

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
JULY 29, 2010

Attachments to the items below can be viewed at the following link:
http://www.dep.state.fl.us/secretary/cab/public_notices.htm

Item 1 Minutes

Submittal of the Minutes from the April 27, 2010 and May 11, 2010 Cabinet Meetings.

(See Attachment 1, Pages 1-19)

RECOMMEND APPROVAL

Item 2 Board of Trustees/M.D. Moody & Sons, Inc. Settlement Agreement

REQUEST: Consideration of a proposed settlement agreement in the case of M.D. Moody & Sons, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, Circuit Court, Fourth Judicial Circuit, State of Florida, Case No. 16-08-CA-012815.

LOCATION: Jacksonville, Duval County

STAFF REMARKS: M.D. Moody & Sons, Inc. (Plaintiff) filed a complaint against the Board of Trustees of the Internal Improvement Trust Fund seeking to quiet and confirm title to certain real and submerged property located in Duval County, adjacent to the Intracoastal Waterway (Subject Property).

The Plaintiff and the Board of Trustees agree that the Subject Property consists of both sovereign and privately-owned submerged real property. However, delineating the boundary between the Board of Trustees' and the Plaintiff's property has been rendered exceedingly difficult by the introduction of the Intracoastal Waterway and the passage of time.

History

Until the late 1800's Pablo Creek meandered south from the St. Johns River to northern St. Johns County. In 1881, the Florida Coast Line Canal & Transportation Company, with over one million acres of donated land from the Florida Legislature, constructed a canal connecting Pablo Creek to the natural lagoons and rivers between Jacksonville and Miami, known as the East Coast Canal. See State v. Florida Coast Line Canal & Construction Co., 73 Fla. 1006, 1012-1013, 75 So. 582 (1917); see also ch. 1987, Laws of Florida (1874); ch. 3166, Laws of Florida (1897). In the early 1920's the Florida Coast Line Canal & Transportation Company, under decree of foreclosure, conveyed a portion of its property to the Rhode Island Hospital Trust Company, which included the East Coast Canal. The Rhode Island Hospital Trust Company then assigned the property to the Florida Canal and Transportation Company (Canal Company), whose stock was controlled by the Trust. The Canal Company later acquired a right-of-way to the east of the property from the Model Land Company, recorded in Deed Book 258, Page 253, Public Records of Duval County, Florida.

Item 2, cont.

In 1927, based upon a recommendation from the U.S. Army Corp. of Engineers, the U.S. Congress approved the acquisition and construction of an expanded canal, the Intracoastal Waterway (ICW), which would exist largely over the footprint of the Florida East Coast Canal. In October 1929, Rhode Island Hospital Trust Company conveyed the right-of-way to the United States for the expansion of the East Coast Canal into what is today the ICW. Additional rights-of-way were acquired by the United States in its effort to construct the ICW. Parcels identified for acquisition in the plat of the ICW from Jacksonville to Miami are adjacent to property currently owned by the Plaintiff.

The introduction of the ICW to this area has artificially changed the landscape and the water elevation in and around the Subject Property making it both remarkably challenging and extremely costly to delineate which portion of the Subject Property is sovereign and which portion is privately-owned, formerly upland, currently submerged real property. Therefore, counselors, on behalf of the parties, have negotiated the proposed Stipulated Settlement Agreement (Settlement Agreement). The Settlement Agreement defines the Board of Trustees' property and the Plaintiff's property, and sets forth the terms and conditions of the land transactions.

Terms of Settlement Agreement

The material terms of the Settlement Agreement are as follows:

