

**AGENDA**  
**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**  
**DECEMBER 8, 2009**

Attachments to the items below can be viewed at the following link:

[http://www.dep.state.fl.us/secretary/cab/public\\_notices.htm](http://www.dep.state.fl.us/secretary/cab/public_notices.htm)

**Substitute Page**

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**Item 1 Minutes**

Submittal of the Minutes from the October 13, 2009 Cabinet Meeting.

(See Attachment 1, Pages 1-4)

**RECOMMEND APPROVAL**

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**Substitute Item 2 Seminole County/Wisdom Partial Release of Deed Restriction and Reverter**

**REQUEST:** Consideration of Partial Release of Deed Restriction and Reverter for a 0.21-acre parcel of land under Board of Trustees' Deed No. 18920 to Seminole County.

**COUNTY:** Seminole  
Deed No. 18920-A

**APPLICANT:** Seminole County (County)

**LOCATION:** Section 32, Township 19 South, Range 32 East

**CONSIDERATION:** \$14,400 to be deposited in the Internal Improvement Trust Fund

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY AgriAppraisal (04/08/09)	APPROVED <u>VALUE</u>	TRUSTEES <u>RELEASE VALUE</u>	CLOSING <u>DATE</u>
Wisdom	0.21	\$14,400	\$14,400	\$14,400	60 days after BOT approval

**STAFF REMARKS:**

**Background**

The subject property is part of a 135-acre parcel acquired by the Board of Trustees by virtue of the Swamp and Overflowed Lands Act of the United States Congress, approved September 28, 1850, by Gainesville Patent 112, dated March 27, 1896. On July 10, 1944, by Deed No. 18920, the Board of Trustees sold the 135-acre parcel to the County for the appraised value of two dollars per acre. Deed No. 18920 contains a restriction and reverter limiting the County's use of the land to public camp and picnic ground purposes. In the event the land is used for any other purposes, title reverts to the Board of Trustees. All but a small area containing 0.21-acre (Release Parcel) is part of the County's Mullet Lake Park. The Release Parcel is separated from the main park by an old boat basin and has no land access. The adjacent landowner, Mr. Avery Wisdom, planned to build a seawall along the shoreline of his property to prevent erosion. He contacted the County and offered to extend the seawall along the perimeter of the Release Parcel

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**Substitute Item 2, cont.**

at no cost to the County. Both parties began negotiating a property improvement agreement, but reached an impasse over access and liability requirements. The County at that time assessed its need for the property and determined that it was not needed for park purposes.

**Request**

Mr. Wisdom would like to purchase the property, and the County has no objection to the sale. To do so requires release of the deed restriction and reverter on the Release Parcel, for which the Board of Trustees requires compensation. Mr. Wisdom has agreed to pay for the release.

The Department of Environmental Protection (DEP), Division of State Lands' staff reviewed the request and is recommending that the Board of Trustees approve the partial release because of the parcel's small size and lack of land access. The Board of Trustees will receive the purchase price from the County, and the County will provide Mr. Wisdom with a deed for the property upon receipt of the partial release of deed restriction and reverter.

**Comprehensive Plan**

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

(See Attachment 2, Pages 1-9)

**RECOMMEND APPROVAL**

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**Substitute Item 3 Chapter 18-24, F.A.C., Final Rule Adoption/Florida Forever Land Acquisition and Management**

**REQUEST:** Final adoption of proposed amendments to chapter 18-24, F.A.C, Florida Forever Land Acquisition and Management.

**APPLICANT:** Department of Environmental Protection (DEP) on behalf of the Acquisition and Restoration Council (ARC).

**LOCATION:** Statewide

**STAFF REMARKS:** DEP, on behalf of ARC, is requesting that the Board of Trustees adopt proposed amendments to chapter 18-24, F.A.C., Florida Forever Land Acquisition and Management, to implement legislative changes resulting from Senate Bill 542 (*Chapter 2008-229, Laws of Florida*). If adopted, DEP staff will publish the attached Notice of Change, file for certification of Rule Adoption after a 21-day additional public comment period and submit the rule to the Legislature by February 1, 2010. The rule will become effective after consideration by the Legislature during the 2010 Legislative Session.

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**Substitute Item 3, cont.**

**Initial Proposed Rule Amendments**

On October 27, 2009, the Board of Trustees approved DEP's request to publish a Notice of Proposed Rulemaking to amend chapter 18-24, F.A.C. A Notice of Proposed Rule was published in the Florida Administrative Weekly on November 6, 2009. The Notice of Proposed Rulemaking, submitted to the Board of Trustees at the October 27, 2009 Cabinet meeting, included the proposed rule amendments that accomplish the following:

Section 18-24.001, F.A.C.:

- Adds new definitions to the rule chapter for "Florida Forever Conservation Needs Assessment", "Resource-based recreation" and "Tax assessed value; and
- Deletes references to the "Florida Forever Advisory Council" and to previous amendments adopted in the 2001 Legislative Session.

Section 18-24.002, F.A.C.:

- Again, deletes references to the "Florida Forever Advisory Council" and to previous amendments adopted in the 2001 Legislative Session.

Section 18-24.0021, F.A.C.:

- New section lists and interprets the Florida Forever criteria in statute.

Section 18-24.0022, F.A.C.:

- New section lists, interprets, modifies and adds Florida Forever goals and measures pursuant to section 259.035(4)(b), F.S.

