AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MAY 3, 2005

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Item 1 **Kappa Alpha Corporation Option Agreement/Florida Board of Education/ FSU**

REQUEST: Consideration of an option agreement to acquire 0.244 acre for the benefit of the Florida Board of Education and Florida State University from Kappa Alpha Corporation.

COUNTY: Leon

APPLICANT: Florida State University (FSU)

LOCATION: Section 35, Township 01 North, Range 01 West

CONSIDERATION: $350,000

PARCEL	ACRES	APPRAISED BY Wright (11/29/04)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Kappa Alpha	0.244	$357,000	$357,000	$120,000*	$350,000** (98%)	90 days after BOT Approval

* The parcel, also known as "FSU parcel 169", was acquired by seller in October 1994.
** $33 per square foot

Noted Features of Subject Property:
Property is 10,625 square feet with 95 feet of frontage on Jefferson Street.
Property is zoned for university transition with future land use of residential & neighborhood commercial.
Two story brick single-family residence containing 3,383 square-feet which was converted to a fraternity house.
Building was constructed in 1939 and in overall very poor condition and will be removed.

STAFF REMARKS: The acquisition was negotiated by FSU. Funds for the acquisition were appropriated during the 1994-1995 Legislative session and are still available for use by FSU for acquisition and costs associated with this purchase. Although the Board of Trustees will have no financial responsibilities in this acquisition, title to the property will be conveyed to the Board of Trustees at closing, pursuant to section 1001.74(31)(c), F.S.

The property is improved with a two-story brick building. The building contains approximately 3,383 square feet. FSU plans to use the property to expand student life facilities currently contiguous to the property.

The seller has opted to refrain from the financial responsibility to correct any discrepancies stated in the environmental site assessment. Department of Environmental Protection, Division of State Lands, staff has already ordered the Phase I environmental site assessment but won't have the results prior to the Board of Trustees consideration. FSU has taken this into consideration and agrees to these terms as specified in the contract.

All mortgages and liens will be satisfied at the time of closing. In the event the commitment for title insurance, to be obtained prior to closing, reveals any encumbrances that may affect

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the value of the property or the proposed management of the property, staff will so advise the Board of Trustees prior to closing.

A title insurance policy, survey and environmental site assessment will be provided by the acquiring agency prior to closing.

This property will be managed by FSU as part of the existing campus.

(See Attachment 1, Pages 1-37)

RECOMMEND APPROVAL

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Item 2 **Franks Option Agreement/Florida Keys Ecosystem/Grassy Key Florida Forever Project**

REQUEST: Consideration of an option agreement to acquire 44.4 acres within the Florida Keys Ecosystem/Grassy Key Florida Forever project from Harry Franks, Paul Franks and Daniel Franks.

COUNTY: Monroe

LOCATION: Section 19, Township 65 South, Range 34 East

CONSIDERATION: $600,000

PARCEL	ACRES	APPRAISED BY Johnston (10/24/04)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Franks	44.4	$600,000	$600,000	*	$600,000** (100%)	120 days after BOT Approval

* Seller inherited the property in 1962
** $13,513.51 per acre

Noted Features of Subject Property:

Property has been valued based upon land use regulations in effect as of January 1, 1996.
An estimated seven units would be allowed; however, the appraised value is based on four residential units.
Property has access from and 715 feet of frontage along US Hwy. #1.
Property has 600 feet of frontage on the Atlantic Ocean, within the City of Marathon.
The parcel is level with the closest 11.74 acres to US Hwy. #1 being considered as uplands.
As an oceanside property on Grassy Key the subject is within recognized Marine Turtle Nesting habitat, with the most common turtle seen in the Marathon area being the Atlantic Loggerhead.

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on February 16,

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2005. The project contains 11,641 acres, of which 3,117.61 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 8,478.99 acres, or 73 percent of the project, will remain to be acquired. This parcel will be purchased with Save Our Coast funds. Also, this acquisition will return sovereignty submerged lands previously owned by the state to state ownership again.

On May 22, 1956, the Board of Trustees approved a sale of 30 acres of sovereignty submerged lands to Walter and Verona Ellinger for $3,000. The property was then inherited by Harry, Paul and Daniel Franks on August 3, 1962. The property has been marketed for sale many times over the past several years, most recently in 2003 for $675,000.