- 1) The Board of Trustees will execute a quit claim deed to the Plaintiff for the real property described in Exhibit "A" of the Settlement Agreement, which consists of approximately 43.80 acres. The deed will be delivered to the Plaintiff for recording;
- 2) Said quitclaim deed will include the following restrictive covenants which shall run with the land and be binding upon Plaintiff and all heirs, successors, and assigns and all successive owners (and all parties claiming by, through and under the owners) of any of the real property described in Exhibit "C" to the Settlement Agreement:
 - (i) No non water-dependent structures shall be erected over the real property;
 - (ii) Should the Plaintiff convey a fee title interest in a marina wet slip constructed with in the real property described in Exhibit "C" to the Settlement Agreement, the Plaintiff shall pay to the Board of Trustees a sum equivalent to 5.05% of the fair market value of the wet slip. The term fair market value shall mean the final contract price negotiated between the Plaintiff and a third party affiliated with the Plaintiff for the purchase of the marina wet slip. However, if the Board of Trustees deems the final contract price unreasonable, it may require the Plaintiff to obtain an appraisal from an appraiser acceptable to the Board of Trustees;
 - (iii) Should the Plaintiff convey a less-than-fee interest in a marina wet slip, the Plaintiff shall pay to the Board of Trustees 3.03% of the annual income, the base fee, or the minimum annual fee whichever is greater. This fee shall be calculated and reported pursuant to rule 18-21.011, F.A.C.;

Item 2, cont.

- (iv) Plaintiff agrees that the minimum amount of slips available to the public for lease shall not be fewer than 100, of which 50 shall be wet slips;
 - (v) Plaintiff shall file an annual report with the Department of Environmental Protection, as staff to the Board of Trustees, on or before April 1 of each calendar year that discloses all transactions referenced in paragraphs (ii) and (iii) above;
- 3) Plaintiff will execute a quitclaim and deliver a deed to the Board of Trustees conveying any and all right title and interest it may claim to the real property described in Exhibit "B" of the Settlement Agreement, consisting of approximately 46.26 acres; and
- 4) With respect to the lands quitclaimed to the Board of Trustees, the Plaintiff will retain two non-exclusive easements for ingress, egress, and utilities. The easements are depicted in Exhibit "D" and "E" to the Settlement Agreement and consist of approximately 0.68 acre and 0.97 acre respectively.

If the Board of Trustees approves the proposed Settlement Agreement, then fifteen days after its execution the parties will file a joint motion with the court requesting it enter an order approving the Settlement Agreement. The court's order ratifying the Settlement Agreement will effectively dismiss all claims with prejudice and forever discharge the parties from any and all obligations, liabilities, lawsuits, controversies, expenses, attorney's fees, etc., related to the this litigation. The Settlement Agreement provides that it is contingent upon Board of Trustees' approval.

(See Attachment 2, Pages1-44)

RECOMMEND APPROVAL

Item 3 Magnolia Cove Development, LLC Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for a five-year sovereignty submerged lands lease containing 45,596 square feet, more or less, for a proposed 66-slip private residential multi-family docking facility.

APPLICANT: Magnolia Cove Development, LLC
Lease No. 100343522
ERP Application No. 4-019-106698-3

LOCATION: 300 South Magnolia Avenue
Green Cove Springs, Clay County
Section 38, Township 06 South, Range 26 East
Aquatic Preserve: No

Item 3, cont.

Waterbody/Classification: St. Johns River, Class III, not approved for shellfish harvesting
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$29,703.25, representing (1) \$6,989.00 as the initial annual lease fee computed at the base rate of \$0.153281 per square foot for the total of 45,596 square feet; (2) \$1,747.25 as the 25 percent surcharge payment for the initial area; and (3) \$20,967.00 as the one-time premium pursuant to section 18-21.011(1)(c), 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.

Background

The St. Johns River Water Management District (District) has previously issued two environmental resource permits (ERP) to authorize the residential development of the riparian uplands. The original ERP for an 88-unit condominium development was issued on September 21, 2006. The second ERP modified the original permit and authorized a 66-unit townhome development in place of the condominium and was issued on May 11, 2009.

Project Details

The applicant is proposing to construct a 66-slip private residential multi-family docking facility to be used in conjunction with a previously permitted, but not yet constructed, 66-unit townhome development. The docking facility will accommodate recreational vessels up to 50 feet in length with drafts of 4 feet.

An undetermined number of wet slips may be available for use by the public. However, the townhome owners could utilize all 66 wet slips; therefore, pursuant to section 18-21.004(4)(g), F.A.C., the applicant will provide a proprietary conservation easement over a 10-foot-wide strip along the its entire 1,141 linear feet of riparian shoreline to prohibit future construction or expansion of the facility. This has been included as a special approval condition. If the Board of Trustees approves this five-year sovereignty submerged lands lease, the recorded conservation easement will be referenced in, and attached to, the lease.