Section 18-24.003, F.A.C.:

- Regarding project applications, increases the number of copies (or originals) of certain maps required to be submitted to take into consideration increased number of ARC members; and
- Adds language requiring applicants to definitively describe how applications meet certain criteria.

Section 18-24.006, F.A.C.:

- Describes a different ARC ranking process whereby ARC votes projects to the acquisition list and gives recommendations to DEP's Division of State Lands (DSL) on categorization. After DSL places the projects in the work plan categories, ARC ranks the projects individually in numerical priority order within the categories;
- Adds a requirement that ARC gives increased priority to projects that meet certain criteria described in sections 259.105(9) and (10), F.S., i.e., acquisition partnerships, owner's sell price, discounts, and military buffering;
- Describes technical resource data, factors and initial information sources that ARC's priority rankings will be based upon, including: the Full Review, a comparative analysis of each project's ability to meet the Florida Forever goals and measures, as well as rankings based on an efficient resource analysis using a computer modeling approach to

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**Substitute Item 3, cont.**

conservation reserve design that involves iterative site selection, which describes those projects offering the greatest return in resource protection given the estimated acreage likely to be acquired by the Florida Forever Program. Additionally, ARC will consider whether projects: are considered priority resources, meet multiple Florida Forever criteria, are substantially complete with important resources yet to be acquired, close a critical gap, and provide a greater number of opportunities for resource-based recreation;

- Describes other factors important in ARC's evaluation, selection and ranking process, including the threat of development or loss of resources, public support, and owner's willingness to sell, as well as any other pertinent information;
- Adds a description of DSL's land acquisition work plan development process and the method by which ARC's ranked list is transposed into DSL's work plan categories, as well as ARC's right to provide recommendations to DSL and ARC's ability to require DSL to amend the work plan; and
- Describes how the DSL places projects in each of the work plan categories into priority groups (High/Medium/Low).

Section 18-24.008, F.A.C.:

- Requires that at least 3%, but no more than 10%, of Florida Forever funding be spent annually on capital improvement projects that enhance public access.

**Additional Proposed Rule Amendments**

Comments were received from the staff of the Board of Trustees and staff of the Joint Administrative Procedures Committee (JAPC) subsequent to the Board of Trustees' approval of the proposed rule revision on October 27, 2009. As a result, DEP incorporated additional changes into the version of the rule now before the Board of Trustees for adoption. The primary changes include those to the following sections: 18-24.001(h), F.A.C., - a development date was added to a referenced document; 18-24.003 (3)(f)6.iv, F.A.C., - the type of document required to be submitted by a landowner indicating a willingness to sell at 80% or less of the state's appraised value was changed. Changes to 18-24.006(3)(c), F.A.C., address JAPC's comments regarding references to specific documents that change every six months; to avoid the necessity of revising the rule each time these documents change; the text now describes only the generic content of these documents. This will allow ARC to continue to use these dynamic documents when developing its priority list. DEP has also made additional minor grammatical and clarification revisions to the rule in sections 18-24.001(2)(s) and 18-24.0022(2)(g), F.A.C., since October 27, 2009.

DEP recommends that the Board of Trustees approve the proposed amendments to chapter 18-24, F.A.C., direct DEP to publish the Notice of Change and authorize the Secretary to execute and submit the certification documents to the Secretary of State in accordance with chapter 120, F.S.

(See Attachment 3, Pages 1-27)

**RECOMMEND APPROVAL**

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**Substitute Item 4 Chapter 18-21, F.A.C., Notice of Proposed Rulemaking/Sovereignty Submerged Lands Management**

**REQUEST:** Approval to publish a Notice of Proposed Rule regarding amendments to chapter 18-21, F.A.C., Sovereignty Submerged Lands Management, to provide criteria for authorizing fish cleaning stations and other non-water dependent items on docks, piers and other structures in, on, or over state-owned submerged lands.

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

**LOCATION:** Statewide

**STAFF REMARKS:** Pursuant to section 120.54(3)(a)1., F.S., approval of the Board of Trustees, as the agency head, is required before DEP may publish a proposed rule for eventual adoption. After the Board of Trustees approves publication, DEP will publish the rule in the Florida Administrative Weekly. The notice will include a date for a hearing to be held, if requested. There will be a 21-day period following publication for anyone to comment on or challenge the proposed rules, and the Joint Administrative Procedures Committee will have 30 days to comment. The hearing, if one is requested, is another opportunity for the public to comment and propose amendments. DEP staff will consider all comments to determine if the rule should be revised and will publish a Notice of Change, if needed. However, if the changes are significant, DEP will present a revised proposed rule to the Board of Trustees before publishing a Notice of Change. DEP will bring the final rule back to the Board of Trustees for adoption.

**Background**

In November 2008, DEP notified the Board of Trustees that it was proposing to enter into rulemaking to amend chapter 18-21, F.A.C., Sovereignty Submerged Lands Management, to provide criteria for authorizing fish cleaning stations over state-owned submerged lands. Historically, the Board of Trustees and DEP have not authorized fish cleaning stations, or other non-water dependent activities, under the existing sovereignty submerged land rule, unless determined to be in the public interest on a case-by-case basis. Recognizing that there are locations and circumstances where such activities would be appropriate, having criteria in rule will allow staff to authorize them rather than presenting each request to the Board of Trustees.

