

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
MAY 2, 2006

Item 1 City of Pahokee/Everglades Ventures Company, L.L.C. Recommended Consolidated Intent

REQUEST: Consideration of an application for a modification of a five-year sovereignty submerged lands lease containing 535,309 square feet, more or less, for the incorporation of additional docking structures with 108 slips within the existing lease area to be used in conjunction with an upland public recreation development.

COUNTY: Palm Beach
 Lease No. 500224016
 Application No. 50-0129049-009

APPLICANTS: City of Pahokee (City) and Everglades Ventures Company, L.L.C. (d/b/a Everglades Adventures RV & Sailing Resort)

LOCATION: Section 18, Township 42 South, Range 37 East, in Lake Okeechobee, Class I Waters, within the local jurisdiction of the city of Pahokee
 Aquatic Preserve: No
 Outstanding Florida Waters: No
 Designated Manatee County: Yes, without an approved manatee protection plan
 Manatee Aggregation Area: No
 Manatee Protection Speed Zone: No

CONSIDERATION: Six percent of the annual rental value from the wet slip rental area as approved by the Board of Trustees on May 13, 2003.

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. 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."

The applicants are proposing to expand the existing 116-slip docking facility, presently used in conjunction with the upland public recreation development, including a campground, restaurant, and boat repair facilities, by constructing five new piers with 108 additional slips, thereby creating a 224-slip facility for vessels ranging up to 50 feet in length. The applicants are also proposing to install a new sewage pumpout system that will provide service to each

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slip and will also accommodate transient vessels through a tie-in location at the previously permitted fuel dock (50-0129049-008). The sewage pumpout system will be tied directly to the City's public utility system.

A minimum of 90 percent of all of the slips will continue to be maintained on an open to the public, first-come, first-served basis, which is a special condition of the existing lease and will remain in the proposed lease modification. The slip rental terms will be for no longer than one year.

On May 7, 1956, the Board of Trustees issued a Use Permit to the City to use and control a parcel of Lake Okeechobee bottom related to an existing breakwater. The Use Permit authorized the City to "occupy, use, and control, for the benefit of the public" a parcel of lake bottom in and around the breakwater to afford protection to boats and other craft for navigation, refuge, wharfage, mooring, docking, and servicing. No lease fees were assessed to the City under the subject Use Permit. The adjacent state-owned uplands were also leased to the City on December 15, 1986, for the development and management of public outdoor recreation and related purposes.

On October 30, 2001, the City requested and obtained approval from the Board of Trustees to sublease the state-owned uplands to Everglades Ventures Company L.L.C. (EVC). The October 2001 approval of the upland sublease referenced the City's plans to request a submerged lands lease for the marina facility and for the subsequent sublease (or reassignment) of the submerged lands to EVC for operation of the marina.

On May 13, 2003, the Board of Trustees approved (1) the conversion of a use permit to a five-year sovereignty submerged lands lease, with a five-year renewal option subject to the Board of Trustees approving the additional five years; and (2) the modification of the fee structure to be leased strictly on six percent of the annual rental value from the wet slip rental area, because the city of Pahokee is designated as a Rural Area of Critical Economic Concern. The current lease was executed on April 6, 2004.

In September 2004, the marina was severely damaged by Hurricanes Frances and Jeanne. On May 18, 2005, an environmental resource permit (50-0129049-008) was issued to rebuild and reconfigure the previously existing marina, and the lease modification was approved by DEP under delegation of authority. On June 16, 2005, the Board of Trustees approved a lease modification to increase the preempted area from 401,362 square feet to 535,309 square feet, and construct a permeable rock breakwater.

DEP's environmental resource permit (50-0129049-009) authorizes sewage pumpout facilities, liveboards, and a fueling facility. There are no seagrasses at the subject site.

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The recommendations of the Florida Fish and Wildlife Conservation Commission (FFWCC) regarding the protection of manatees have been addressed in the permit and/or included as special lease conditions. Palm Beach County is a designated manatee county without an approved manatee protection plan, but deemed to be making significant progress by FFWCC.

The modified lease request was not required to be noticed due to an exemption for lease modifications, 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 the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan in compliance. The proposed action is consistent with the adopted plan, as amended, according to a letter received from the City on May 25, 2005.

(See Attachment 1, Pages 1-29)

RECOMMEND APPROVAL

Item 2 Mobro Marine, Inc. Lease

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 operating an existing commercial barge facility.

