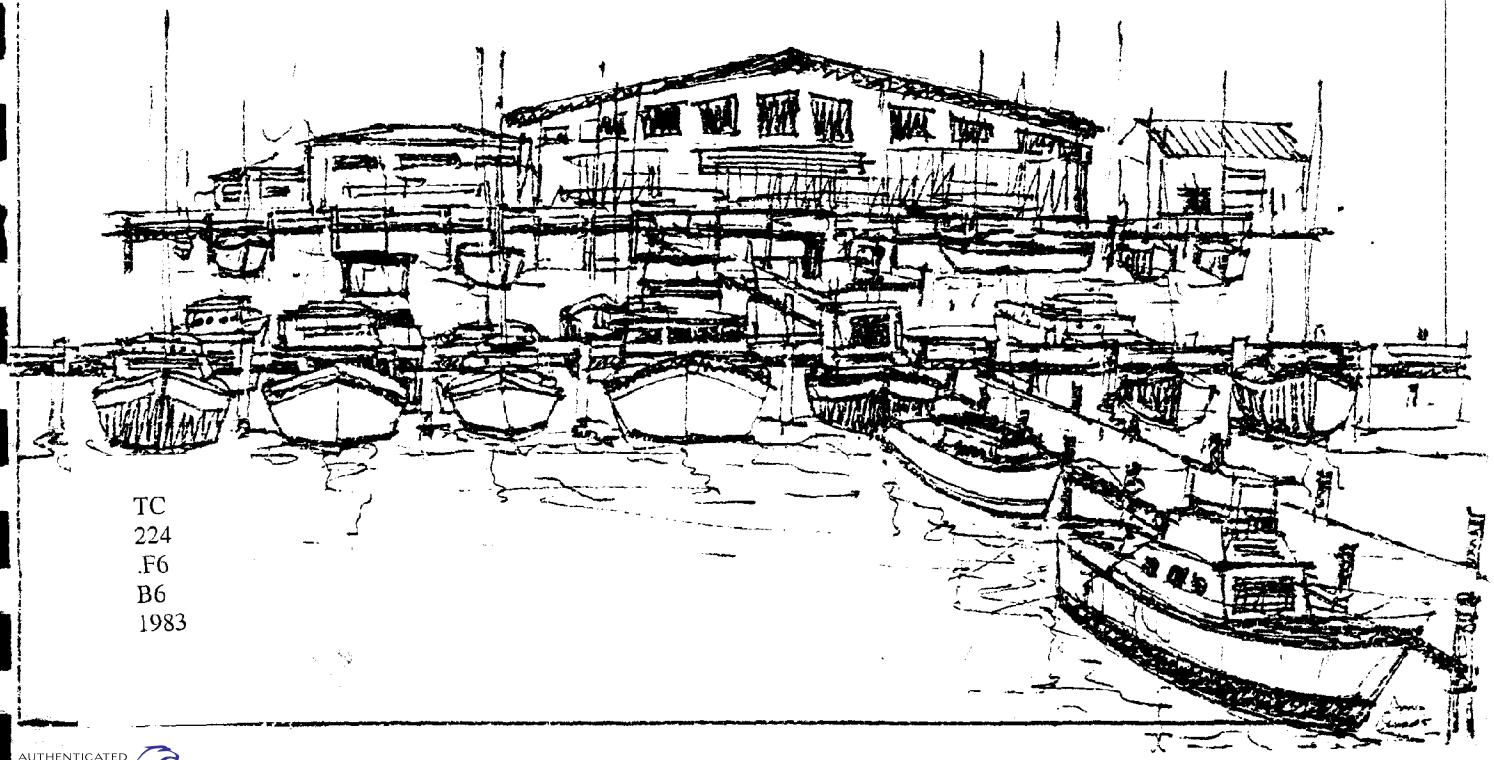
BLUE RIBBON MARINA COMMITTEE

Final Report

January 1983



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This public document was promulgated at an annual cost of $4,293.78, or $1.72 per copy to inform the public of the final recommendations of the Blue Ribbon Marina Committee.

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January 1983

M E M O R A N D U M

TO: Governor and Members of the Cabinet

FROM: James C. Cato, Chairman James C. Cato
Blue Ribbon Marina Committee

SUBJECT: Final Report of the Blue Ribbon Marina Committee

This memorandum is to convey to you the final recommendations of the Blue Ribbon Marina Committee. These recommendations are the work product of the past year's activities and are in response to the charge given to the Committee to recommend a Marina Policy for Florida and a new formula for submerged land lease fees.

These recommendations result from several activities. First, a series of educational sessions were held during which the Committee heard input from the scientific community, state government representatives, and sectors of Florida's industry which will be affected by the Committee's recommendations. All existing information was reviewed and then preliminary recommendations were made. These recommendations were then reviewed and made final after consideration of input from the public as heard in seven public workshops held around the state.

The Blue Ribbon Marina Committee believes these recommendations are fair and equitable to the people of Florida as both owners and users of the submerged lands. We urge your adoption of these recommendations.

JCC:js

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HISTORICAL OVERVIEW

With statehood in 1845 came the state's ownership of sovereign lands with other wetlands added to state ownership by virtue of the Swamp and Overflow Act of 1850.

As the state began its early development, draining the lowlands was encouraged and given a high priority as being necessary for future growth. Then came the coastal development that required extensive dredge and fill that was, likewise, encouraged as necessary to build good water access and an economic base. During this period the state conveyed millions of acres of upland and submerged lands to private ownership.

It was not until the 1960's that Florida began to recognize the tremendous value of its sovereign lands and began reversing this policy. By the 1970's the trend was reversed and many far-reaching environmental laws were implemented. Next came wetlands protection and for the first time serious land management policies.

The legislature required that all state lands be inventoried, required state agencies to develop land management plans and created a Division of State Lands.