All mortgages and liens will be satisfied at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to the Department of Environmental Protection (DEP) the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Therefore, DEP staff will review, evaluate and implement an appropriate resolution for any title issues that arise prior to closing.

A title insurance policy, a survey, and an environmental site evaluation will be provided by the purchaser prior to closing.

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

The property will be managed by DEP, Division of Recreation and Parks, as a part of the state park system.

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 2, Pages 1-55)

RECOMMEND APPROVAL

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Item 3 **BOT/National Park Service Management Agreement/Dry Tortugas National Park**

REQUEST: Consideration of a management agreement between the Board of Trustees and the National Park Service for certain submerged lands located within Dry Tortugas National Park.

COUNTY: Monroe

LOCATION: Submerged lands surrounding several small islands (keys), flats, and shoals located in the Gulf of Mexico near the western extremity of the Florida Keys, at approximately latitude twenty-four degrees thirty-eight minutes south, longitude eighty-two degrees fifty-two minutes west of Greenwich.

STAFF REMARKS: The State of Florida Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and the Department of the Interior National Park Service (National Park Service) have a long-standing disagreement concerning which party owns the submerged lands within the Dry Tortugas National Park (Park). This disagreement has prevented the National Park Service from fully implementing its management plan because they have not finalized the implementing regulations for the Park. Under the proposed Management Agreement, the parties agree to disagree about who owns the submerged land so the Park can finalize its implementing regulations for protecting the resources of the Park.

The history of this issue goes back to Florida's statehood. Title to lands below the mean high water line vested in the State of Florida upon entry to the United States on March 3, 1845. See, e.g., Pollard's Lessee v. Hagan, 44 U.S. 212, 230 (1845); Martin v. Waddell's Lessee, 41 U.S. 367, 410 (1842). The Submerged Lands Act of 1953 confirmed the states' ownership of submerged lands, with the exception of lands expressly granted by a state, lands expressly retained by the United States when the state entered the union, or "any rights the United States has in lands presently and actually occupied by the United States under claim of right." 43 U.S.C. § 1313(a).

On May 7, 1822, Congress passed an act appropriating funds to build lighthouses at various places within the United States, including the Dry Tortugas Islands. 3 Stat. 698 (1822). Subsequently some of the Dry Tortugas Islands were used for military purposes. By a September 17, 1845, Executive Order, Florida's Governor executed a deed of cession to the United States for the Dry Tortugas Islands, stating that these lands were reserved before statehood by the United States for military purposes. By a January 4, 1935, Executive Order, President Roosevelt established the Fort Jefferson National Monument on the Dry Tortugas Islands, confirming the intention to reserve the Dry Tortugas Islands for lighthouse purposes pursuant to the Act of May 7, 1822, but revoking all other previous Executive Orders and military reservations concerning the Dry Tortugas.

On October 26, 1992, Congress established the Park and abolished the Fort Jefferson National Monument. Title II, Pub. L. 102-525. By referring to a 1980 map, the 1992 law establishing

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the Park could appear to include adjacent submerged lands within the Park boundary. However, staff believes such an expansive ownership claim is unjustified, and that any express reservation, grant, or claim of right held by the United States only applies to uplands.

In collaboration with staff, the National Park Service has developed a management plan for the Park. The National Park Service's general policy is to issue management plans and regulations only for lands that it owns. It claims that it owns the submerged lands as well as the uplands in the Park, as referenced by the 1980 map; however, staff disagrees that the National Park Service owns the submerged lands in question.

The purpose of the proposed Management Agreement is to allow the National Park Service to manage submerged lands within the Park, in accordance with the management plan attached to the Management Agreement, without any relinquishment of the Board of Trustees' ownership. Nothing in the Management Agreement may be construed as an admission by either party regarding ownership of the submerged lands. In other words, the parties would agree to disagree about the ownership issue, while providing for management of the submerged lands in a manner to ensure the protection and preservation of significant natural and cultural resources. Pursuant to the attached Management Agreement, the National Park Service will consult with staff in drafting regulations specific to the Park. If the Board of Trustees does not concur with any such regulations, or updates thereto, the Board of Trustees has the option to terminate the Management Agreement.

