

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**OCTOBER 14, 2008**  
**Substitute Page**

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**Substitute Item 1     School Board of Manatee County Conveyance/Murphy Act Parcel**

**REQUEST:** Consideration of a sales contract to sell 0.29-acre, more or less, of state-owned land to the School Board of Manatee County.

**COUNTY:** Manatee

**APPLICANT:** School Board of Manatee County (SBMC)

**LOCATION:** Section 14, Township 34 South, Range 17 East

**CONSIDERATION:** \$134,500 to be deposited in the Internal Improvement Trust Fund

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Dailey (8/17/07)	TRUSTEES' SALE <u>PRICE</u>	CLOSING <u>DATE</u>
PID # 2705200000	0.29	\$134,500	\$134,500	120 days after BOT approval

**STAFF REMARKS:** The Board of Trustees originally acquired the 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.

**Project Description**

SBMC submitted a request to the Department of Environmental Protection's (DEP) Division of State Lands (DSL) in January 2007 to purchase the 0.29-acre Murphy Act parcel, along with the SBMC- approved resolution dated December 11, 2006. The subject property is surrounded by approximately 6.5 acres of property owned by the SBMC, which is currently used for Palmetto Elementary School. The SBMC is interested in acquiring the property for future campus expansion.

SBMC is partnering with the City of Palmetto and the City of Palmetto's Community Redevelopment Agency to purchase property to expand the campus and thus has identified the Murphy Act parcel as a crucial parcel for campus expansion. The subject property is an asphalt-paved parking lot and has been used for this purpose by SBMC for a number of years.

Pursuant to section 253.82(2)(b), F.S., land to which title 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 law. In accordance with section 253.034(6)(f)1, F.S., permitted uses for such surplus lands may include but is not limited to public schools.

**Noticing**

Pursuant to sections 253.034(6)(f) and 253.111, F.S., Manatee County, the City of Palmetto and state agencies were notified of the subject parcel's availability and did not express any interest in the property.

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**Substitute Item 1, cont.**

**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 1, Pages 1-17)

**RECOMMEND APPROVAL**

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**Substitute Item 2      **Westlake Land Management, Inc/Southern Region Industrial Realty, Inc./Easement Amendment and Partial Release****

**REQUEST:** Consideration of an amendment to and partial release of grant of easement, as follows: (1) amend grant of easement to provide that the temporary ingress and egress Easement B-2 shall terminate when temporary ingress and egress Easement B-1 is dedicated to the public for road use; (2) amend legal description of the lands described in Easement B-1 to correct certain scrivener's errors; and (3) release 9.73 acres of Easement B-2.

**COUNTY:** Duval

**APPLICANTS:** Westlake Land Management, Inc. (Westlake) and  
Southern Region Industrial Realty, Inc. (Southern)

**LOCATION:** Section 31, Township 01 South, Range 25 East; and Sections 6 and 7, Township 02 South, Range 25 East

**CONSIDERATION:** \$1,200 towards goods and services necessary to facilitate development of three primitive camp sites within Cary State Forest

**STAFF REMARKS:**

**Amendments to Easements**

On September 7, 2005, the Board of Trustees approved a purchase agreement to acquire 1,651.69 acres within the Northeast Florida Timberlands and Watershed Reserve Florida Forever project from Southern. On June 27, 2006, Southern deeded certain real property (Property) as part of Cary State Forest to the Board of Trustees by Special Warranty Deed (Deed) recorded in Official Records Book 13418, Page 1124, Public Records, Duval County, Florida. The Deed includes two temporary easements (Easement B-1 and Easement B-2) to the Board of Trustees for ingress and egress to the Property. There was no additional compensation paid for these temporary easements at the time of purchase and they were granted over existing forest roads. Therefore, an appraisal was not ordered for the Partial Release of Easement B-2. Easement B-1 is over and across a portion of property now owned by Southern. Easement B-2 is over and across a portion

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**Substitute Item 2, cont.**

of property now owned by Westlake. The Deed states Easement B-1 shall terminate when the easement area described in Easement B-1 is dedicated to the public for road use. This has not occurred yet so the temporary easements are still in effect. It was the intention of Southern and the Board of Trustees for the Deed to contain the same termination language for Easement B-2. The requested amendment to grant of easement will recognize that Easement B-1 and Easement B-2 will both terminate when the easement area described in Easement B-1 is dedicated to the public for road use.