If all 66 wet slips and the associated preempted area (a maximum of 45,596 square feet) are used by the townhome owners, the proposed facility will be consistent with the upland unit to slip ratio

Item 3, cont.

pursuant to section 18-21.004(4)(b)1, F.A.C., and the preempted area to linear footage ratio of 40 to 1 pursuant to section 18-21.004(4)(b)2, F.A.C.

The site consists of 0.06 acre of submerged aquatic vegetation. The entire docking facility, exclusive of the access dock, will be located waterward of the submerged aquatic vegetation to ensure these resources would not be adversely impacted by the proposed facility. The access dock will be constructed with flow-thru decking and elevated 5 feet above mean high water.

Noticing

The project was noticed pursuant to section 253.115, F.S. Approximately 37 property owners were specifically noticed and one objection was received. The objector raised the following specific concerns:

- (1) diesel, gasoline and oil fuels will occasionally spill into the water;
- (2) fumes from the boat fuel released into the air will affect air quality;
- (3) noise from the boats will be undesirable to residents;
- (4) birds will be forced out of a large waterbird rookery, allegedly located immediately south of the proposed facility;
- (5) boat traffic will kill manatees;
- (6) the site for the facility is a primary grassbed and feeding area for manatees;
- (7) the cove where the facility is proposed is a safe area for boats during storms;
- (8) dredging will upset the clarity of the water and kill fish and other aquatic organisms;
- (9) a bulkhead will prevent wildlife assess;
- (10) boat wakes will disturb shoreline fauna;
- (11) the cove where the facility is proposed is too small to accommodate the number of boats;
and
- (12) the project will preclude access by kayakers along the shoreline.

The District is of the opinion that the objector's concerns have been addressed as follows:

- (1) per the District's ERP for this facility, no fueling facilities will be located within the docking facility;
- (2) air quality is not part of the ERP permitting criteria;
- (3) noise pollution is addressed by zoning and land use regulations and is under the purview of the local government's jurisdiction;
- (4) per wading bird rookery data layers compiled by the Fish and Wildlife Conservation Commission (FWC) and based on field visits by District staff, no rookery was observed;
- (5) the FWC has made recommendations regarding the protection of manatees and its recommendations will be implemented as conditions of both the ERP and lease;
- (6) based on the facility's design, adverse impacts to submerged aquatic vegetation will be avoided;
- (7) most of the cove along the St. Johns River where the facility will be located will remain available for use as a safe harbor by other boat users;
- (8) no dredging is proposed;

Item 3, cont.

- (9) the construction of a retaining wall above the mean high water line was authorized under the District's ERP for the adjacent upland development, however, the vegetation currently present between the retaining wall and the mean high water line will remain and this area will be placed under a conservation easement per the ERP;
- (10) the facility includes the erection of no wake signs, a more stringent speed restriction than currently exists in the cove;
- (11) the applicant has reduced the number of slips from 99 to 66 and has reduced the facility's size; and
- (12) the facility's main access dock is elevated five feet above mean high water along the shoreline and will allow kayakers to traverse along the shoreline.

Permit Summary

The District's ERP requires sewage pumpout facilities, prohibits liveboards, and prohibits fueling facilities.

Commenting Agencies

The recommendations of FWC regarding protection of manatees have been addressed in the permit. Although Clay County is not a designated manatee county, Clay County has an approved manatee protection plan (MPP). FWC stated that 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 has 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 Green Cove Springs.

(See Attachment 3, Pages 1-31)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$ 29,703.25**

Item 4 Pointe One, LLC Recommended Consolidated Intent/Lease

REQUEST: Consideration of an application for (1) a five-year sovereignty submerged land lease containing 106,721 square feet, more or less, for a proposed 51-slip private residential multi-family docking facility; and (2) authorization for the severance of 590 cubic yards of sovereignty material.

APPLICANT: Pointe One, LLC (Pointe One)
Lease No. 460338621
Application No. 46-0251677-004-DF

Item 4, cont.