Disposal of wastes in water, including fish carcasses, may adversely affect submerged lands resources, particularly if the wastes are deposited in large quantities (individually or cumulatively), and in waters with limited water circulation and flushing. Adverse effects include potential violations of State water quality standards; accumulations that adversely affect submerged lands resources; and ingestion of fish bones, which has been documented to result in death and injury to birds that feed on such wastes, including the Brown Pelican. To address concerns with disposal and use, DEP has proposed rule amendments to provide criteria for authorizing fish cleaning stations provided that: (1) there is no expansion of the dock's footprint for fish cleaning station; (2) the station is not enclosed by walls, screens, doors, windows, or

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**Substitute Item 4, cont.**

other means, although it may be covered; (3) there is appropriate disposal of fish carcasses and fish waste; and (4) appropriate signage is installed to educate users of the environmental impacts of improper disposal of fish waste to water quality, birds and other wildlife, and submerged resources.

The rule amendments also propose to address other minor non-water dependent items or appurtenances such as floor mats, flower pots, kayak racks, decorative lighting and dock boxes that may be authorized on over-water structures when related to a water-dependent activity, provided that there is no adverse environmental impact and such addition is not used as justification to build a larger structure.

**Noticing and Public Workshop**

Staff published a “Notice of Development of Rulemaking” in the Florida Administrative Weekly on May 1, 2009, which included announcing the May 15, 2009, public workshop. Staff mailed the notice to 367 potential interested parties.

To make the workshop as available to the public as possible, it was held as a video conference connecting the Tallahassee Office and the Northwest District Office in Pensacola, plus a call-in number so that anyone around the state could participate. A preliminary draft rule was distributed to all on the interested parties mailing list for discussion at the workshop. That preliminary draft generated many comments and suggested revisions received at the workshop and during the commenting period afterwards. A summary of the comments are attached. After considering the comments, the draft amendments were revised to reduce and simplify the conditions. The condition to allow other minor non-water dependent items was also added to address public comment and in recognition of customary use.

**Summary of the Rule**

The revisions are proposed to accomplish the following:

- Allow staff to authorize fish cleaning stations and other non-water dependent accessory items without requiring individual review by the Board of Trustees.

The proposed criteria for constructing fish cleaning stations are as follows:

- Minimum size and no increase in footprint of the structure
- Cover is allowed, but cannot extend footprint of structure over water. No walls, screens, doors windows or further enclosure.
- Fish carcasses, bones and pieces must be disposed as provided in receptacle on the dock or disposed of appropriately on the uplands. Liquids may fall into the water.
- An educational sign on or near the cleaning station explaining the importance of and effect of keeping wastes out of the water to protect water quality, birds and other wildlife, and submerged resources.

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**Substitute Item 4, cont.**

The non-water dependent items that may be authorized are as follows:

- Mobile, temporary and accessory items such as floor mats, flower pots, kayak racks, decorative lighting, and dock boxes, provided they meet the following criteria:
  - There is no adverse environmental impact.
  - They are related to a water-dependent activity for which use of state-owned submerged land is authorized.
  - Such items cannot be justification for authorization of a structure design that preempts more area than otherwise would be necessary.

**Commenting Agencies**

A representative of the Florida Fish and Wildlife Conservation Commission attended the workshop to explain concerns that the preliminary draft amendments would shift concerns from the water to the upland and cause nuisance and safety problems with upland disposal. The FWC also provided written comments. DEP revised the rule to not specify the location or type of disposal so that each proposed location and method of disposal can be reviewed under the regulatory permit.

The Department of Agriculture and Consumer Services responded on September 9, 2009, that it had no concerns with the proposed amendments.

Collier County (County) objected on November 6, 2009, to the requirement that all fish carcasses and pieces be kept out of the water. The County has disposal chutes at existing fish cleaning stations that allow for the fish cleaning wastes to be discarded to the water bottom and have requested the chutes be allowed at future fish cleaning stations.

**Comprehensive Plan**

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

(See Attachment 4, Pages 1-8)

**RECOMMEND WITHDRAWAL**

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**Substitute Item 5 TRG Oasis, Ltd./City National Bank of Florida Recommended Consolidated Intent/Lease Renewal/Modification**

**REQUEST:** Consideration of an application for (1) renewal and modification of a five-year sovereignty submerged lands lease to increase the preempted area from 34,033 square feet to 111,723 square feet for a 68-slip private residential multi-family docking facility and a commercial marina; (2) authorization for the placement of 880 linear feet of seawall; and (3) authorization for the severance of 2,300 cubic yards of sovereignty material.

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**Substitute Item 5, cont.**

**APPLICANTS:** TRG Oasis (Marina), Ltd., and City National Bank of Florida  
Lease No. 360336295  
Application No. 070830-22

**LOCATION:** 2951 Frierson Street  
Fort Myers, Lee County  
Sections 07 and 18, Township 44 South, Range 25 East  
Aquatic Preserve: No  
Waterbody/Classification: Caloosahatchee River, Class III, not approved for shellfish harvesting  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Zone: Slow speed year-round

**CONSIDERATION:** \$54,189.44, representing (1) \$16,697.56 as the initial annual lease fee computed at the base rate of \$0.149455 per square foot; (2) \$2,902.79 as the 25 percent surcharge payment for the additional area; (3) \$29,414.09 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C.; and (4) \$5,175.00 for the severance of sovereignty material computed at the rate of \$2.25 per cubic yard pursuant to section 18-21.011(3)(a)2, F.A.C. 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)1, F.A.C.

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

**Project Synopsis**

The applicants are proposing to construct a 68-slip (51 permanent, 5 temporary, and 12 staging) private residential multi-family docking facility and a commercial marina, with an 18-space boat ramp parking area, to be used in conjunction with 1,079 condominium units, a 61-unit dry storage facility, a restaurant, and public boat ramp.