Additionally, the amendment to grant of easement will correct certain scrivener's errors in portions of the legal description of the lands described in Easement B-1 correcting three incorrect calls relating to locations for Township and Range.

**Partial Release of Temporary Easement B-2**

On October 24, 2007, Westlake deeded real property to Duke Realty Limited Partnership by Special Warranty Deed recorded in Official Records Book 14247, Page 619, Public Records, Duval County, Florida. A small portion of the northern segment of Easement B-2 encumbers the Duke Realty Parcel. Knowing that the temporary Easements B-1 and B-2 will not terminate until Easement B-1 is dedicated to the public for road use, Westlake is requesting that this portion of Easement B-2 be released at this time to clear title to the Duke Realty Parcel. Westlake has also requested the remainder of the northern segment of Easement B-2 be released, for a total partial release of 9.73 acres, because this partial release will not prevent public access to the Property and is not being utilized at this time. The southern segment of Easement B-2 (approximately 5.33 acres), which is the only portion needed for direct access to Cary State Forest, will remain in place and will continue to allow temporary legal access to the Property until such time as the easement area described in Easement B-1 is dedicated to the public for road use.

**Manager's Approval**

The Property is part of Cary State Forest which is managed by the Department of Agriculture and Consumer Services' Division of Forestry (DOF), under Board of Trustees' Lease No. 3687. DOF has no objection to the partial release of the northern segment of Easement B-2 (9.73 acres) because the southern segment of Easement B-2 that provides direct access to the forest is being retained. DOF submitted a letter dated September 11, 2008, requesting goods and services necessary to facilitate development of three primitive camp sites within Cary State Forest. This is a condition to be satisfied before the release will occur.

**Comprehensive Plan**

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

(See Attachment 2, Pages 1-57)

**RECOMMEND APPROVAL**

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**Item 3 Water Side Enterprises, LLC Recommended Consolidated Intent/Lease  
Renewal/Modification/Determination**

**DEFERRED FROM THE SEPTEMBER 30, 2008 AGENDA**

**REQUEST:** Consideration of an application for renewal and modification of a five-year sovereignty submerged lands lease to (1) increase the preempted area from 34,737 square feet to 67,260 square feet, more or less, for a proposed reconfigured 146-slip private residential and commercial docking facility (132 slips over sovereignty submerged lands and 14 slips over privately-owned submerged lands); and (2) determine that allowing a 5,370-square-foot area of filled, formerly submerged, sovereignty lands to remain as a non-water dependent activity is in the public interest.

**COUNTY:** Collier  
Lease No. 110377965  
ERP No. 11-0256078-010  
OGC Cases No. 05-0722-11-SL, 06-0315-11-SL, 07-1646-11-SL

**APPLICANT:** Water Side Enterprises, LLC (Water Side)

**LOCATION:** Section 11, Township 53 South, Range 29 East, in the Barron River, Class II waters not approved for shellfish harvesting, within the local jurisdiction of Everglades City  
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 speed zone

**CONSIDERATION:** \$51,204.06, representing: (1) \$9,789.96 as the initial lease fee computed at the base rate of \$0.145554 per square foot for the docking facility; (2) \$1,183.44 as the initial 25 percent surcharge payment for the additional area; (3) \$16,065.66 as the one-time premium for the private residential multi-slip portion of the facility pursuant to section 18-21.011(1)(c), F.A.C.; and (4) \$24,165.00 as the initial lease fee computed at a negotiated rate of \$4.50 per square foot for the 5,370-square-foot area of filled, formerly submerged, sovereignty lands. 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 for the docking facility may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C. The lease fee for the filled, formerly submerged sovereignty lands will be adjusted annually based on eight percent of the Collier County Property Appraiser's Final Tax Roll. Fees may be revised upon receipt of an acceptable survey.

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**Item 3, 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 which require authorization to use sovereignty submerged lands.

**Project Synopsis**

Water Side proposes to construct a 146-slip docking facility with 132 slips over sovereignty submerged lands and 14 slips over privately owned submerged lands in an adjacent man-made basin. The man-made basin will also contain a 60-foot-long by 16-foot-wide boat ramp available to users of the docking facility. Upland activities will include a recreational vehicle (RV) resort, restaurant, club house, bait and tackle shop, and a 27-unit dry storage facility. The docking facility will accommodate private recreational boats, commercial tour boats, commercial fishing boats, and rental boats. Boat sizes will range in lengths from 20 to 51 feet, with drafts of less than or equal to 3.5 feet.