LOCATION: 1 Gulf Shore Drive
Destin, Okaloosa County
Section 00, Township 02 South, Range 22 West
Aquatic Preserve: No
Waterbody Classification: Destin Harbor, a.k.a. Old Pass Lagoon, Class III, not approved for shellfish harvesting
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: \$70,260.27, representing: (1) \$16,358.30 as the initial annual lease fee computed at the base rate of \$0.153281 per square foot; (2) \$4,089.57 as the 25 percent surcharge payment for the total area; and (3) \$49,074.90 as the one-time premium pursuant to section 18-21.011(1)(c), F.A.C.; and (4) \$737.50 for the severance of 590 cubic yards of sovereignty material computed at a rate of \$1.25 per cubic yard pursuant to section 18-21.011(3)(a)3, F.A.C. 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 that require authorization to use sovereignty submerged lands.

Background

The site is located near the entrance to Destin Harbor and south of Norriego Point (Okaloosa County owned land) with water frontage on both the north side in Destin Harbor and the south side in East Pass Channel. Both water front sides of the site have existing upland retaining walls.

Project Detail

Pointe One is proposing to construct a 51-slip private residential multi-family docking facility to be used in conjunction with a 79-unit condominium complex. The docking facility will accommodate recreational vessels ranging from 36 to 145 feet in length with drafts up to 10 feet. The docking facility will not be open to the public on a first come first serve basis. Therefore, the facility is not eligible for the 30% open to the public discount.

Net Positive Public Benefit

The shoreline adjacent to the East Pass Channel is waterward of the Coastal Construction Control Line (CCCL); therefore, only the shoreline located along Destin Harbor, which is 618 feet in length, may be counted towards the 40:1 ratio. The docking facility exceeds the 40:1 ratio and is required to provide a Net Positive Public Benefit (NPPB). As an NPPB, the applicants have proposed to contribute \$1,812,287 towards the construction of:

Item 4, cont.

- 1) a public restroom facility located on Norriego Point accessible by a crushed gravel road; and
- 2) the extension of Gulf Shore Drive along with 18 public parking spaces, a pedestrian boardwalk, a transit parking space, bicycle racks, lighting and landscaping.

The total estimated construction cost of the public restroom facility and the improvements to the Gulf Shore Drive extension is \$2,904,890 and the City of Destin is paying the remaining \$1,092,603. A special lease condition is included that requires the Lessee to construct the improvements prior to completion of construction of the docking facility. In addition, a special lease condition is included that requires the Lessee to clean the public restroom facilities on a daily basis and maintain the restroom facilities in good condition, keeping the structure and equipment located therein in a good state of repair in the interests of the public health, safety and welfare.

Section 18-21.004(4) (a) 7, F.A.C., requires the applicant to record a conservation easement over the entire 618 linear feet of the riparian shoreline to prohibit future construction or expansion of the facility. This requirement has been included as a special approval condition. If the Board of Trustees approves this five-year sovereignty submerged lands lease, the recorded conservation easement will be referenced in and attached to the lease.

Dredging

Pointe One is proposing to dredge 590 cubic yards of sovereignty material to elevation -8 feet mean low water to provide adequate depths for vessels that will moor at the facility. The spoil will be disposed of in an upland spoil site located on the applicant's upland property. All dredging on sovereignty submerged lands is included in the proposed lease area. A special approval condition is included that requires the applicant to submit severance fees prior to the applicant's receipt of a fully executed lease.

A separate application was made to the Department of Environmental Protection (DEP) by the City of Destin and Pointe One for the dredging of 60,585 cubic yards from the existing federal channel in Destin Harbor and a shoal surrounding the channel. This permit was issued on March 17, 2010. The authorized dredging is expected to reduce congestion from boat traffic seeking to enter and exit the mouth of Destin Harbor. The dredging is part of the applicant's reasonable assurances that the use of the proposed docking facility will not contribute to increased congestion near the harbor entrance or impede navigation. The dredging is also projected to increase flushing at the mouth of Destin Harbor by approximately five percent as indicated in a hydrographic study. A special lease condition is included that requires the Lessee to complete the dredging of the federal channel and surrounding shoal prior to commencement of construction of the docking facility.