(See Attachment 3, Pages 1-108)

RECOMMEND APPROVAL

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Item 4 **Mobro Marine, Inc. Recommended Consolidated Intent**

REQUEST: Consideration of an application for a five-year sovereignty submerged lands lease containing 606,161.21 square feet, more or less, for the purpose of constructing a marine railway for an existing commercial barge facility.

COUNTY: Clay
Lease No. 100003048
Application No. 10-149470-001-ES

APPLICANT: Mobro Marine, Inc.

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LOCATION: Section 38, Township 06 South, Range 26 East, in the St. Johns River, Class III Waters, within the local jurisdiction of the City of Green Cove

Springs
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speed Zone: No

CONSIDERATION: $120,518.95, representing (1) $94,567.32 as the initial lease fee computed at the base rate of $0.1342 per square foot, and including the 25 percent surcharge payment for the additional area; (2) $8,222.72 as lease fees in arrears, including interest, for the unauthorized use of 121,093 square feet of sovereignty submerged lands from January 1, 1999 through July 31, 1999; and (3) $17,500.00 as an administrative fine for the unauthorized use of sovereignty submerged lands. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable.

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 activities, which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

DEP previously submitted to the Board of Trustees a similar request by the applicant for (1) a modification of a five-year sovereignty submerged lands lease to increase the preempted area from 21,050 square feet to 324,362.86 square feet, more or less; and (2) the construction of a marine railway for an existing commercial barge facility. The Board of Trustees withdrew this request, on July 25, 2000, at the recommendation of DEP because the Florida Fish and Wildlife Conservation Commission (FFWCC) had concerns regarding the potential for the proposed marine railway to adversely affect the endangered manatee, and discrepancies remained over the proposed lease area and the actual amount of preemption of sovereignty submerged lands occurring at the facility.

The applicant is proposing to construct a pile-supported marine railway at its existing commercial barge repair and construction facility and lease 'after-the-fact' and henceforth

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Item 4, cont.

606,161.21 square feet of sovereignty submerged lands. The marine railway will be 200-feet-long by 50-feet-wide and will be used to move the applicant's largest barges onto the upland property for maintenance and repairs. The existing facility operations involve the mooring of barges for temporary storage and repairs and the mooring of associated support vessels. The facility has an existing dry dock platform (synchrolift), located near the center of the applicant's shoreline, that is used to lift barges out of the water for repairs and also to move barges onto the upland property for maintenance and repairs. The existing synchrolift was approved by the Board of Trustees on January 21, 1975, under marina license ML 10-30-3048, which authorized the preemption of 12,896 square feet, more or less, of sovereignty submerged lands. The marina license was subsequently converted to a sovereignty submerged lands lease which was renewed on January 22, 1985 for a five-year term. Upon expiration of this lease; however, no new valid lease instrument for this facility was executed.

Inspections of the facility by the former Department of Natural Resources (DNR), conducted April 6, 1987 and March 11, 1988, revealed that the applicant was preempting additional area beyond that authorized in the lease. A survey submitted by the applicant on April 4, 1988, described a preempted area of 21,050 square feet, encompassing the synchrolift basin and two concrete docks located on either side of the basin. The file does not indicate that a modified lease instrument, which would have incorporated the revised survey, was ever executed. However, DNR began to charge, and the applicant began to pay, annual lease fees for this preempted area.

On June 3, 1988, DNR notified the applicant, in writing, that the facility was not in compliance with the terms and conditions of the existing lease (effective January 22, 1985). The notice requested the removal of all vessels moored outside of the leased premises and removal of existing offshore cluster piles, or the submittal of an application to expand the lease area. The applicant submitted a lease modification request on or about August 1988. However, the application was eventually deactivated by DNR on March 14, 1989 for failure of the applicant to submit requested additional information necessary to complete the application. The file was sent to DNR's investigative section requesting a compliance inspection and appropriate enforcement proceedings, if necessary.