**Ownership History**

Barron River Development Corporation (Barron River) formerly owned three upland parcels adjacent to the leased facility. Everglades V.R. Corp., another former owner, owned an 80-linear-foot portion of shoreline adjacent to the leased facility. Barron River sold its upland parcels to Water Side on June 10, 2005. Everglades V.R. Corp. sold its riparian upland parcel to Water Side on February 20, 2006, but retains ownership of two non-riparian parcels adjacent to Water Side's property. One of those parcels is a commercial parcel consisting of approximately 36 RV sites that are separate from the Water Side RV resort. The other parcel is also commercial and contains one commercial building.

**Background of Lease History and Compliance/Enforcement of Previous Upland Ownership**

- On September 6, 1983, the Board of Trustees approved the issuance of a five-year sovereignty submerged lands lease containing 9,929 square feet to Barron River for a trailer park docking facility. The lease authorized an existing marginal dock and 18 finger piers pursuant to Wetland Resource Permit (WRP) No. 11-37796-5E issued by the former Department of Environmental Regulation (DER) on November 9, 1983.
- On September 6, 1988, the former Department of Natural Resources (DNR) renewed the lease pursuant to a delegation of authority.
- In February 1993, Barron River submitted a WRP application to DER to expand the docking facility. DER provided a copy of the application to DNR, and DNR began processing a lease modification for that project. On July 1, 1993, DER and DNR merged and became DEP.
- On October 27, 1993, DEP notified Barron River's agent that the lease modification application had been deactivated because the docking facility was not in compliance with the lease because of docks located and vessels moored outside of the lease area.

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**Item 3, cont.**

- On January 31, 1995, DEP issued WRP No. 112264729 to expand the docking facility from 85 slips to 128 slips. That permit did not include a proprietary authorization because DEP's regulatory and proprietary (sovereignty submerged lands) programs were not merged until October 1995.
- On April 3, 1995, DEP renewed and modified the lease pursuant to a delegation of authority to include Everglades V. R. Corp as a joint lessee and to expand the lease area to 34,737.54 square feet to more accurately reflect the historically preempted area. Barron River subsequently built the permitted expansion without obtaining the required modified lease for that expansion.
- A November 3, 1998 site inspection by DEP revealed that due to the expansion, the docking facility was not in compliance with the lease.
- A March 18, 1999 site inspection by DEP erroneously indicated that the previous violations had been corrected. Therefore, on June 30, 2000, DEP renewed the lease pursuant to a delegation of authority for the period of September 6, 1998 to September 6, 2003.
- A July 9, 2003 site inspection by DEP revealed that the docking facility was not in compliance with the lease and the prior regulatory permits. DEP requested a new survey to accurately depict the onsite conditions, which was received in 2005.
- On May 24, 2005, following receipt of the survey, a site inspection by DEP revealed that unauthorized alteration of mangroves had occurred.
- On April 7, 2006, following the sale of the upland parcels to Water Side, DEP and Barron River entered into Consent Order No. 05-0722-11-SL. The Consent Order required: (1) payment of \$15,240.00 as an administrative fine; (2) payment of \$26,807.47 as lease fees in arrears; (3) payment of \$486.95 as the initial 25 percent surcharge on 15,241 square feet of additional preempted area; (4) submission of all wet slip rental and revenue certification forms for all years that had not been previously submitted, up to the date of sale; (5) payment of \$3,000.00 as a civil penalty; and (6) payment of \$500.00 for DEP costs and expenses. All of the fees and fines were paid and the information received. All parties agreed that the new owner, Water Side, would enter into a separate consent order to implement corrective actions.

**Background of Compliance/Enforcement of New Upland Ownership**

- On April 13, 2007, DEP and Water Side entered into Consent Order No. 06-0315-11-SL and Temporary Use Agreement (TUA) No. 110377965. The Consent Order provided regulatory authorization for the docks as they previously existed and required: (1) development of a Marina Operations and Management Plan; (2) installation of waterway and manatee informational signage previously required by the referenced permits; and (3) development of a self-monitoring certification program.
- The TUA granted temporary proprietary authorization for the existing facility, preempting 50,858 square feet of sovereignty submerged lands, through April 13, 2008 and required payment of: (1) \$16,516.11 as the lease fee for the initial TUA period on the preempted 50,858 square feet (June 11, 2005 through September 6, 2007); and (2) \$30.26 as the initial 25 percent surcharge on 880 square feet of additional preempted area.