Net Positive Environmental Benefit

The proposed project is located in Destin Harbor a.k.a. Old Pass Lagoon. Old Pass Lagoon has experienced a decline in water quality dating back to the early 1980's. As a result of these concerns, on March 6, 1984, the Board of Trustees imposed a condition that future developments

Item 4, cont.

on sovereignty submerged lands in Old Pass Lagoon must not only meet water quality standards, but must also have a Net Positive Environmental Benefit (NPEB) to the water quality in the lagoon. Also, because of these concerns, the Northwest Florida Water Management District installed a pumping mechanism in the lagoon in 1995, turning the operation and maintenance over to the City of Destin. This mechanism pumps water from the Gulf of Mexico into the lagoon during an outgoing tide forcing the water in the lagoon out into the Gulf. The pump provides flow through circulation in the lagoon, as the lagoon only has one opening. DEP's hydrographic engineering section stated no objection on November 12, 2004, as long as the pump operates on a regular basis. Quarterly water quality monitoring is conducted by the City of Destin, and according to the City Engineer, improved water quality has been demonstrated with the operation of the harbor pump.

The applicant has agreed to donate \$21,420 for NPEB, based on a contribution of \$420 per slip for the boats. This is consistent with previous Board of Trustees' actions and payment of the NPEB has been added as a special approval condition.

Noticing

The current lease request was required to be noticed pursuant to section 253.115, F.S., and section 18-21.005(3), F.A.C. One hundred and thirty-three property owners were specifically noticed and fifty-four objections were received. The objectors raised the following concerns:

- (1) navigation concerns;
- (2) potential increased boat traffic;
- (3) water quality concerns;
- (4) increased vehicular traffic, noise, parking, upland property values, property zoning issues, loss of view due to construction of the condominium; and
- (5) potential construction danger to threatened or endangered bird species nesting sites.

DEP is of the opinion that the objectors' concerns have been addressed as follows:

- (1) the department issued a wetland resource permit on March 17, 2010 authorizing the dredging of the federal channel and the shoal surrounding the channel thereby alleviating the congestion and the potential for navigation concerns at the mouth of the channel;
- (2) the department has included a specific condition in the wetland resource permit that will address the timing of the marina construction so it will not impact vessel traffic during the boating season;
- (3) all water quality parameters tested were in compliance with state standards;
- (4) the local government is responsible for the noise, parking, increased vehicular traffic, upland property values, property zoning issues and loss of view; and
- (5) the department has included a specific condition in the wetland resource permit that addresses the timing of the construction and requires nesting surveys and protective buffer zones if nesting occurs between February 15 and September 1 to avoid impacts to species nesting sites.

Item 4, cont.

Additionally, if this project is approved, each objector will be sent a cover letter with our Intent to Issue that will be tailored to their specific concerns and will outline what measures we have taken to meet those concerns.

Permit Summary

DEP's wetland resource permit requires sewage pumpout facilities, prohibits fueling facilities, and prohibits liveboards. Sewage pumpout connections will be located between each slip and will be connected to a centralized upland sewage system.

Commenting Agency

The Florida Fish & 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 (DCA) determined that the plan is in compliance. The proposed action is consistent with a Development Order authorized by the City of Destin on September 29, 2009.

(See Attachment 4, Pages 1-35)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$70,260.27**

**Item 5 Tarpon Point Associates, LLC Recommended Consolidated Intent/Lease
Modification/Authorization**

REQUEST: Consideration of an application for (1) a modification of a 25-year sovereignty submerged lands lease to increase the preempted area from 347,531 square feet to 588,101 square feet, more or less, for a proposed reconfigured 185-slip commercial docking facility; (2) authorization for the placement of 213 cubic yards of riprap; (3) authorization of the severance of 750 cubic yards of sovereignty material; and (4) authorization for planting of mangroves.

APPLICANT: Tarpon Point Associates, LLC
Lease No. 360189959
Application No. 36-0153417-004

LOCATION: 6095 Silver King Blvd
Cape Coral, Lee County
Section 22, Township 45 South, Range 23 East
Aquatic Preserve: No

Item 5, cont.