The commercial uses of Florida's submerged lands came under formal control on March 10, 1970 with the beginning of a leasing program for new commercial uses, while grandfathering in existing commercial uses.

There were many problems with the submerged land leasing program in the early 1970's, primarily due to the problems of determining a fair and equitable fee assessment. The original fee was arbitrarily set at two cents per square foot per year and considerable time and effort was expended over the years to improve the method of assessment, but all possibilities were unacceptable. In 1979, in the absence of an acceptable solution, the Governor and Cabinet as the Board of Trustees of the Internal Improvement Trust Fund increased the fees based upon the rate of inflation to 3.7 cents per square foot per year and charged the Department of Natural Resources with the responsibility to develop and recommend a more permanent and equitable method of assessment. Draft recommendations were developed and several public hearings held, but the recommendations were unacceptable because the basic premise of using upland property values itself created many inequities.

Early in 1982, the Governor and Cabinet again felt it necessary to increase the lease fees based upon the rate of inflation to 4.5 cents per square foot per year and at the same time appointed a Blue Ribbon Marina Committee to develop recommendations for a more comprehensive solution.

THE COMMITTEE

The Blue Ribbon Marina Committee membership includes representatives of county government, a regional planning agency, environmental interests, marine industries, marina owners, general citizenry, boating interests and developmental interests. The Governor and Cabinet appointed Dr. James Cato, Director of the Florida Sea Grant College Program as Chairman. Personnel of the Department of Natural Resources were designated to serve as staff.

THE CHARGE

The Governor and Cabinet charged the Committee with: 1) A complete review of Florida's marina policy—examining where new marinas shall be established, the development of a proactive policy determining marina needs, types of marinas, and location of these new or additional facilities; 2) the development of a policy to establish a new formula of submerged land lease fees taking into consideration an equitable rate structure which is fair to the people of Florida and to the marina operators, including a formula which would be adjusted according to the annual rate of inflation as well as taking into account a geographical difference for submerged land lease fees; and 3) recommendations for marina policy in aquatic preserves.

The Committee felt that, although they were charged with recommending equitable lease fees for state owned submerged land in general, due to the history of the charge and the expertise represented on the Committee, only lease fees for marinas and other vessel-related facilities would be considered. The Committee did not attempt to set fees for aquaculture activities, oil and gas exploration and development, stilt houses presently under lease, dead shell and other mining, nor subaqueous utility easements.

MEETINGS AND PUBLIC WORKSHOPS

To accomplish the charge, the Committee met monthly from May through October and held seven public workshops. A mailing list was compiled, and persons on the list were mailed agendas and summaries of all meetings. In addition, meetings and workshops were advertised in the Florida Administrative Weekly, and press releases were issued.

The first four meetings were designed as educational sessions for the members. Preliminary recommendations were developed in September and October, taken to public workshops in November, and finalized in December.

Below is a brief outline of the meeting agendas including location and topics covered, and the public workshop schedule.

May 6, 1982 - Tampa

- Administrative Procedures
- Staff Functions
- Discussion of Scope and Goals of the Committee
- Presentation of Reference Materials
- Development of a Work Plan

June 7-8, 1982 - Miami

- Presentation of Existing Marina Policy, Sovereignty Lands Rule, and Aquatic Preserves by Ted Forsgren, Chief, Bureau of State Lands Management, DNR

- Presentation on Federal, State, and Local Permitting Procedures and Requirements by Suzanne Walker, Chief, Bureau of Permitting, DER

- Presentation on Local Zoning Requirements by J. Ed Bell, Director of Building and Zoning, and Anthony J. Clemente, Director, Environmental Resource Management, Dade County.

- Presentation on the Principles and Methods of Land Valuation by Ken Howell, Appraiser Administrator, Division of State Lands, DNR

- Discussion of Various Formulas Considered Concerning Assessment of Sovereignty Submerged Lands Lease Fees, by Lee Thompson, Land Planner, DNR

July 7, 1982 - Jacksonville

- Discussion of Current Florida Sea Grant Marina Study by Dr. J. Walter Milon, Assistant Professor, Department of Food and Resource Economics, University of Florida

- Discussion of Office of Coastal Zone Management Funded Marina Inventory by Al Gregory, Recreation Planner Supervisor, Division of Recreation and Parks, DNR

- Identification of Additional Research and Statistics Needs

- Analysis of State Lands Management Including Administrative Structure and Fees in Other States by Ted Forsgren, Chief, Bureau of State Lands Management, DNR

August 9-10, 1982 - Orlando

- Presentations by Various Interest and User Groups on Marina Policy and Submerged Land Lease Fees. Invited Participants Included:

  - Ms. Jami Grosseck, Sailfish Marina, Palm Beach Shores
  - Dr. Ernie Estevez, Mote Marine Laboratory, Sarasota
  - Ms. Julie Morris, Sierra Club
  - Mr. Leo Cooper, City Fish, Inc., Marathon
  - Mr. John Moran, Spencer Boat Company, West Palm Beach
  - Mr. Dan Farley, Consultant, Jacksonville Shipyard
  - Ms. Carol Rist, President, Metro-Dade League of Women Voters
  - Mr. Hamlin B. Jones, Seafood Shack Restaurant, Cortez
  - Mr. Gerald Dake, Stockton, Watley, Davin & Company, Jacksonville
  - Mr. Henry Talton, Research Engineer, City of Ft. Lauderdale
  - Mr. John MacKroth, Managing Director, Jacksonville Port Authority

September 9-10, 1982 - Ft. Lauderdale

- Discussion and Adoption of Preliminary Recommendations For a Marina Policy and Submerged Land Lease Fees

October 19-21, 1982 - Ft. Walton Beach

- Continuation of Discussion and Adoption of Preliminary Recommendations

November 15-18, 1982 - Public Workshops

  - Jacksonville
  - St. Petersburg
  - Melbourne
  - Ft. Myers
  - Dania
  - Key West
  - Ft. Walton Beach

December 1, 1982 - Tampa

- Consideration of Public Workshop Input
- Final Recommendations

MARINA AND SITING POLICY

Background

Florida is a boating state. Over 500,000 vessels are registered in Florida and many vessels registered outside the state visit seasonally to make Florida their hailing port. There is one Florida registered boat or vessel for each 19 residents, or one for each seven households. Florida ranks first in the nation in boat sales but fifth in registration, since non-powered boats are not registered.