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**Item 3, cont.**

- On August 2, 2006, DEP issued a letter to Water Side stating that the installation of a non-vertical seawall at the project site qualified as an activity that was exempt from the need to obtain an environmental resource permit (ERP) and qualified for a letter of consent to use sovereignty submerged lands. Water Side then removed the dock structures and mooring pilings on sovereignty submerged lands and installed the seawall.
- A July 13, 2007 site inspection by DEP revealed that the seawall was not installed in compliance with the exemption and the letter of consent because: (1) portions of the structure were installed at an angle greater than 75 degrees, thereby constituting a vertical seawall and requiring a permit; (2) the structure extended waterward of the mean high water line resulting in unauthorized filling of 5,370 square feet of sovereignty submerged lands; (3) a boat ramp was constructed on privately-owned submerged lands in a man-made basin with two wing walls extending 34 feet into the basin; (4) two 10-foot-long by 14-foot-wide “cut outs” were installed along the river shoreline; and (5) a new stormwater system was being installed on Water Side’s upland property.
- On September 24, 2007, DEP and Water Side entered into a second, succeeding Consent Order, No. 07-1646-11-SL. The Consent Order provided regulatory authorization to remediate some of the non-compliance and required: (1) payment of \$3,000.00 as an administrative fine; (2) payment of \$24,880.00 as a civil penalty; (3) payment of \$2,500.00 for DEP costs and expenses; (4) realignment of the seawall to an angle less than 75 degrees; (5) placement of seawall panels across the two “cut outs” to create a continuous seawall; (6) modification of the wing walled boat ramp to meet an exemption from permitting pursuant to section 40E-4.051(3)(e), F.A.C.; (7) implementation of a new stormwater system; (8) submission of a new survey reflecting the existing conditions; and (9) submission of sufficient information to DEP by March 22, 2008 for DEP to deem ERP Application No. 11-0256078-006 complete or withdraw the application. Lease fees for the previously existing docking facility are current through September 6, 2008.
- On September 9, 2008, DEP and Water Side entered into a second, succeeding TUA, No. 110377965. The TUA required payment of \$43,693.61 as the lease fee for the initial TUA period for 67,260 square feet of preempted area and lease fees in arrears for the 5,370-square-foot area of filled, formerly submerged, sovereignty lands computed at a negotiated rate of \$4.50 per square foot (July 1, 2007 through March 1, 2009). The TUA granted temporary proprietary authorization for the proposed facility, preempting 67,260 square feet of sovereignty submerged lands, through March 1, 2009. Lease fees in the amount of \$43,693.61 were paid on September 9, 2008.

**Project Detail**

Water Side proposes to redevelop its upland property from a rental RV resort to an exclusive Class A motorcoach retreat, known as Everglades Isle, in which each of the 61 RV sites are purchased. On April 7, 2008, Water Side submitted an ERP application (no. 11-0256078-010) to DEP to create a stormwater management system for the resort and to reconfigure the previously existing docking facility. The modified docking facility will be operated as a “hybrid” docking facility in which some of the slips will be designated for owners of upland residential RV sites, and the remaining slips will be reserved for other uses not associated with ownership of an upland residential unit.

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**Item 3, cont.**

Water Side will assign a boat slip to each RV site in its development for a total of 61 slips preempting approximately 27,788 square feet. This is consistent with sections 18-21.004(4)(b)1 and 2, F.A.C., allowing no more than one boat slip for each residential unit and no more than 40 square feet of preempted area for each linear foot of shoreline owned by Water Side. Water Side will use a DEP-approved "Proprietary Sublease" that includes language clearly stating that no ownership of sovereignty submerged lands is granted through a slip sublease, and that six percent of income generated from each slip sublease must be paid to DEP. This is addressed as a special approval condition and special lease condition. Water Side's Marina Operations and Management Plan states that the RV site owners will be able to rent their respective boat slips to third parties when the respective RV site owners are not using those boat slips. Water Side will be responsible for reporting that revenue to DEP pursuant to standard lease conditions.