**Background**

In 2004, the Department of Environmental Protection (DEP) issued, under delegation of authority, a five-year sovereignty submerged lands lease. The lease has subsequently been modified, under delegation of authority, to reflect a change in upland ownership and in the description of use. The existing lease authorizes the operation of a 6-slip commercial docking



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**Substitute Item 5, cont.**

facility and pier for travel lift operations exclusively to be used for the mooring of commercial and recreational vessels in conjunction with an upland public boat ramp, residential condominium development, and dry storage facility.

On April 5, 2006, the South Florida Water Management District (District) issued Permit No. 36-05693-P authorizing construction of a surface water management system serving a 17.66-acre residential and commercial development, including five multi-story residential condominium towers, a fitness and tennis center, a commercial building with associated parking areas, landscaped areas, roadway improvements (Frierson Avenue) and the master surface water management system.

On March 9, 2009, DEP conducted a lease renewal site inspection and discovered several lease violations had occurred within the lease area and that two fishing/observation piers, preempting 840 square feet, were constructed outside of the lease area without authorization. The lease violations and unauthorized structures were conducted by previous owners. On April 29, 2009, the applicants were notified of the violations. On May 26, 2009, DEP conducted a site inspection and verified that the applicants had corrected the violations in the lease area.

On July 20, 2009, DEP and the City National Bank of Florida entered into a temporary use agreement (TUA) for the unauthorized fishing/observation piers. The TUA required payment of \$799.95 for lease fees in arrears, which were assessed from December 27, 2004 (date the City National Bank of Florida acquired the property) through May 25, 2010. These two fishing/observation piers will be removed prior to expiration of the TUA. Because the lease violations and unauthorized structures were conducted by the previous owners, no fines were assessed.

After further review, it was discovered that on August 12, 2005, DEP issued City National Bank of Florida a regulatory exemption and a proprietary letter of consent for the replacement of the two fishing/observation piers. Therefore, it was not necessary to enter into the TUA or to collect lease fees in arrears. If the Board of Trustees approves the proposed lease renewal and modification, the applicants will receive a lease credit in the amount of \$799.95. A special lease condition has been included which requires removal of the two fishing/observation piers by July 20, 2010.

**Project Detail**

The applicants propose to remove the existing 6-slip commercial docking facility and construct a 68-slip docking facility for vessels up to 70 feet in length with drafts up to 5.5 feet.

The 68 slips will be utilized as follows:

- 22 permanent slips, open to the public, for transient vessels cruising the Intracoastal Waterway;
- 5 temporary slips, open to the public, for recreational boaters to patronize the restaurant;

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**Substitute Item 5, cont.**

- 6 staging slips for the public boat ramp;
- 29 permanent slips for private residential use; and
- 6 staging slips for the private residential dry storage.

The docking facility will be operated as a mixed use docking facility. The applicants propose to preempt: (1) 46,120 square feet for commercial boat slips available for rent to the general public on a first-come, first-served basis pursuant to section 18-21.003(28), F.A.C.; and (2) 65,603 square feet for private boat slips available for the condominium residents.

Based on the project site's 1,642 linear feet of shoreline adjacent to sovereignty submerged lands, section 18-21.004(4)(a), F.A.C. (40:1 rule), limits the docking facility's preempted area to 65,680 square feet to be leased, rented, or otherwise used by entities having an ownership interest in any residential condominium unit. The applicants propose to preempt a total of 65,603 square feet for residential use that is within the 40:1 rule. A special lease condition will require no more than 65,603 square feet be leased, rented or otherwise used by entities having an ownership interest in any residential condominium unit. Pursuant to section 18-21.011(1)(c), F.A.C., the applicants will be assessed the one-time premium for the private residential multi-slip portion of the facility.

Pursuant to section 18-21.004(4)(g), F.A.C., a proprietary conservation easement will be granted to the Board of Trustees for the entire 1,642 linear feet of shoreline to prohibit construction of additional docks in association with the upland residential development. This has been included as a special approval condition.

The applicants propose to dredge 2,300 cubic yards of sovereignty material. Dredging to a depth of -5 feet mean low water (MLW) is planned to achieve navigable water depths. The current depths in the project footprint range from approximately -3 feet to -7 feet MLW. This dredging is proposed to occur in areas that do not contain submerged aquatic vegetation or any other significant benthic resources. The spoil material will be disposed of at an appropriate self-contained upland site.

The applicants propose to replace/install 880 linear feet of seawall by: (1) replacing 411 linear feet of seawall; (2) installing 139 linear feet of new seawall; and (3) installing 330 linear feet of new seawall waterward of the existing seawall. A special lease condition has been included to clarify that the replaced seawall, and any future seawall replacements, shall not cumulatively extend more than three feet waterward of the mean high water line.

**Noticing**

The lease modification request was noticed pursuant to section 18-21.004(1)(m), F.A.C. Approximately 30 property owners were specifically noticed and no objections were received.

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**Substitute Item 5, cont.**

**Permit Summary**

The District's environmental resource permit (ERP) does not authorize sewage pumpout facilities and prohibits liveaboards and fueling facilities. However, a special approval condition requires the applicants to obtain an ERP modification to provide sewage pumpout facilities at the proposed docking facility.

**Commenting Agencies**

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees will be addressed in the environmental resource permit or included as special lease conditions. Lee County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated 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 the lessee and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Lee County and approved by FWC, and/or any speed zones established by Lee County and approved by FWC.