Waterbody/Classification: Glover Bight, Class III, 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 all year

CONSIDERATION: \$64,993.03 representing: (1) \$54,086.83 as the initial annual lease fee computed at the base rate of \$0.153281 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, and discounted 10 percent for participation in the Clean Marina Program pursuant to section 18-21.01191)(b)13, F.A.C.; (2) \$9,218.70 as the 25 percent surcharge payment for the additional area; and (3) \$1,687.50 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., 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 lessee proposes to reconfigure and expand the existing 175-slip docking facility to create a 185-slip (175 permanent and 10 temporary) docking facility.

Background

On November 5, 1985, the Board of Trustees approved the issuance of a 5-year lease for a 216-slip public/private marina preempting 355,014 square feet of sovereignty submerged lands for Avatar Properties, Incorporated.

In 1989, under delegation of authority, the former Department of Natural Resources (DNR) modified the lease to authorize minor changes to the docking facility as authorized by permit modifications issued by the former Department of Environmental Regulation in 1986, 1988 and 1989, including the reduction of boat slips from 216 to 175. The modified lease also changed the use of the docking facility to a commercial marina and reduced the lease area to 347,531 square feet.

In 1991, under delegation of authority, DNR modified the lease to reflect a change in upland ownership to Tarpon Point, Inc. In 1994, under delegation of authority, the Department of Environmental Protection (DEP) renewed the lease.

Item 5, cont.

On October 13, 1998, the Board of Trustees approved issuance of a modified lease to extend the term to 25 years. In 1999, under delegation of authority, DEP modified the lease to reflect a change in upland ownership to Marina Resources, Inc. In 2002, under delegation of authority, DEP modified the lease to reflect a change in upland ownership to the current lessee. In 2003, under delegation of authority, DEP modified the lease to allow for a beach shuttle to moor at the docking facility.

On April 9, 2010, DEP observed lease violations consisting of: (1) bow sprits or auxiliary engines of three vessels extended partially outside of the lease boundary; (2) two floating docks/platforms within the lease boundary; and (3) a commercial ice machine (non-water dependent structure) on one of the docks. DEP notified the lessee of these violations and the lessee immediately corrected the violations by: (1) relocating the vessels to another location within the lease; (2) removing the floating docks/platforms; and (3) removing the ice machine to the lessee's uplands. Because the violations were immediately corrected, the lessee retained the Clean Marina status.

On May 19, 2010, DEP and the lessee entered into a Consent Order which required the lessee to pay \$500.00 as an administrative fine and \$500.00 for DEP costs and expenses, both of which were paid on June 8, 2010. Lease fees in arrears were not assessed because of the minimal additional area preempted by the bow sprits or auxiliary engines. All the required corrective actions have been completed.

On June 16, 2010, under delegation of authority, DEP modified the lease to: (1) to remove an existing 647-square-foot fuel dock; (2) construct a new 200-square-foot fuel dock on the south side of the basin; (3) remove four existing finger piers and nine associated boat slips from the proposed fuel dock area; (4) add 1,360 square feet of structure (including a 76 foot extension of the main access dock and four finger piers) and eight boat slips at the end of Dock C; and (5) add one boat slip to the marginal dock on the west side of the basin.

A July 13, 2010 site inspection by DEP revealed that the lessee is in compliance with the lease. The lease expires on September 25, 2023.

Project Detail

The lessee operates the upland property as a mixed use commercial development including a restaurant, shops, hotel and offices. A 210-unit residential condominium (Tarpon Landings Condominium) is located on nearby uplands that are not riparian to sovereignty submerged lands. The recorded condominium documents make no reference to the docking facility.

The entire marina will be refurbished and reconfigured for a larger boat mix within the existing marina. The modified facility will include 175 permanent slips, 10 temporary slips and a fishing/observation pier. The proposed reconfigured slips will provide mooring for private recreational boats, rental boats, a dinner cruise boat, and a commercial beach shuttle boat with lengths up to 100 feet with drafts of less than or equal to 8 feet. The controlling depth in the nearby Intracoastal Waterway is -9 feet mean low water. The proposed temporary slips will be for boats up to 30 feet long.