The DNR file does not indicate that any immediate enforcement actions were initiated, or that the file was reactivated, or that a new application was submitted. An inspection by DNR, on May 7, 1991, revealed that the actual preemption exceeded 21,050 square feet for which the applicant was being charged lease fees. A new survey, submitted by the applicant on March 18, 1992, described a preempted area of 212,107.88 square feet which encompassed the existing synchrolift area and an area of submerged lands along the eastern portion of the applicant's shoreline. DNR prepared a new 25-year extended term lease instrument, however, the instrument was not submitted to the applicant for signature, as staff believed that the applicant's actual preemption exceeded 212,107.88 square feet. Nevertheless, DNR and subsequently DEP sent invoices to the applicant for the yearly lease fees due for the 212,107.88-square-foot area, and

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Item 4, cont.

the applicant has paid the annual fees for the preempted area. DEP ceased issuing invoices in 2000; however, since the lease was not executed properly, although the yearly lease fees had been paid, a "tenancy at will" situation existed at this facility, pursuant to chapter 83, F.S., until the issuance of invoices ceased. The "tenancy at will" runs year-to-year as the applicant submits annual lease fees and DEP accepts payment.

The applicant submitted an application for an environmental resource permit in December 1998 to construct a marine railway. During DEP's review of the railway application and the project site, significant discrepancies were again found relating to the applicant's previously surveyed preempted area of 212,107.88 square feet, for which they had paid lease fees, and the actual preemption occurring at the project site. At the time, the actual preemption was estimated by DEP, based upon field observations, to be 333,662 square feet and a revised survey later submitted by the applicant described a preempted area of 324,362.86 square feet. The additional 112,254.98 square feet of preemption was occurring over a portion of submerged lands located along the applicant's western shoreline, immediately west of the synchrolift. The surveyed preempted area of 324,362.86 square feet was included in the applicant's request before the Board of Trustees on June 13, 2000 and July 25, 2000. This survey however, would be later revised as the actual preemption was determined to be greater than the amount originally requested by the applicant.

On February 4, 1999, DEP sent written notification of the unauthorized mooring activities to the applicant. DEP and the applicant entered into a temporary use agreement (TUA), which was effective August 1, 1999, for an estimated 333,662-square-foot area preempted by the facility operations. The expiration date of the TUA was August 1, 2000, and the applicant paid fees associated therewith for the period of August 1, 1999 through August 1, 2000.

On July 25, 2000, the applicant's original request was withdrawn from consideration by the Board of Trustees based upon DEP's recommendation. Subsequently, DEP reviewed a series of aerial photographs which documented approximately a 20-year history of preemption of sovereignty submerged lands beyond the 324,362.86 square feet originally requested. This additional preemption is waterward of the requested area, and it is used for the intermittent offshore anchoring and mooring of barges adjacent to piling clusters, and it is nearly double the preempted area. The applicant asserted in numerous discussions that the intermittent nature of this use was evidence that the area in dispute had not been preempted and that it was being used only for normal, federally protected navigational purposes. DEP has consistently found this argument to be without merit, and the applicant ultimately agreed to prepare a new survey which more accurately described the preemption occurring at the site. The applicant provided the revised survey on June 4, 2001, which includes a total preemption of 606,161.21 square feet, or 13.92 acres, more or less. The total preempted area in this new survey is contained in two parcels, Parcel 1 containing 485,068.21 square feet, which included the

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Item 4, cont.

212,107.88-square-foot area, and Parcel 2 containing 121,093 square feet. The preempted area in Parcel 1 includes, and is located to the north and east of, the synchrolift area, extending north approximately 900 feet and east 900 feet along the applicant's shoreline. The preempted area contained in Parcel 2 is located to the west of the synchrolift area, extending west approximately 650 feet along the applicant's shoreline.

Since the 121,093-square-foot area contained in Parcel 2 was not included in the non-executed 1992 lease, the applicant could have reasonably assumed that this area was not considered preempted and subject to the payment of lease fees. Therefore, DEP recommends that lease fees in arrears be assessed from January 1, 1999 to July 31, 1999 for the 121,093-square-foot area. The beginning date reasonably corresponds to the time the marine railway application was submitted and DEP informed the applicant of the need to lease this area. The ending date corresponds with the time period of authorization specified in the first TUA which was August 1, 1999 through August 1, 2000 and which TUA and subsequent TUA's have collected lease fees for this area.