**Comprehensive Plan**

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

(See Attachment 5, Pages 1-39)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$54,189.44**

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**Item 6 Diversified Yacht Services, Inc. Recommended Consolidated Intent/Lease Modification**

**REQUEST:** Consideration of an application for: (1) modification of a ten-year sovereignty submerged lands lease to (a) reflect a change in upland ownership; (b) reduce the term of the lease to five years; and (c) increase the preempted area from 41,492 square feet to 57,562 square feet, more or less, for a proposed reconfigured 41-slip commercial docking facility; (2) authorization for the replacement of an existing vertical seawall; (3) authorization for the installation of fish attractors at the toe of the replacement seawall; and (4) authorization for the severance of 1,700 cubic yards of sovereignty material.

**APPLICANT:** Diversified Yacht Services, Inc.  
Lease No. 360010335  
ERP No. 36-0125905-005

**LOCATION:** 703 Fisherman's Wharf  
Fort Myers Beach, Lee County  
Section 24, Township 46 South, Range 23 East

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**Item 6, cont.**

Aquatic Preserve: No  
Waterbody Classification: Matanzas Pass, Class II, not approved for shellfish harvesting  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Slow speed

**CONSIDERATION:** \$9,203.37, representing: (1) \$8,602.93 as the initial lease fee computed at the base rate of \$0.149455 per square foot, and (2) \$600.44 as the initial 25 percent surcharge payment for the additional area. The \$3,825 fee for the severance of 1,700 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard, pursuant to section 18-21.011(3)(a)2, F.A.C., has been paid. 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)1, F.A.C. Fees may be revised upon receipt of an acceptable survey.

**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**

The applicant proposes to remove the existing 41-slip commercial marina and construct a reconfigured 41-slip commercial marina. The proposed slips will include 20 permanent boat slips, up to 20 temporary slips for boat launching and retrieval, and 1 temporary slip for fueling at the fuel dock. The number of temporary slips at the fuel dock may vary depending upon the size of vessels being fueled. Upland activities will continue to include a commercial marina and a 184-unit dry storage facility. The docking facility will accommodate private recreational vessels, rental vessels and commercial charter vessels. Permanent slips will accommodate vessels up to 75 feet long and temporary slips up to 125 feet long, with drafts limited by the controlling depth of approximately -13 feet mean low water in the adjacent Intracoastal Waterway.

**Background**

This commercial marina has operated since the early 1950s and has evolved into a full service marina consisting of powerboat sales, dry storage capacity for 184 vessels including ground and rack storage, boat repair, and 41 wet slips. The former Department of Natural Resources issued the original lease for the former registered grandfathered facility (GSR No. 360024) in 1992 to Fort Myers Beach Marina, Inc., pursuant to a delegation of authority. The lease authorized fueling, a sewage pumpout facility and liveboards, and preempted 41,413 square feet of sovereignty submerged lands.

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**Item 6, cont.**

The facility contains an existing non-water dependent building on sovereignty submerged lands that was installed in the mid-1950s. Since the building was built prior to adoption of the rule prohibiting such structures, it has been allowed to remain and has been subject to the standard lease fee. The building does not qualify for a Butler Act disclaimer.

The lease was renewed and modified by the Department of Environmental Protection (DEP) on March 13, 2007 to reflect a change in upland ownership to Carroll Marina, LLC and increase the square footage, pursuant to a delegation of authority. The lease authorizes the existing 41-slip docking facility with three boat hoists and a 184-slip dry storage facility and a non-water dependent building for mooring of commercial and recreational vessels in conjunction with upland marina sales and service, preempting 41,492 square feet of sovereignty submerged lands. The lease expires on September 14, 2012. The applicant purchased the upland property on June 24, 2009.

On November 4, 2009, DEP conducted a site inspection and found minor lease violations. DEP contacted the applicant's agent and the applicant immediately corrected the non-compliance. A subsequent site inspection on November 19, 2009 determined the facility to be in compliance. Because the violations did not adversely impact resources and the applicant immediately resolved the non-compliance, no fines were assessed.

**Project Detail**

An undetermined number of the permanent boat slips located over sovereignty submerged lands and the upland dry storage spaces will be available for rent to the general public with longer than one-year rental terms. Therefore, the applicant does not qualify for the 30 percent discount to the lease fee and the lease term will be reduced from ten to five years.

Nearshore portions of the modified docking facility will be within the 25-foot setback on both sides (east and west) of the project site. Setback waivers have been provided from the two affected riparian owners (U.S. Coast Guard to the west and the Florida Department of Transportation to the east). Therefore, the proposed project is in compliance with section 18-21.004(3)(d), F.A.C.

As part of the project's proposed reconfiguration, the existing non-water dependent overwater building will be removed, and will not be rebuilt.

The applicant proposes to replace the existing 245-foot-long seawall with a new seawall 1-foot waterward of the existing seawall. A special lease condition will clarify that the replaced seawall, and any future seawall replacements, shall extend no more than three feet waterward of the mean high water line. The applicant also proposes to place 30 four-foot diameter concrete fish attractors at the toe of the replacement seawall which will be authorized as part of the modified lease.