Item 5, cont.

A minimum of 90 percent of all the slips will continue to be maintained on an open to the public, first-come, first-served basis pursuant to section 18-21.003(28), F.A.C. This requirement has been included as a special lease condition.

The lessee also proposes to dredge 750 cubic yards of sovereignty material from three areas near the shoreline within the existing lease to provide adequate water depth (-5 feet mean low water) for the floating docks and boats proposed to be moored in these areas. The dredging will increase depths in areas that are currently -2 to -4.9 feet deep at mean low water.

The material to be dredged consists of sand, silt, and crushed 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. The lessee does not currently 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 lessee to pay the dredge fee for the 750 cubic yards of material on sovereignty submerged lands prior to receipt of a fully executed modified lease. The special approval condition specifies that the severance fee shall not be required if the lessee demonstrates that the lessee qualifies for a waiver of the severance fee pursuant to section 18-21.011(3)(c), F.A.C.

The lessee also proposes to install 213 cubic yards of riprap at various locations along the shoreline within the lease. Installation of one of the access walkways in the expansion area will require removal of 170 square feet of mangroves. To mitigate for this impact, DEP's environmental resource permit requires the lessee to plant 340 square feet of mangroves. This planting, including the installation of riprap to stabilize the area, will also be authorized by the lease modification.

Noticing

The current modified lease request was required to be noticed pursuant to section 18-21.004(1)(m), F.A.C. Six property owners were specifically noticed and no objections were received by the end of the comment period.

Permit Summary

DEP's environmental resource permit authorizes fueling facilities, prohibits liveboards, and requires sewage pumpout facilities.

Commenting Agency

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. 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 lessee 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

Item 5, cont.

FWC. FWC has also stated that the following existing special lease condition may be eliminated: "The Lessee shall ensure that no more than 122 wet slips are made available for the mooring of power craft and that at least one of those wet slips shall be made available to the State of Florida Department of Environmental Protection at no cost." The Board of Trustees approved this condition in 1985 to protect manatees, before Lee County adopted a FWC-approved manatee protection plan. FWC has determined that the adopted plan eliminates the need for this condition to protect 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 Cape Coral.

(See Attachment 5, Pages 1-46)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND
PAYMENT OF \$64,993.03**

**Item 6 Jabo, LLC (Pink Shell Resort) Recommended Consolidated Intent/Lease
Modification**

REQUEST: Consideration of an application for modification of a five-year sovereignty submerged lands lease to increase the preempted area from 43,899 square feet to 110,936 square feet, more or less, for a proposed 41-slip commercial docking facility reconfiguration.

APPLICANT: Jabo, LLC, d/b/a Pink Shell Resort (Jabo)
Lease No. 360010245
ERP No. 36-0185701-005

LOCATION: 275 Estero Boulevard
Fort Myers Beach, Lee County
Section 24, Township 46 South, Range 23 East
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

Item 6, cont.

CONSIDERATION: \$19,573.25, representing: (1) \$17,004.38 as the initial lease fee computed at the base rate of \$0.153281 per square foot, and (2) \$2,568.87 as the 25 percent surcharge payment for the additional area. 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.

Project Synopsis

The applicant proposes to remove the existing 41-slip commercial marina and construct a reconfigured 41-slip commercial marina.

Background

This commercial docking facility and resort has operated since the 1960s. In 1992, under delegation of authority, the former Department of Natural Resources issued the original five-year lease for the former unregistered grandfathered facility to Florida Income Fund III, LP. The lease prohibited fueling, sewage pumpout facilities and liveaboards except for two liveaboards that existed at that time, and preempted 43,899 square feet of sovereignty submerged lands.

In 1997, under delegation of authority, the Department of Environmental Protection (DEP) renewed and modified the lease to reflect a change in upland ownership to Boykin Hotel Properties, LP.

In 2002, under a delegation of authority, DEP renewed and modified the lease to clarify the authorized uses and the upland activities.

On September 21, 2006, the current applicant, Jabo acquired the upland ownership. On September 26, 2006, DEP observed lease violations consisting of: (1) a vessel mooring outside the lease area; and (2) unauthorized dock modifications including a ramp addition for handicapped access installed by the predecessor in title.