Preliminary results from a 1981 Florida Sea Grant study of the marine industry identified 477 private marinas and boatyards, 24 public marinas and 51 yacht clubs. An undetermined number of additional berthing facilities in the form of private homeowner docks and docks for boats associated with condominiums, motels, hotels and private clubs also exist, but were not included in the study. Employment at the 501 private and public marinas numbers almost 10,000 to serve the almost 70,000 slips in those two types of facilities. Preliminary results indicate that during 1981, the wetslip occupancy rate in public marinas was over 95 percent and for private marinas 93 percent. This occupancy rate indicates complete slip utilization considering slips for transients and demand for slips other than the available size. Eighty-six percent of public marina business and 69 percent of private marina business is with Florida residents. The remainder is with visitors from outside the state.

Florida's coastline, and the shoreline of the state's navigable lakes, rivers, and streams represent an extremely valuable asset. These resources provide recreational opportunities for the public and are renewable in many ways. However, Florida's environment is limited in its capacity to support human activities without some damage to the environment.

Marinas, boating, and all forms of development and use place demands on these resources. However, marina and boating uses are critical in that they are water-dependent activities in contrast to many uses which are not water dependent. While there is no comprehensive statewide inventory of marina and docking facilities, it is known from recent limited studies that significant amounts of submerged lands being used for private or commercial purposes are not under lease. This is primarily the result of the historical exemption for private residential docking, the grandfather clause exemption from leasing procedures and private ownership of some submerged lands.

The survival and development of the marine industry, its dependence upon submerged land use and the potential conflict associated with the necessary environmental maintenance of those submerged lands necessitates the recommended statewide marina policy.

Statewide Marina Policy

The Blue Ribbon Marina Committee recommends that a statewide marina policy be adopted that recognizes the tremendous values of the submerged lands of the state and the enjoyment and economic benefit that is derived from or dependent upon these valuable lands by the boating public.

It is the policy of the state to preserve the ability of the state's waters and submerged lands to meet public demands for food, recreation, and transportation. Environmental and aesthetic values must continue to be assured prior to the state authorizing encroachment and development.

The state encourages proper public uses of these valuable natural resources, but demands that environmental integrity be maintained to the fullest extent of the laws of the state. Preemptive uses shall only be granted on a fair and equitable basis with riparian rights considered.

It is the policy of the state that water dependent uses such as marinas and boating shall take precedence over non-water dependent uses. Extra caution and consideration shall be given prior to authorizing uses of areas with high environmental values such as aquatic preserves, Outstanding Florida Waters, and marine and estuarine sanctuaries, and important archaelogical sites.

Locations which are currently or have historically been used for water access or boating related activities should be maintained for such uses. New sites should be located near well flushed deep waters with reasonable access and sufficient public demand where possible. The state shall not allow significant degradation of its waters and shall recognize that each body of water is different in natural quality and strive to maintain proper balance of allowable uses against the ability of the resource to continue to support such uses.

Marina Siting Policy

Meaningful recommendations for site-specific locations of marina facilities are dependent on many factors including demand for such facilities and private entrepreneurial development. As discussed in another section of this report, comprehensive data to make these site-specific recommendations based on supply-demand-needs assessments and economics of the industry does not exist at this time.

The Committee feels, however, that general recommendations for marina siting can be made based on certain demographic, socio-economic and environmental characteristics.

- The state should give priority to the expansion of existing facilities, if environmentally sound, over new facilities. It should also encourage location of marinas in previously disturbed areas and in areas that have historically been used for marine related activities.
- Marinas should be located as close as possible to demand.
- The state should encourage marina development where adequate uplands are available to develop related support activities and allow for possible future expansion.
- Hurricane protection needs for marinas should be considered.
- Input from local government should be considered in evaluating lease requests.
- Location of marinas in highly productive habitat should be discouraged.
- Location of marinas in or near well flushed, deep water areas should be encouraged.
- Piling construction and other non-dredge and fill techniques should be utilized where possible to minimize habitat destruction.
- Pollution prevention including sanitation and spill containment needs should be assessed and safeguards required as appropriate.
- Impact upon state designated manatee sanctuaries should be considered. Particular marina locations or design features which threaten manatees in these sanctuaries should be discouraged.

LEASING AND FEE STRUCTURE RECOMMENDATIONS

Introduction

There are certain inalienable rights to proper use of public waters. However, these rights should not automatically include charging fees for private gain without compensation to the public owners.

The Committee recognized a fee based on the philosophy of generating monies to fund a state lands management program including necessary planning and management studies would be different than a fee based on the concept of generating monies for the public coffers from the use of a state-owned economic resource, that is the state-owned submerged lands.

The Committee agreed that one of the basis for charges for use of submerged lands should be the shared cost of funding a comprehensive sovereignty submerged lands management program within the Division of State Lands and that the actual fee on a square foot basis should be derived from that shared cost. Further, that the elements of the comprehensive sovereign lands management program should include adequate research and study, the preparation of management plans at a level of detail sufficient to project and identify the most environmentally desirable sites for the location of water dependent facilities, particularly in areas of environmental sensitivity where controversies and permitting delays are often prone to arise.