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**Item 6, cont.**

Water depths at the site range from -1 feet mean low water (MLW) at the seawall to -19 feet MLW at the waterward extent of the facility. The controlling depth in the nearby federal channel (Intracoastal Waterway) is 13 feet. The applicant proposes to dredge 1,700 cubic yards of sovereignty material from an 18,300-square-foot area along the seawall to provide adequate water depth (approximately -8 feet MLW) for the vessels proposed to be moored near the seawall at the modified docking facility. The material to be dredged consists of sand, silt and shell fragments, with no significant benthic resources in or adjacent to the area proposed to be dredged. The spoil material will be disposed of at an appropriate self-contained upland site. All dredging on sovereignty submerged lands will be included in the proposed lease. The applicant does not qualify for a waiver of the dredge fee pursuant to section 18-21.011(3)(c), F.A.C.; therefore, the applicant has paid to DEP the severance fee for the 1,700 cubic yards of sovereignty material.

**Noticing**

The current modified lease request was required to be noticed pursuant to section 18-21.004(1)(m), F.A.C. Eight property owners were specifically noticed and one objection was received. DEP is of the opinion that the objector's concerns have been addressed.

**Permit Summary**

DEP's environmental resource permit (ERP) will authorize fueling and require a sewage pumpout facility but will prohibit liveboards. The ERP will also incorporate several requirements designed to prevent and/or reduce potential water quality impacts, including implementation of a marina operations plan. With these requirements, and the removal of the non-water dependent overwater building (thereby reducing shading), 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 Matanzas Pass.

**Commenting Agency**

The recommendations of FWC regarding protection of manatees have been addressed in the ERP. Lee County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated that the proposed project is consistent with the MPP. In 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 the lessee and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Lee County and approved by FWC, and/or any speed zones established by Lee County and approved by FWC.

**Comprehensive Plan**

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

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**Item 6, cont.**

(See Attachment 6, Pages 1-39)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$9,203.37**

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**Item 7 BP Products North America, Inc. Recommended Consolidated Intent/Lease  
Renewal/Modification/Easement**

**REQUEST:** Consideration of an application for (1) renewal and modification of a five-year sovereignty submerged lands lease to increase the preempted area from 182,516 square feet to 247,980 square feet for a commercial docking facility; (2) a ten-year sovereignty submerged lands private easement containing 155,335 square feet, more or less, for access to the docking facility; and (3) authorization for the severance of 23,404 cubic yards of sovereignty material.

**APPLICANT:** BP Products North America, Inc. (BP)  
Lease No. 160011622  
Easement No. 160233732  
Application No. 16-152383-004-EI

**LOCATION:** 2101 Zoo Parkway  
Jacksonville, Duval County  
Section 47, Township 01 South, Range 27 East  
Aquatic Preserve: No  
Waterbody/Classification: St. Johns River, Class III, not approved for shellfish harvesting  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Zone: 300-foot slow speed shoreline buffer

**CONSIDERATION:** \$187,046.16 representing (1) \$37,061.85 as the initial annual lease fee computed at the base rate of \$0.149455 per square foot; (2) \$984.31 as the 25 percent surcharge payment for the additional area; and (3) \$149,000.00 representing a one-time fee for the easement value pursuant to section 18-21.011(2)(b), F.A.C. The project qualifies for a waiver of the severance fee pursuant to section 18-21.011(3)(c)1, F.A.C. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable.

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

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**Item 7, cont.**

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**

BP is proposing to expand the existing docking facility by 65,464 square feet for a total of 247,980 square feet for a commercial docking facility to be used in conjunction with an upland fuel distribution center.

**Background**

On April 1, 1991, pursuant to section 18-21.00405(2), F.A.C., DEP issued a five-year sovereignty submerged lands lease containing 182,516 square feet. The lease authorized the operation of an existing docking facility exclusively to be used for the mooring of vessels and offloading of fuel oil in conjunction with an upland fuel distribution center. DEP subsequently renewed the lease in 1996 and 2001 under delegation of authority.

On March 11, 1999, the Department of Environmental Protection (DEP) issued BP an exemption verification permit, No. 16-152383-001-EE, authorizing the maintenance dredge of 25,000 cubic yards of sovereignty material at the BP Oil Tanker berthing area. No impacts to wetlands were identified in that exemption verification.

On June 17, 2002, DEP issued BP an environmental resource permit, No. 16-152383-002-EI, and sovereignty submerged lands authorization to dredge and deepen the existing fuel tanker berth. The berth was authorized to be deepened to -40 feet mean low water (MLW) with a 2-foot allowance for over dredging.

On September 14, 2009, DEP and BP entered into a temporary use agreement (TUA) for the unauthorized preemption of 39,120 square feet. BP's fuel offloading tankers were preempting area outside of the existing lease due to an increase in the beam of the vessels after the original lease was processed. The TUA required payment of \$154,676.14 for lease fees in arrears, which were assessed from April 1, 1991 through April 1, 2010.

**Project Description**

The expansion is needed to: (1) facilitate the size of vessels that have been using the facility; and (2) construct two sediment trap basins on the landward side of the preempted area. The docking facility will accommodate vessels up to 800 feet in length with drafts of 38 feet.

BP proposes to dredge approximately 23,404 cubic yards of sovereignty material from the existing lease area and proposed lease expansion area. Dredging to a depth of -40 feet MLW, with a 2-foot allowance for over dredging, is planned to: (1) achieve navigable water depths; and (2) create two sediment trap basins to lessen the frequency of maintenance dredging. The



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**Item 7, cont.**

current depths in the project footprint range from approximately -8 to -40 feet MLW. This dredging is proposed to occur in areas that do not contain submerged aquatic vegetation or any other significant benthic resources.

The spoil material will be disposed of on Bartram Island. Severance fees are not required pursuant to section 18-21.011(3)(c), F.A.C., as it will be disposed of at Jacksonville Port Authority's Bartram Island disposal site.