The intermittent nature of the preemption beyond the 212,107.88-square-foot area and the 121,093-square-foot area has prevented staff from determining a specific time period during the 1980s and 1990s over which to assess lease fees in arrears. Amended TUA's, executed between DEP and the applicant have, however, collected those lease fees due for the entire 606,161.21-square-foot area as of September 25, 2001, and earlier TUA's have collected fees due for the estimated preemption of 333,662 square feet from August 1, 1999 to September 25, 2001. Lease fees are current through December 31, 2004.

Section 18-21.011(1)(b)3, F.A.C., requires a one-time surcharge equivalent to 25 percent of the base fee for all leases and new additional areas. File records indicate that the applicant was billed the 25 percent surcharge for the preemption of 212,107.88 square feet described in the unexecuted 1992 lease. However, the applicant has not been billed for the 25 percent surcharge on any preempted area beyond the 212,107.88 square feet, which is 394,053.33 square feet. Therefore, payment of $13,220.49 for the 25 percent surcharge, at the current base rate for 394,053.33 square feet, is included in this consideration. Further, DEP recommends imposing of an administrative fine in the amount of $ 17,500.

Chapter 253.77, F.S., requires that a person obtain authorization to use sovereignty submerged lands from the Board of Trustees prior to conducting any activity involving the use of sovereignty submerged lands. The applicant did not obtain such authorization to use all sovereignty submerged lands preempted by its facility and associated activities. Therefore, DEP is recommending additional measures to prevent future unauthorized activities on sovereignty submerged lands. DEP recommends the removal of all existing offshore cluster/mooring piles outside of the leased premises. DEP also recommends that the applicant adequately mark (i.e. with buoys or other suitable system) the lease boundaries to clearly delineate the limits of the leased premises. These two measures have been addressed as special

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Item 4, cont.

lease conditions. Further, staff is recommending that the sovereignty submerged lands lease, if approved, be limited to a one-year term during which DEP shall monitor the applicant's compliance with the conditions of the lease, including the removal of existing offshore cluster/mooring pilings located outside of the approved lease premises and the demarcation of the authorized lease boundaries. At the end of the one-year lease term, if the applicant has demonstrated compliance with the lease conditions, DEP would recommend that the Board of Trustees approve a five-year lease. Any further expansion of the facility must be approved by the Board of Trustees. This has been included as a special lease condition.

DEP's environmental resource permit does not authorize sewage pumpout facilities or liveaboards. Upland fueling facilities already exist at the facility and are authorized in the existing lease instrument. The recommendations of FFWCC regarding the protection of manatees are addressed in the permit and special lease conditions. The project was not required to be noticed, pursuant to section 253.115(5)(i), F.S.

A local government comprehensive plan has been adopted for this area, pursuant to section 163.3167, F.S.; however, the Department of Community Affairs (DCA) determined that the plan was not in compliance. In accordance with a compliance agreement between the DCA and the local government, an amendment has been adopted which brought the plan into compliance. The proposed marine railway is consistent with the adopted plan as amended according to a letter received from Clay County dated March 17, 1999.

In summary, this facility has operated without a proper lease for the past 15 years, and the only lease, it once had, covered only a small portion of the preempted area, although TUAs provided some but not complete coverage. The applicant submitted at least four surveys over the life of this case that failed to include the entire preempted area. Other external forces also caused delays including a change in the corporate structure of the applicant in 2003, which required the submittal of revised information necessary for the proper execution of a lease. DEP had requested that this updated information be provided in a letter dated June 18, 2004, however, the applicant did not submit the information until February 2, 2005. While there may have been past missed opportunities either for enforcement or preparation for Board of Board of Trustees' action, DEP is currently working to rectify the situation and get the facility under an appropriate lease and properly paying lease fees and abiding by conditions for the use of sovereignty submerged lands.

(See Attachment 4, Pages 1-27)

RECOMMEND APPROVAL OF A ONE-YEAR TERM LEASE SUBJECT TO SPECIAL LEASE CONDITIONS AND PAYMENT OF $120,518.95