The 1982 Legislature redirected monies generated from state lands from the Land Acquisition Trust fund to the Internal Improvement Trust Fund to fund the Division of State Lands, including management and administration and protection, conservation and acquisition of state owned lands. The Internal Improvement Trust Fund is presently made up of revenue generated from the sale, lease, rental of state lands or the sale, lease or rental of products in, on or under state lands.

The leasing and fee structure recommendations of the Committee are presented below in three sections which reflect policy, management and actual fee consideration decisions. These recommendations are to be amendments and additions to the existing rules. If no recommendation is made on a particular subject, it is intended that the existing rule covering that subject remain in full force and effect. Recommendations adopted by the Governor and Cabinet requiring rule making will not become effective until such rules are promulgated pursuant to Chapter 120, Florida Statutes, which requires final approval by the Governor and Cabinet.

Basic Decisions Relating to Leasing and Fees

1. A lease or other formal approval should be required to use state-owned submerged lands.

Requiring a formal approval for all uses, even if at no charge, one-time charge or annual charge, would allow the state to identify the extent of use of submerged lands and put in place a mechanism for proper control and impact evaluations. In addition to leases, other forms of approval include licenses, consents of use, management agreements, easements, and registration.

Although the Governor and Cabinet have already expressed their desires that existing licenses be converted to leases, due to questions regarding the legality of such conversions that need to be resolved, that action has not yet been taken and continues to be reviewed by the Department of Natural Resources.

2. <u>There should be a charge for both revenue generating, income related use and non-revenue generating, non-income related use of state-owned submerged lands.</u>

Revenue generating, income related activity as defined in 16Q-21, F.A.C., means "an activity on sovereignty lands which produces income, through rental or any other means, or which serves as an accessory facility to other rental, commercial, or industrial operations. It shall include, but not be limited to, docking for marinas, restaurants, hotels, motels, commercial fishing, shipping, and boat or ship construction, repair and sales."

3. <u>There should be certain types of differential charges</u>.

4. <u>The differential should not be geographic</u>.

The question of whether or not a differential should be based on geographic considerations was discussed at great length before the final decision was made. A number of points were raised demonstrating that the issue was not a simple one.

The Committee questioned whether or not there was any public interest benefit in charging a differential rate from one end of the state to the other based on appraisals or some other theory of higher or lower value. Various concepts connected to the principle of highest and best use value all have extremely high overhead cost to implement and evaluation of the cost/benefit ratio makes these concepts less acceptable.

Although a high degree of interest exists for applying the geographic differential concept between urban and rural Florida, the Committee could find no cost effective basis on which to set up a geographic differential.

5. There should be a differential between revenue generating, income related uses and non-revenue generating, non-income related uses.

Commercial uses generate revenue and personal gain to owners of the commercial ventures. Non-revenue generating uses do not provide monetary gain to the user of sovereign lands. Thus, commercial uses should be required to pay a higher fee for using state-owned submerged lands.

6. Government uses for which a fee is charged should be treated the same as private uses for which a fee is charged.

If a government entity wishes to charge, they may, with income being used in their discretion in a localized manner, however, the appropriate lease fees are designed to ensure that the income is shared with all the people and used by state government in a state-wide manner.

7. There should be waivers or exclusions from payment of the fees for government or charitable organizations in the event that the proposed uses are in the public interest, water dependent and non-revenue producing.

8. There should be a differential in all or a part of an aquatic preserve specifically determined by the Governor and Cabinet based on a staff recommendation of exceptional environmental value.

The intent in the recommendation is to use fees collected in aquatic preserves for site-specific management needs that may be more intense than for areas not in aquatic preserves. There are two types of aquatic preserves—pristine and developed—and within one preserve there can be parts that are pristine and parts disturbed. The recommendation allows for consideration of those differences.

9. There should be a differential between water dependent and non-water dependent uses, with substantially higher charges for non-water dependent uses.

New non-water dependent uses should be prohibited, except in instances where the board determines that issuance of a lease for such use is necessary and in the public interest.

The concept of charging a higher fee for non-water dependent activities emphasizes the recommendations of the Committee that the state, through

every tool at its disposal should encourage the preservation of certain sites for water dependent activities that must be located in, over, or adjacent to the water.

Chapter 16Q-21, F.A.C., defines "water dependent activity as "an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or sovereignty lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or sovereignty lands is an integral part of the activity."

The rule also states that "activities on sovereignty lands shall be limited to water dependent activities only unless the board determines that it is in the public interest to allow an exception as determined by a case by case evaluation."

Under the definition, such activities as condominiums, pools, hospitals, restaurants, airports, motels and restaurants, if located over the water, are non-water dependent uses. However, docks associated with those uses are water dependent. The Committee's intent is to strengthen the current policy reflected in the rule, and to charge significantly higher fees for those cases that slip out from under the current general prohibition.

The Committee also feels that under such a proposed recommendation, and given current policy, a situation can exist in which two fees, one for the water dependent portion of a proposal, and one for the non-water dependent portion, if approved, could be assessed.

10. <u>There should not be a differential between direct and indirect income producing uses.</u>

Early in the state's leasing program, only direct income producing facilities were charged lease fees. Direct income producing was defined to include those docking facilities which were actually leased or rented to second parties. Later this was changed to include both direct and indirect income producing facilities. Thus, all docking facilities which were related in any way to a commercial facility, such as docks for motels and restaurants, were required to pay lease fees.

The Committee felt that both type uses pre-empted sovereign land, were equally important to the well being of the business and, therefore, were commercial uses for which equal fees should be charged.

Decisions Relating to Managing Leases

11. The term of the lease should be up to 25 years.

Chapter 16Q-21 states that all leases shall be for a term of 5 years and renewable at the option of the board or department. The rule further states "that the rate shall be automatically adjusted to a new rental fee upon adoption of a rule revising this rate. The adjusted rate shall be prospective for the remainder of the term of the lease."