Water Side also proposes to assign 27 boat slips preempting approximately 9,004 square feet to Everglades V. R. Corp. pursuant to a slip license agreement between Water Side and Everglades V.R. Corp. that is effective through 2017, so long as Water Side is in compliance with the sovereignty submerged lands lease. Everglades V.R. Corp. owns two nearby non-riparian commercial parcels. One of those parcels has 37 mobile homes that are owned by Everglades V.R. Corp. shareholders. Some of the shareholders reside in the mobile homes, and the remaining mobile homes are rented to third parties. The other Everglades V.R. Corp. parcel has a building used as a recreation center for mobile home residents on the other parcel. The 27 boat slips to be reserved for Everglades V.R. Corp. are considered a private residential multi-slip docking facility. Reserving 27 boat slips for Everglades V.R. Corp. is consistent with section 18-21.004(4)(b)2, F.A.C., that allows no more than 40 square feet of preempted area for each linear foot of shoreline owned by Water Side associated with those boat slips. It is also consistent with section 18-21.004(4)(b)1, F.A.C., that allows no more than one boat slip for each residential unit. This slip allocation is addressed as a special lease condition.

The remaining 44 slips preempting approximately 30,468 square feet not reserved for Water Side RV site owners or Everglades V.R. Corp. property owners will initially be allocated as follows:

- 32 slips for rent to the boating public not having an ownership interest in the Water Side or Everglades V.R. Corp. residential areas;
- 3 slips for temporary mooring for patrons of the marina's retail bait and tackle shop;
- 2 slips for rental boats available for rent from Water Side to the boating public;
- 1 slip (located at the covered boat slip on the north side of the site) for use by a tour operator;
- 2 slips, at no charge, for use by federal and state agencies and local law enforcement agencies for the purposes of conducting official business;
- 1 slip for users of Water Side's sewage pumpout facility; and
- 3 slips for short-term visitors to the marina and the RV resort.



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**Item 3, cont.**

The special lease conditions provide for some flexibility within this slip allocation, but require Water Side to maintain at all times a minimum of 32 slips for rent to the general public on a “first come, first served” basis, 2 slips, at no charge, for use by federal and state agencies and local law enforcement agencies for the purposes of conducting official business, and 1 slip dedicated for users of the sewage pumpout facility.

Another special approval condition requires Water Side to provide DEP a complete copy of the recorded documents pertaining to the upland RV resort, whether or not those documents are required to be filed with the Department of Business and Professional Regulation, prior to receipt of the renewed/modified lease. Another special approval condition will require DEP approval of the wet slip user agreement prior to receipt of the renewed/modified lease. To date, DEP has not discovered any boat slips at the facility have been sold; they are only being advertised for sale.

Because the docking facility will be operated as a “hybrid” docking facility, Water Side is required to grant the Board of Trustees a proprietary deed of conservation easement for a 983-linear-foot portion of its riparian shoreline pursuant to section 18-21.004(4)(g), F.A.C. This is addressed as a special approval condition. Pursuant to section 18-21.011(1)(c), F.A.C., Water Side will be assessed the one-time premium for the private residential multi-slip portion of the facility. This is addressed as a special approval condition.

The expired lease prohibits fueling facilities and liveaboards, but authorizes a sewage pumpout facility. Although authorization has not been previously granted for the fueling facilities, they have been documented as having existed since 1988. Therefore, the modified lease will authorize sewage pumpout facilities and fueling facilities, but will continue to prohibit liveaboards.

**Filled, Formerly Submerged, Sovereignty Lands**

Because the existing seawall and its associated backfill exceed the criteria for a letter of consent, that portion of the project constitutes filled, formerly submerged, sovereignty lands. 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 10, 1957: (1) direct the fill be removed by or at the expense of the applicant; (2) direct the fill remain as state owned; or (3) sell the filled land. The first option is not recommended as the majority of the filled, formerly submerged, sovereignty lands are located below the water’s surface and do not result in any gain of uplands. Water Side has agreed to pay an annual adjusted lease fee on this filled area and has requested that the Board of Trustees approve the second option. The third option is not recommended by DEP because Water Side has not demonstrated that such a sale would be in the public interest as required by the Florida Constitution, chapter 253, F.S., and rule 18-21, F.A.C. Therefore, DEP recommends the second option.

The 5,370 square feet of unauthorized fill for the as-built seawall constitutes a non-water dependent activity. Section 18-21.004(1)(g), F.A.C., provides that activities on sovereignty submerged lands shall be limited to water dependent activities unless the Board of Trustees