**Private Easement**

A private easement is required for the continual maintenance dredging of the existing and historically dredged channel leading into the facility. DEP's Bureau of Appraisal procured an independent appraiser to conduct an appraisal to determine the value of the easement. Because the easement is for dredging to historical depths, the enhancement value was not required for this easement. BP paid for the appraisal. DEP's Bureau of Appraisal accepted the conclusion of \$149,000 for the easement value. DEP recommends that the Board of Trustees assess 100 percent of the easement value for a total of \$149,000.

**Noticing**

There are no property owners within 500 feet of the proposed project; therefore, the proposed project was not noticed.

**Permit Summary**

The permit does not authorize sewage pumpout facilities or fueling facilities and prohibits liveaboards.

**Commenting Agency**

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. Duval County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated the proposed project is consistent with the MPP.

**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 Duval County.

(See Attachment 7, Pages 1-28)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL CONDITION,  
THE SPECIAL LEASE CONDITIONS, AND PAYMENT OF  
\$187,046.16**

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**Item 8 Beach Drive Development, LLC (Bay Vue Marina) Recommended Consolidated Intent/Lease/Determination**

**REQUEST:** Consideration of an application for (1) a ten-year sovereignty submerged lands lease containing 141,566 square feet, more or less, for a proposed 28-slip commercial docking facility; (2) authorization for the placement of a 434-linear-foot concrete breakwater; (3) authorization for the placement of 577 linear feet of seawall; (4) authorization for the placement of rip-rap; (5) authorization for the severance of 1,500 cubic yards of sovereignty material; and (6) determination that releasing the previously authorized conservation easement (a) is not contrary to the public interest; (b) does not defeat the original purpose of such easement; and (c) is in compliance with current rules at the time of the modification.

**APPLICANT:** Beach Drive Development, LLC (d/b/a Bay Vue Marina)  
Lease No. 030341031  
Application No. 03-243630-004-DF

**LOCATION:** 430 West 5th Street  
Panama City, Bay County  
Section 08, Township 04-South, Range 14-West  
Aquatic Preserve: No  
Waterbody Classification: St. Andrews Bay, Class III, not approved for shellfish harvesting  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: No

**CONSIDERATION:** \$22,593.64 representing (1) \$14,810.43 as the initial annual lease fee computed at the base rate of \$0.149455 per square foot, discounted 30 percent because a minimum of 90 percent of the slips are open to the public for rent on a first-come, first-served basis; (2) \$4,408.21 as the 25 percent surcharge payment for the additional area; and (3) \$3,375 for the severance of 1,500 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard pursuant to section 18-21.011(3)(a)2, F.A.C. 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)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 activity which require authorization to use sovereignty submerged lands.

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**Item 8, cont.**

**Background**

On May 09, 2007 a 48-slip private docking structure preempted 23,585 square feet associated with an upland condominium was authorized by the Department of Environmental Protection (DEP) via delegation of authority. The private multi-family docking structures and condominium were never built. The applicant is now proposing to construct a 28-slip commercial marina.

Pursuant to section 18-21.004(4)(g), F.A.C., the original lease for a private residential multi-family docking facility required a conservation easement be recorded in favor of the Board of Trustees to waive any further riparian rights for additional docks or piers. Also, pursuant to section 18-21.004(4)(g), F.A.C., the conservation easement shall be released or modified only if the Board of Trustees finds such release or modifications is not contrary to the public interest, does not defeat the original purpose of such easement, and is in compliance with current rules at the time of the modification.

DEP recommends releasing the conservation easement and is of the opinion that: (1) releasing the conservation easement is not contrary to the public interest as the currently proposed marina will be open to the public on a first-come, first-served basis; (2) releasing the conservation easement does not defeat the original purpose of the easement as it was intended to preclude any future preemption in association with a private multi-family docking facility and condominium that was never constructed; and (3) the conservation easement is currently in compliance.

If the Board of Trustees approves this request, the applicant, prior to issuance of the lease, will be required to relinquish the previous authorized Wetland Resource Permit (No. 03-0243630-002-DF). This requirement has been included as a special approval condition. Also, prior to issuance of the lease, DEP will cancel the existing private multi-family lease and release the conservation easement.

**Project Detail**

The applicant is proposing to construct a 28-slip commercial marina facility to be used in conjunction with revised upland activities including an upland boat sales center, a parking lot and dry storage for 270 vessels. The dry storage facility will accommodate recreational vessels ranging up to 45 feet in length. The docking facility will accommodate recreational vessels ranging up to 55 feet in length, with drafts up to 6 feet.

A minimum of 90 percent of all the wet slips will be maintained on an open to the public, first-come, first-served basis, pursuant to section 18-21.003(28), F.A.C., therefore, the applicant qualifies for a ten-year lease term and will receive the 30 percent discount to the lease fee. This requirement has been included as a special lease condition.

The applicant is proposing to armor the shoreline with 577 linear feet of seawall. A special lease condition will clarify that the proposed seawall, and any future seawall replacements, shall extend no more than three feet waterward of the mean high water line. The applicant is

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**Item 8, cont.**

proposing the placement of 27.26 cubic yards of rip-rap along 327 linear feet of the shoreline in front of the seawall, but not in the location of the proposed vessel launch. The applicant is proposing to construct a 434-linear-foot free standing concrete breakwater to protect the boat basin.