Committee discussions relative to modifying the current lease term centered around its recognition of the business community's financing needs.

The Committee felt that it was never the intent of the Board of Trustees of the Internal Improvement Trust Fund to have a marina constructed with a five year lease, but rather the five year lease was an effort on their part to readdress the fee structure on at least a five year basis. Florida is the only state that has a five year lease. Other states have terms legitimately related to the amortization of an investment. Those states do, however, have a readjustment of the fee structure on at least a five year basis. The Committee felt that the ability to readjust the fee structure should be maintained.

The Committee agreed that a 25-year term would be optimum but discussed the merits of allowing or requiring shorter terms in certain instances.

A 25-year lease would provide the owner with something that is "saleable" if the lease is transferrable.

The Committee felt that a marina or other substantial structural facility that has an amortization of the investment is justified along 25 years, but recognized that there are leases for lesser things of a temporal nature such as a sunfish rental area that does not necessarily justify 25 years. The phrase "up to 25 years" is intended to allow for interim use situations.

12. Payment should be made within 90 days of Board authorization. However, upon written notice and request, payment may be delayed or deferred up to one year to allow the applicant to obtain necessary local, state and federal permits.

The Committee felt that because leases are only granted to the upland riparian owner or his legally authorized agent, and because no preemption takes place until construction begins, requiring the applicant to start paying the lease fee before he is able to start construction is unfair.

Rule 16Q-21, F.A.C., currently states that "initial payment of annual lease fee shall be made within 90 days of lease approval by the board. A validated lease will be transmitted to the applicant upon receipt of initial payment and acknowledgement of issuance of the Department of Environmental Regulation permit, where applicable."

Under the current policy, the term of the lease begins when the Governor and Cabinet approves it, but approval of the lease is not finalized until the applicant has the DER permit in hand. Normally, a lease is not agendaed before the Board until a letter of intent has been received from DER.

The Committee agreed that the term of the lease and the requirement for payment should not start until the document had been executed. In effect then, Board approval would give the applicant an "option" to execute the lease within a reasonable period of time (90 days) unless there were extenuating circumstances.

13. <u>There should be a one-time consent of use fee for non-revenue generating, non-income related uses which do not require a lease. Payment is due when document is executed.</u>

<u>Those uses required to pay the one-time consent of use fee shall have two years in which to do so. The Department of Natural Resources shall exhaust all reasonable means to ensure that affected persons are informed of this requirement.</u>

<u>In the event that a person fails to pay the one-time consent of use fee within the two year period, a payment of up to ten times the fee may be assessed.</u>

The one-time consent of use fee for non-revenue generating, non-income related uses, such as private residential docks, which are currently exempt, was discussed along the lines of a "registration" fee that would cover processing costs and assist in the funding of a proper management of state-owned submerged lands. The state would be issuing a document for inventory/identification purposes, but would not require a survey for those uses that now require only a consent of use, or require nothing from the state due to the fact that they fall below size thresholds.

The Committee also recognized that private docks, like other uses, do have some environmental impact, preempt use, and obstruct navigation to some extent.

This one-time consent of use fee would not apply to docks on submerged lands that are not owned by the State of Florida. It is generally understood for instance, that most canal systems originally dug out of uplands are not state owned.

14. The first year fee for new revenue generating, income related uses should be 120% of the appropriate base rate.

The Committee felt that the existing processing fee of $200 was inadequate to totally cover the cost of initial processing of the lease application. Instead of recommending an increase in application fees, the additional cost involved in processing was placed on a sliding scale by the recommendation that the first year lease fee be 120% of the base rate.

This extra fee is restricted to revenue generating, income related use since most application processing problems are associated with this particular type of use.

15. The fixed rate schedule shall be revised annually and increased or decreased based on the Consumer Price Index-All Items. The rate for all new leases shall be determined according to the fixed rate schedule for the year in which the lease is granted. The fee charged for individual leases shall be adjusted every five years according to the fixed rate schedule. A cap of 5% annually shall apply should the CPI rise or fall in excess of this amount.*

Past problems have been that the lease has not been long enough for financing purposes and that the applicant has not known what the lease fee would be from adjustment period to adjustment period. With an automatically adjusting fee schedule, the applicant could anticipate the maximum fee.

The Committee recommends 25-year leases, but feels that there should be an opportunity to adjust those fees within that span and recommends that individual adjustments be made in 5 year increments. Five year increments would be manageable and cost efficient from an administrative viewpoint.

The intent of the cap is to lend state support to marina operators for providing a valuable service. With a cap of 5% the applicant will know that the maximum increase he will pay is 30% at the end of his first five year increment period.

16. Any grandfathered facility sold or otherwise transferred after adoption of this rule shall be subject to the leasing provisions of the rule.

* Minority Report filed on this recommendation. See page 24.

Upon the effective date of rule changes resulting from the work of the Blue Ribbon Marina Committee, all grandfathered facilities shall be provided with a two year period within which to apply for an appropriate document of authorization for continued use of sovereign lands with no annual fee.

This document of authorization that would be issued to grandfather holder would guarantee continuation of use to a new owner even though status would change to a lease. The sale and transaction to be handled in the same manner as any other previously leased sovereign land.

Any owner of a facility that fails to apply for such authorization within a two year period shall be subject to the loss of any existent "grandfathered" rights. The Department of Natural Resources shall exhaust all reasonable means to ensure that affected persons are informed of this requirement.

A registration fee not to exceed that currently required by rule for submerged land leases may be charged for such registration.

Grandfathered non-water dependent uses shall be treated as water dependent uses when grandfather status is lost for any reason.

