 47-slip marina on Lot Nos. 10A and 11, the existing 13-slip lease number 460002031 for East Pass Investors on Lot No. 10 and the existing 43-slip marina lease number 460022481 to Kelly Boat Services, LLC on Lot Nos. 8 and 9. The upland has a Unity of Development Agreement that transfers the development rights and riparian rights of all of the parcels to Harborwalk, Inc. In addition, the development order issued by the City of Destin on March 19, 2004 considers the parcels to be one plan of development. This application also represents a change in upland use for the two existing leases from commercial to mixed use, making it a lease modification.

Item 8, cont.

The proposed project is located on the northern side of Old Pass Lagoon at the mouth of the harbor in Class III, Shellfish Harvesting Prohibited Waters. Old Pass Lagoon has experienced a decline in water quality dating back to the early 1980's. As a result of these concerns, the Board of Trustees imposed on March 6, 1984, a condition that future developments on sovereignty submerged lands in Old Pass Lagoon must not only meet water quality standards, but must also have a Net Positive Environmental Benefit (NPEB) to the water quality in the lagoon. Because of these concerns, the Northwest Florida Water Management District installed a pumping mechanism in the lagoon in 1995, turning the operation and maintenance over to the City of Destin. This mechanism pumps water from the Gulf of Mexico into the lagoon during an outgoing tide forcing the water in the lagoon out into the Gulf. The pump provides flow through circulation in the lagoon, as the lagoon only has one opening. DEP's hydrographic engineering section stated no objection to the project on November 12, 2004, as long as the pump operates on a regular basis. Quarterly water quality monitoring is conducted by the City of Destin, and, according to the City Engineer, improved water quality has been demonstrated with the operation of the harbor pump.

The applicant has agreed to donate \$13,440 for NPEB, based on a contribution of \$420 per slip for the boats and pontoon boats, and \$105 per slip for the jet skis. This is consistent with previous Board of Trustees' actions and payment of the NPEB has been added as special approval condition.

All of the water quality data sampling met state standards and the applicant has provided reasonable assurance that the standards for Class III waters will not be violated. The Department of Agriculture and Consumer Affairs, Shellfish Environmental Assessment Section will not require a reclassification of the area based on a letter dated January 25, 2007. DEP's wetland resource permit allows a sewage pumpout facility, but prohibits fueling facilities and prohibits liveaboards. The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. Okaloosa County is not a designated manatee county with an approved manatee protection plan. FWC Law Enforcement Section commented that the proposed project will not interfere with navigation in a memo dated October 30, 2003. The Division of Historical Resources stated no objection to the project on October 6, 2003. The project was not required to be noticed pursuant to section 253.15(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 Destin. DCA determined that the proposed project would not require a Development of Regional Impact review based on the information submitted to the department in a letter dated March 1, 2004.

RECOMMEND WITHDRAWAL