On May 9, 2008, DEP and Jabo entered into a Consent Order to correct the non-compliance. The Consent Order required Jabo to pay \$1,250 as an administrative fine and \$500 for DEP costs and expenses, all of which have been paid. A new survey meeting DEP requirements was also submitted, and all the required corrective actions have been completed.

On June 3, 2009, DEP observed lease violations in conjunction with a fishing tournament consisting of unauthorized installation of 27 PVC mooring pilings to temporarily increase the facility's mooring capacity and vessels mooring outside of the lease boundary. On July 27,

Item 6, cont.

2009, DEP and Jabo entered into a Consent Order to correct the non-compliance. The consent order required Jabo to pay \$2,000 as an administrative fine, \$1,000 as a civil penalty and \$500 for DEP costs and expenses, all of which have been paid.

In 2009, under delegation of authority, DEP renewed and modified the lease to reflect a change in upland ownership to Jabo. The lease currently authorizes the existing 41-slip docking facility in conjunction with the upland resort and expires on June 27, 2012.

On May 21, 2010, DEP observed a lease violation consisting of four vessels mooring beyond the lease boundary. On May 24, 2010, DEP and Jabo entered into a Consent Order to correct the non-compliance. The consent order required Jabo to pay \$1,000 as an administrative fine and \$500 for DEP costs and expenses, all of which have been paid.

A site inspection by DEP on July 13, 2010 determined the facility to be in compliance.

Project Detail

The proposed project will include 39 permanent boat slips and up to two temporary slips that will be used for temporary mooring to enable resort registration and for using the fixed sewage pumpout facility. Upland activities will continue to include a commercial resort hotel and associated amenities. The docking facility will accommodate private recreational boats, rental boats, commercial fishing guide boats, up to two commercial parasail boats and a commercial tour boat. Permanent slips will accommodate vessels up to 100 feet in length, with a maximum draft of up to 12 feet.

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

Jabo proposes to continue hold fishing tournaments periodically each year. The modified lease will require Jabo to continue reporting revenue generated from the use of sovereignty submerged lands in conjunction with these tournaments. The modified lease will also require vessels associated with these fishing tournaments to moor within the lease boundaries.

Jabo and the adjacent property owner to the south have historically shared the dock at the south end of the project site pursuant to a 1993 agreement between Jabo's predecessor in title and the adjacent property owner. To address DEP's concerns about riparian rights at this location, the adjacent property owner recently granted Jabo an access easement providing sufficient upland interest to the dock, and the two parties entered into an updated agreement for use of the dock. A special approval condition requires Jabo to record the access easement and provide a copy of the recorded easement to DEP. Since the dock is within the 25-foot setback area, Jabo obtained from the adjacent property owner a waiver of the setback requirement for the dock pursuant to Rule 18-21.004(3), F.A.C.

Item 6, cont.

Noticing

The current modified lease request was required to be noticed pursuant to rule 18-21.004(1)(m), F.A.C. Approximately 17 property owners were specifically noticed and one objection was received.

The objector asserts that the proposed riparian lines on both sides of its existing dock are improper and may restrict navigational access and potential future expansion or modification of its dock.

DEP is of the opinion that the objector's concerns have been addressed as the survey was prepared by a Professional Surveyor and Mapper and meets DEP's guidelines for survey. The proposed project is also consistent with the riparian setback requirement in Rule 18-21.004(3), F.A.C.

Permit Summary

DEP's ERP prohibits fueling, authorizes liveboards, and requires sewage pumpout facilities.

Commenting Agency

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the permit. 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 lessee 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 the Town of Fort Myers Beach.

(See Attachment 6, Pages 1-38)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, SPECIAL LEASE CONDITIONS, AND PAYMENT OF
\$19,573.25**

**Item 7 Deepwater Horizon Oil Spill Incident Status Update/Emergency Response Efforts/
BP/Gulf of Mexico**

Status update of the emergency response efforts to protect Florida's shoreline from the Deepwater Horizon oil spill incident in the Gulf of Mexico.

RECOMMEND INFORMATIONAL