If a facility occupies sovereign submerged lands portions of which are exempted from payment by virtue of grandfathered status and portions of which are leased, and grandfathered status is lost pursuant to the recommendations of this Committee, the lease fee and rate schedule for the entire property shall be the appropriate base rate at the time the renegotiated lease is executed.

The Committee discussed at length the legal ramifications of doing away with the grandfather provision and was advised that DNR legal counsel believes that while the Governor and Cabinet could legally begin to impose a charge for those previously exempted areas, the manner in which the current exemption was handled and how it was applied would be critical. Each situation would probably be handled on a case-by-case basis.

The Committee agreed to retain the current rule provisions regarding grandfather clause which states, "Docks, piers, and other such structures on sovereignty lands in existence prior to March 10, 1970 shall be subject to the provisions of this rule commencing on January 1, 1998. Any expansions to such structures shall be subject to the provisions of this rule, if any expansion thereto requires the use of any additional sovereignty lands. It is the intent of this section to continue, unchanged, the grandfather clause provided in the previous Section 16Q-17.14(1)(a), (i), and (j), Florida Administrative Code."

They then opted to explore other means of eliminating the status over time.

The Committee feels that the grandfather exemption has resulted in an inaccurate means of inventorying submerged land use, and has generated unfair competition among marina owners. While the original grandfather provision was instituted to protect the owner who had a 20 or 30 year amortization schedule on his property, a new owner would know what a particular marina cost to operate including what state lease fees would be, and therefore the grandfather status on a facility should no longer apply if that property is sold.

Requiring grandfathered facilities to register in a reasonable time frame would provide a mechanism to identify grandfathered facilities for inventory purposes and would provide a means of determining when those facilities changed hands.

The Committee agreed that the owner of a grandfathered facility should be guaranteed the right to transfer that facility to a new owner, and that the new owner should be guaranteed continuation of use of the facility if the terms of the granted lease are met. Such leases should be treated more or less like "renewals" rather than "new" facility leases. The guarantees are consistent with the previous recommendation that currently used marina sites be maintained for such use.

17. <u>There should be a simple method for determining submerged lands lease fees.</u>

Site specific evaluations by experts which could include professional appraisers, accountants, attorneys and surveyors was deemed by the Committee to not be cost effective. Likewise, the Committee was aware of the fact that previous complicated systems based upon the assessed upland values had been rejected because of the great variance resulting in equitable fees.

The level of professional training and expertise required to properly evaluate submerged land highest and best use values is limited to a small segment of the appraisal profession. The complex nature of these type appraisals coupled with the absence of market data create additional problems for a fee system based upon site specific highest and best use appraisals.

Thus, the Committee recommended a statewide base rate with various differentials between uses and environmentally sensitive areas.

Decisions Relating to Actual Fees

Introduction

Since the Committee agreed that the cost of funding a comprehensive sovereignty submerged land management program should be derived from a shared cost to all users, the cost of such a program became one of the prime considerations. It was estimated from budget documents that $500,000 with built-in growth would adequately fund the desired program.

The following fee recommendations reflect this policy.

18. The base rate for all uses requiring a lease should be 5¢ per square foot per year. *

19. There should be a discount of 2¢ per square foot per year for all uses requiring a lease that are open to the public on a first come, first served basis. *

20. An additional 20% of the base rate should be charged the first year to cover the additional processing costs for revenue generating, income producing uses. The total fee for the first year would thus be 120% of the base rate.

21. The rate of fee increase shall be directly tied to the Consumer Price Index-All Items with a cap of 5% annually for all increases or decreases. *

22. There should be a maximum differential lease fee of up to three times the then-existing base rate in all or part of an aquatic preserve which has exceptional environmental value as specifically determined by the Governor and Cabinet based upon a staff recommendation.

23. In the event that new non-water dependent uses are permitted, the fee should be ten times the base rate or an amount equal to the appraised value of adjacent uplands, whichever is greater.

* Minority Report filed on this recommendation. See page 24.

24. All non-income producing, non-revenue generating uses not requiring a lease should pay a $50 one-time consent of use.