The applicant proposes to dredge 1,500 cubic yards of sovereignty material to approximately -5 feet mean low water, to provide adequate water depths along a 19,291-square-foot area for vessel launching. The spoil material will be disposed of on the applicant's upland site. All dredging on sovereignty submerged lands will be included in the proposed lease. The applicant does not qualify for a waiver of the dredge fee pursuant to section 18-21.011(3)(c), F.A.C.; therefore, a special approval condition requires the applicant to pay the severance fee for the 1,500 cubic yards of sovereignty material to DEP prior to receipt of a fully executed modified lease.

**Noticing**

The current lease request was required to be noticed pursuant to section 253.115, F.S. One hundred and seven property owners were specifically noticed and one letter of concern was received from the Bay County Conservancy, Inc. (Conservancy). The Conservancy requested that: (1) water quality be maintained at the proposed site by use of sewage pumpouts; and (2) the proposed site have adequate public access to the state waters.

DEP has addressed the Conservancy's concerns as follows: (1) the proposed facility will implement the use of eight sewage pumpout stations; and (2) the proposed boat slips will be maintained on an open to the public, first-come, first-served basis, pursuant to section 18-21.003(28), F.A.C., as well as having adequate parking spaces available. The Conservancy has since indicated that it no longer has concerns with the proposed project.

**Permit Summary**

DEP's wetland resource permit requires sewage pumpout facilities, authorizes fueling facilities, and prohibits liveaboards.

**Commenting Agency**

The Florida Fish and Wildlife Conservation Commission has reviewed the project and stated that the project, as proposed, is not expected to adversely impact manatees.

**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 Panama City.

(See Attachment 8, Pages 1-31)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$22,593.64**

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**Substitute Item 9 Ozean Marine, LLC (North Light Yacht Club) Recommended Consolidated Intent/Lease Modification**

**REQUEST:** Consideration of an application for modification of an existing ten-year sovereignty submerged lands lease to (1) change the use of the docking facilities from commercial to a private yacht club; (2) reduce the term of the lease to five years; and (3) increase the preempted area from 60,569 square feet to 136,239 square feet for an 83-slip docking facility.

**APPLICANT:** Ozean Marine, LLC (d/b/a North Light Yacht Club)  
Lease No. 461364541  
Application No. 46-069991-004-DF

**LOCATION:** 115 John Sims Parkway  
Niceville, Okaloosa County  
Section 01, Township 01 South, Range 23 West  
Aquatic Preserve: No  
Waterbody Classification: Boggy Bayou, Class III, not approved for shellfish harvesting  
Designated Manatee County: No  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: No

**CONSIDERATION:** \$23,188.91, representing (1) \$20,361.60 as the initial annual lease fee computed at the base rate of \$0.149455 per square foot, and (2) \$2,827.31 as the 25 percent surcharge payment for the additional 75,670 square feet. Sales tax and county discretionary sales surtax will be assessed pursuant to section 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)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 activity which require authorization to use sovereignty submerged lands.

**Background**

On June 6, 1988, the Board of Trustees approved a 50-slip commercial marina preempting approximately 48,351 square feet of sovereignty submerged lands. The lease has subsequently been renewed and modified under delegation of authority. The existing lease consists of two mooring docks (eastern and western) with a total of 50 slips and one fueling and sewage pumpout dock. The eastern dock has been removed and the western dock will be removed prior to construction of the new facility. The existing fueling and sewage pump out dock will remain as a part of the proposed facility.

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**Substitute Item 9, cont.**

**Project Detail**

The applicant is proposing to remove the two docks containing 50 permanent slips and construct an 83-slip yacht club marina (55 permanent boat slips, 13 jet skis and 15 temporary mooring) to be used in conjunction with a 250-unit upland dry storage area, a parking lot and a yacht club. The docking facility will accommodate recreational vessels up to 55 feet in length, with drafts up to 5 feet. The upland 250-unit dry storage facility has been constructed and will accommodate recreational vessels up to 40 feet in length.

The use of the docking facilities will be changed from a commercial marina that is open to the public on a first-come, first serve basis to a private yacht club. Therefore, the project does not qualify for the 30 percent discount to the lease fees and the term will be reduced from ten to five years.

**Noticing**

The proposed 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 and objections were received from three property owners. The objections raised the following concerns: (1) location of the eastern riparian line; (2) length of the docks; (3) potential for fuel spills; and (4) construction of a dry storage facility.

The objections received have been addressed as follows: (1) the applicant modified the eastern riparian line to address the adjacent property owners concerns; (2) the docking facility was reconfigured and four proposed slips were removed; (3) the containment for any potential fuel spills has been addressed through a fuel spill plan; and (4) the City of Niceville approved the re-zoning of the uplands to allow for a dry storage facility.

The Department of Environmental Protection (DEP) has subsequently received a letter from the adjacent property owner to the east indicating no further objections to the location of the modified eastern riparian line.

**Permit Summary**

DEP's wetland resource permit requires sewage pumpout facilities, authorizes fueling facilities, and prohibits liveboards. Sewage pumpout will be located on the westernmost dock and is required to be fixed and connected to a central sewage system. Fueling facilities will also be located on the westernmost dock.

**Commenting Agency**

The Florida Fish and Wildlife Conservation Commission has reviewed the project and stated that the project, as proposed, is not expected to adversely impact manatees.

**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.

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**Substitute Item 9, cont.**

The proposed action is consistent with the adopted plan according to a letter received from the City of Niceville.

(See Attachment 9, Pages 1-29)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, SPECIAL LEASE CONDITIONS, AND PAYMENT OF  
\$23,188.91**