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**Item 3, cont.**

determines that it is in the public interest to allow an exception as determined by a case-by-case evaluation. In the present case, DEP recommends the Board of Trustees find that it is in the public interest to allow the fill to remain as leased area at A higher negotiated per-square-foot rate because removal and relocation of a relatively new, structurally-sound seawall with backfill would cause further impacts to the environment with minimal reduction in the preempted area of the leased facility (and thus would not result in significant restoration of the public's access to sovereign lands). If the Board of Trustees approves the second option as requested by the applicant, DEP recommends 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 the applicant if the proposed lease is approved. In lieu of providing DEP with an appraisal showing these values, Water Side has agreed to base the negotiated lease fee on the 2007 Final Tax Roll from the Collier County Property Appraiser, the purchase price of the upland parcels adjacent to the leased facility, and the estimated market rental value of Water Side's upland property. Based on these factors, DEP and Water Side agreed upon an annual lease fee of \$4.50 per square foot of fill. This will result in an initial annual lease fee of \$24,165.00. The fee shall be adjusted annually at eight percent of the County's assessed square-foot value, but shall not be lower than the agreed upon annual fee of \$4.50 per square foot of fill. If the Board of Trustees allows the fill to remain, a special approval condition will require Water Side to provide an acceptable survey and legal description of that area.

**Good Faith Efforts**

DEP received letters from the Collier County Sheriff's Office and U. S. Coast Guard Auxiliary confirming their desire for use of the boat ramp and associated parking at the project site. Therefore, in consideration of the repeated violations at the docking facility and to demonstrate its good faith efforts, Water Side proposes, upon completion of the facility, to provide at no charge: (1) two wet slips for use by federal and state agencies and local law enforcement agencies for the purposes of conducting official business; (2) unlimited boat ramp access at the site by federal and state agencies and local law enforcement agencies for the purposes of conducting official business; and (3) two upland parking spaces dedicated at all times for vehicles and boat trailers for federal and state agencies and local law enforcement agencies in conjunction with boat ramp use while conducting official business. This is addressed as a special lease condition.

**Noticing**

The current modified lease request was required to be noticed pursuant to section 18-21.004(1)(m), F.A.C. Thirty-six property owners were specifically noticed. Four letters supporting the project and eight objections were received. The objectors raised the following concerns: (1) the project site is located in the most narrow area of the river; (2) the area is heavily used by the local airboat companies and stone crabbers with boats measuring 45 feet (and up) in length; (3) the area has a very strong current that makes navigation very difficult

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**Item 3, cont.**

even for the most seasoned boater; and (4) the proposed structures would protrude too far into the waterway, thereby restricting access for others to the most shallow side of the river, especially during the winter months when the tides result in lower water levels. Additionally, Save the Manatee Club has provided a written objection to the proposed project based on its opinion that the proposed project is inconsistent with the federal Marine Mammal Protection Act.

DEP is of the opinion that the objections received are addressed as follows: (1) the proposed docking facility is not located in the most narrow portion of the river; it will extend approximately the same distance as the previously existing facility; it will extend less than 25 percent of the width of the waterbody; and there is adequate depth in the waterbody to navigate around the proposed docking facility; (2) in light of item (1) above, the proposed project will not interfere with the ongoing commercial uses of the river; (3) in consideration of the strong currents, the boat ramp has been relocated to the man-made basin on the south side of the property that is protected from those currents; and the proposed docking facility will be similar in configuration to the previously existing docking facility; and (4) recent bathymetry verified by a Professional Surveyor and Mapper shows that the deepest part of the river in this area is located in roughly the middle of the river. Additionally, concerns regarding potential manatee impacts have been addressed through the Florida Fish and Wildlife Conservation Commission's (FWC) recommendations that will be incorporated into the ERP.

**Permit Summary**

DEP's ERP will prohibit liveaboards over sovereignty submerged lands and authorize fueling and sewage pumpout facilities. DEP's ERP will authorize liveaboard slips on privately-owned submerged lands and will require hard-piped sewage connections to those slips. The ERP will also incorporate several requirements designed to prevent and/or reduce potential water quality impacts, including stormwater management, implementation of a marina operations plan, and a 3.5-foot vessel draft limit to avoid prop dredging in the marked navigation channel with a 5.7-foot mean low water controlling depth, thereby resulting in a net improvement to water quality at the site. With these requirements, DEP is of the opinion that long-term secondary and cumulative impacts from this project will be improved as compared to historic conditions at the site, and that the proposed project will provide a net improvement to water quality in the river.

**Commenting Agency**

The recommendations of FWC regarding protection of manatees have been addressed as special lease conditions. Collier County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated that the proposed project is consistent with the MPP. In addition to FWC's recommendations, a special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between Water Side and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Collier County and approved by FWC, and/or any speed zones established by Collier County and approved by FWC.

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**Item 3, cont.**

**Comprehensive Plan**

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

(See Attachment 3, Pages 1-57)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$51,204.06**