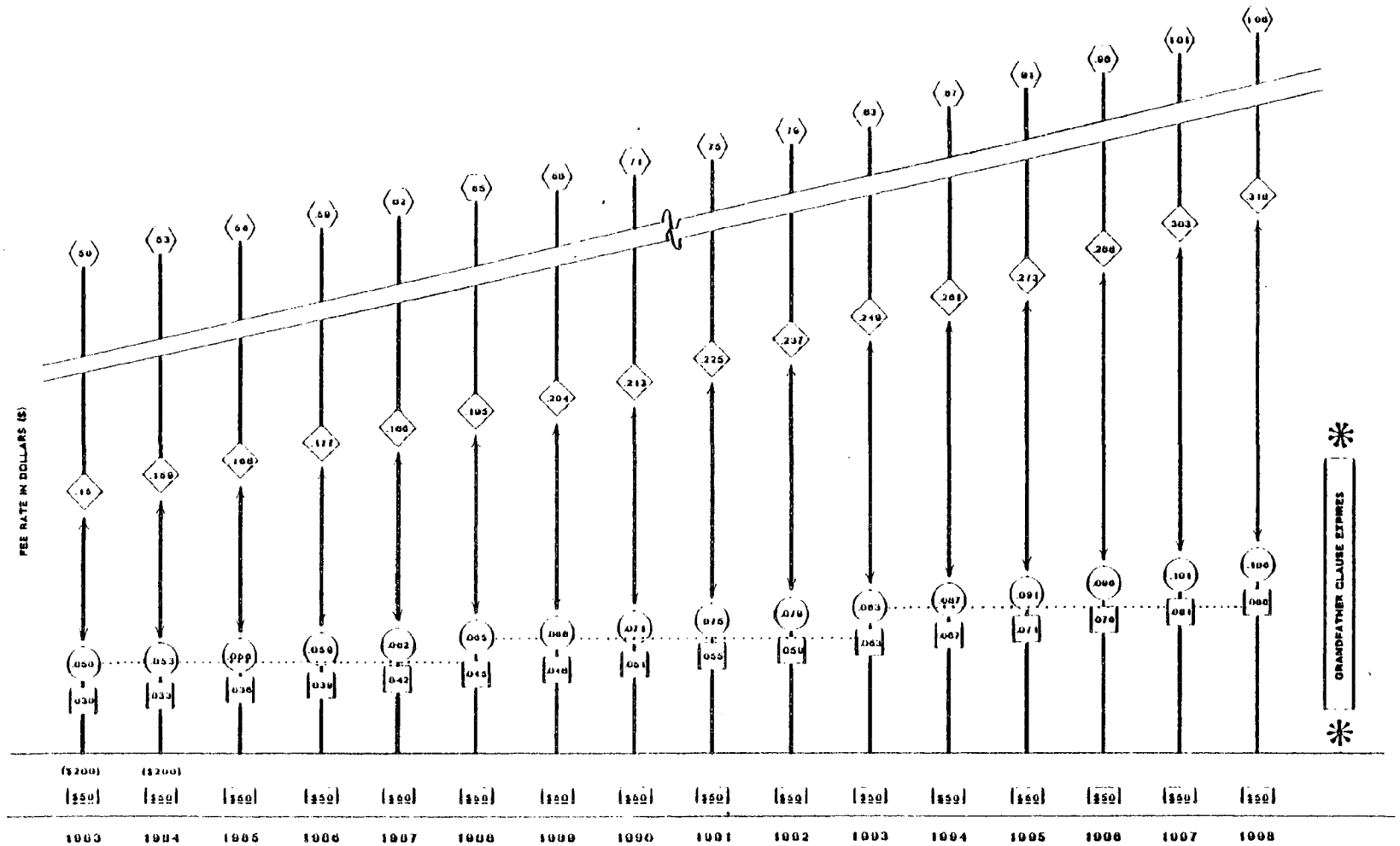
Those uses required to pay the $50 consent of use fee should not be required to pay any other application fees.

All non-income producing, non-revenue generating uses requiring a lease should pay the applicable lease fee on all pre-empted area.

25. All holders of grandfather status for facilities should pay a $200 registration fee for such facilities.

PROPOSED FEE SCHEDULE

(PROJECTED WITH A 5% CAP)



PUBLIC MARINAS*

BASE RATE*

AQUATIC PRESERVES*

NON-WATER DEPENDENT*

GRANDFATHER REGISTRATION-ONE TIME FEE PAYABLE ANYTIME WITHIN 2 YEARS

NON-INCOME PRODUCING REGISTRATION-ONE TIME FEE

15 YEAR LEASE ILLUSTRATING PROJECTED COST INCREASES

SPECIFIC RATE TO BE SET BY GOV. AND CABINET AT OR BETWEEN THE BASE RATE AND THREE TIMES THE BASE RATE IN ALL OR PART OF AN AQUATIC PRESERVE WITH EXCEPTIONAL ENVIRONMENTAL VALUE

* ADD 20% FOR FIRST YEAR ON ALL REVENUE GENERATING LEASES

INFORMATION NEEDS

In addition to recommending a marina policy and the establishment of a formula for assessing equitable submerged land lease fees, the Governor and Cabinet also charged the Blue Ribbon Marina Committee with developing a pro-active policy determining marina needs, types of marinas and location of these new or additional facilities.

Early in its work, the Committee reviewed two current marina related studies—one in the proposal stage being developed by the Division of Recreation and Parks of the Department of Natural Resources to be funded through the Coastal Zone Management Program, and one nearing completion being conducted through the Florida Sea Grant Program—and briefly discussed information available from previous studies.

The members felt that while they could make general recommendations for marina siting as stated in the Marina Siting Policy of this report, they lacked the comprehensive supply-demand-needs assessment and economics of the industry data necessary to make site specific recommendations.

As one method of emphasizing the marina inventory needs recognized by the Committee, the Coastal Zone Management grant proposal was tailored to include those data the Committee felt of greatest important to their work, particularly the identification of ownership of submerged lands, that is, privately owned, privately grandfathered in, and sovereignty leased.

The Committee recommends the following:

- completion of the Coastal Zone Management grant study
- fundamental marina design criteria be developed that properly meshes the needs of the marina with the needs for environmental protection
- state and local government responsibilities in marina siting be delineated
- inclusion of comments on siting of water dependent uses in the coastal zone element of local comprehensive plans
- plans for analyzing and considering cumulative impacts of marina siting be implemented

The Committee feels that accomplishing the above-mentioned recommendations should finally lead to the identification of what level of use can be made of a body of water while still maintaining the quality of use of that body of water and the quality of the water itself.

RECOMMENDATIONS THAT REQUIRE LEGISLATIVE ACTION FOR IMPLEMENTATION

- The Committee recommends that local governments bordering on navigable waters should be required by the Legislature to incorporate an element in their local government plans relating to water dependent activities such as marinas, shipyards and other uses which by their nature must be located adjacent to navigable waters.

- The Committee recognizes that due to problems such as understaffing, DNR and DER have been far too slow in processing applications, and recommends that both DNR and DER be sufficiently staffed to significantly expedite the marina and sovereignty land lease and permitting processes.

  Close cooperation between DNR and DER should be mandated by the Governor, the Cabinet and the Legislature to assure streamlining of the permitting and state lands approval process.

  The DNR and the DER should use the same method to measure pre-empted area for leasing and permitting purposes. The method used should be along the same lines as that presently being used by the DNR.

- The Committee recommends that the Legislature approporiate increased funding for marine law enforcement activities.

- The Committee recommends that the Legislature require all vessels to be registered and registration fees be increased to facilitate increased law enforcement efforts, and to fund acquisition of waterfront lands for recreational and public marine facility uses.

- The Committee recommends that the Legislature establish a "Bluebelt" ad valorem tax relief mechanism for the encouragement of water dependent facilities and in recognition of the fact that land management for sovereign lands resides primarily at the state rather than at the local level. Improvements located on sovereign lands under authorization by the Trustees of the Internal Improvement Trust Fund should be exempted from ad valorem taxation.

DEFINITIONS

Aquatic Preserve: an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition. Thirty-one aquatic perserves are established by Chapter 258, Florida Statutes. Four additional aquatic preserves are established by separate acts of the Legislature.

Consent of Use: a non-possessory interest in sovereignty lands created by an approval which allows the applicant the right to erect specific structures or conduct specific activities on said lands.

Easement: a non-possessory interest in sovereign lands created by a grant or agreement which confers upon the applicant the limited right, liberty, and privilege to use said lands for a specific purpose and for a specific time.

Estuarine Sanctuary: a federally designated quality estuarine area set aside for scientific research and public education. Management is administered through the state through the National Oceanic and Atmospheric Administration. Florida currently has two estuarine sanctuaries—Apalachicola River and Bay National Estuarine Sanctuary, and Rookery Bay National Estuarine Sanctuary.

First Come, First Served: Any water dependent facility operated on the sovereign lands of the state the services of which are open to the general public on a first come, first served basis. This is intended to cover services offered to various types, classes or groups of public users and such service need not be comprehensive. The service offered may be a specialty service such as boat repair, seafood purchasing, marine slip rentals or shipping terminals as long as they are open to the general class of users without any qualifying requirements such as club membership, stock ownership, etc.

Lease: an interest in sovereignty lands designated by a contract creating a landlord-tenant relationship between the Board as landlord and the applicant as tenant whereby the Board grants and transfers to the applicant the exclusive use, possession, and control of certain specified sovereignty lands for a determinate number of years, with conditions attached, at a definite fixed rental.

Management Agreement: a contractual agreement between the Board and one or more parties which does not create an interest in real property but merely authorizes conduct of certain management activities on lands held by the Board.

Marine Sanctuary: a federally designated ocean area set aside to restore conservational, recreational, ecological or aesthetic values. Management is administered through the state through the National Oceanic and Atmospheric Administration. Florida currently participates in the management of Key Largo Coral Reef National Marine Sanctuary and Looe Key National Marine Sanctuary. Both sanctuaries are outside state boundaries.

Non-Revenue Generating, Non-Income Related Use: those uses not included in the definition of revenue generating, income related use.

Non-Water Dependent (Activity): all other activities not included in the definition of water dependent activities.

Outstanding Florida Waters: those bodies of water designated in accordance with and contained in Section 17-3.041, Florida Administrative Code.

Registration: a method for identifying and verifying location and number of existing and new docking facilities.

Revenue Generating, Income Related Use: an activity on sovereignty lands which produces income, through rental or any other means, or which serves as an accessory facility to other rental, commercial, or industrial operations. It shall include, but not be limited to, docking for marinas, restaurants, hotels, motels, commercial fishing, shipping, and boat or ship construction, repair and sales.

Sovereignty Lands: means those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, under navigable fresh and salt waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.

Water Dependent (Activity): means an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or sovereignty lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or sovereignty lands is an integral part of the activity.

SINCE NINETEEN HUNDRED "THE VOICE OF CONSERVATION"

December 3, 1982

Don Duden
Assistant Executive Director
Department of Natural Resources
3900 Commonwealth Blvd.
Tallahassee, Fla. 32303

Dear Don:

This letter constitutes my "Minority Report" concerning the recommendations of the Blue Ribbon Marina Committee, of which I am a member.

On balance, I think that the recommendations are strongly in the public interest, and responsive to the charge given the committee by the Governor and Cabinet. I must, however, state my concern and alternative recommendations relative to one aspect of the Committee's recommendations.

The Committee early in its deliberations adopted a general policy that the basic purpose for charging fees for the use of sovereign lands should be linked to funding the submerged lands management programs of the Division of State lands. In response to the pro-active charge given the committee by the Trustees, the Committee further stated (page 8 of the workshop draft report) that funding of the Division of State Lands from these fees should be adequate to support "... the preparation of management plans at a level of detail sufficient to project and identify the most environmentally desirable sites for the location of water dependent facilities, particularly in areas of environmental sensitivity where controversies and permitting delays are often prone to arise".

Based on the budget figures produced by the Division of State Lands, I seriously doubt that the fee structure, of $.03 per square foot for marine facilities which serve the public on a first come, first served basis, and $.05 per square foot as the base rate for all other uses which require a lease, is adequate to generate the funds needed to do the detailed plan development referenced above, as well as provide adequate staffing for the responsive processing of submerged land use requests, which was another concern of the Committee.

Further, the 5% cap per year proposed to be placed on lease fee escalation is in conflict with the 10% inflation figure used by the Division of State Lands in projecting its basic submerged lands management budget needs.

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As I urged at various stages during the Committee's deliberations, including the final meeting, I think a higher set of lease rates is necessary.

I urge that a rate of $.04 per square foot be adopted for marine facilities which serve the public on a first come, first served basis, and that a rate of $.06 be adopted as the base rate for all other uses which require a lease.

In additon, I urge that an annual escalation cap of from 8 to 10 per cent be adopted to replace the 5% cap proposed by the majority of the committee.

With the above requested changes, I can strongly endorse the entire report, and urge its approval by the Cabinet.

Sincerely,

Charles Lee
Vice Presicent

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