COUNTY: Clay
 Lease No. 100003048

APPLICANT: Mobro Marine, Inc. (Mobro)

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

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CONSIDERATION: \$83,347.17, representing the lease fee computed at the base rate of \$0.1375 per square foot. Sales tax will be assessed pursuant to section 212.031, F.S., if applicable.

STAFF REMARKS: On May 3, 2005, the Department of Environmental Protection (DEP) recommended the Board of Trustees approve a one-year lease for Mobro. The one-year term was justified by DEP due to Mobro's past failure over a 15-year period to appropriately address its need to obtain a sovereignty submerged lands lease. DEP would utilize the one-year term to monitor Mobro's compliance with the conditions of the lease, including: (1) the removal of all existing offshore cluster/mooring piles outside of the leased premises; and (2) the adequate marking of the lease boundaries to clearly delineate the limits of the leased premises. At the end of the one-year term, if Mobro demonstrated compliance with the lease conditions, DEP would recommend that the Board of Trustees approve a five-year lease. The Board of Trustees approved the recommended one-year lease on May 3, 2005.

Mobro has since completed items (1) and (2) and is currently not preempting beyond the existing lease boundaries. The lease will expire May 3, 2006 and Mobro is requesting renewal of the lease for a five-year term. No new construction activities are proposed.

DEP staff conducted a series of inspections of the facility during September of 2005 as well as during February and March of 2006. In addition to ensuring Mobro's compliance with the lease, DEP initiated a multi-media review of the facility for compliance with applicable DEP rules including air, industrial waste, solid waste, and hazardous waste. There were no water violations found during the inspections. It was relayed to DEP staff that the facility had conducted its own stormwater audit in December 2005 and, as a consequence, had to update its Stormwater Pollution Protection Plan (SWPPP). When Mobro's National Pollution Discharge Elimination System (NPDES) stormwater permit was reviewed as a part of the industrial waste review, it was noted that the SWPPP update was in progress and additional suggestions were made at that time. An air inspection was conducted within the same week with no violations found. In general, across all program areas, recommendations for minor deficiencies in operating practices observed were immediately implemented. DEP staff has noted committed cooperation by Mobro during this renewal process.

However, Mobro's facility was noted to have both hazardous and solid waste violations including: (1) faults with waste characterization sampling; (2) waste container control; and (3) improper disposal of both hazardous and solid waste. In regards to item (1), Mobro had failed to perform a hazardous waste determination on several waste streams. With respect to item (2), Mobro did not properly label all tanks and containers of used oil and used oil filters. Item (3) results from improper disposal of both aerosol cans and fluorescent tubes. Mobro's activities have resulted in a violation of section 403.727, F.S., which prohibits any hazardous

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waste generator, transporter, or facility owner or operator to violate or fail to comply with the provisions of DEP rules or orders. Section 403.727(1)(d), F.S., also states that it is unlawful to cause, create, suffer, or allow an imminent hazard to occur or continue.

Due to these recent violations, Mobro is not in compliance with lease condition 28 which states, "COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor." On April 5, 2006, in order to resolve these violations, Mobro entered into a Consent Order, which includes penalties in the amount of \$12,325.00, and shall correct the identified violations through corrective actions specified within, at most, 270 days from its effective date and until DEP issues a No Further Action Order or Site Rehabilitation Completion Order for these areas.

Mobro has been in operation since World War II and it continues to be a major employer for Clay County. Mobro has had a management change in the past two years that has expressed a renewed commitment to environmental stewardship. Mobro has taken the initiative in its waste minimization efforts by beginning to remove sunken barges that were occupying sovereignty submerged lands. The removal of these barges will create a positive benefit to the adjacent marsh by decreasing the potential of leaks or spills from the barges and prevent their further corrosion and should restore surrounding habitat to its natural condition.

The original approval of the one-year lease has tightened the focus on Mobro's compliance responsibilities. The addition of the multi-media review has broadened Mobro's understanding and commitment to State and Federal rules, statutes, and laws pertaining to its facility. DEP staff will commit to conducting quarterly inspections in order to monitor progress in completing corrective actions as well to ensure continued compliance. Mobro now appears to understand that remaining in compliance with Federal and State rules, statutes, and laws is ultimately its burden. DEP will continue to assist Mobro in improving its compliance as well as Best Management Practices. However, given Mobro's most recent non-compliance with the above-discussed rules, which was addressed in the Consent Order, and consequently its non-compliance with its lease, DEP staff recommends that the renewal of Mobro's lease be again limited to a one-year term. At the time to renew the next lease, Mobro has expressed interest in decreasing its total preempted area of sovereignty submerged lands once the previously mentioned removal of the barges is complete. The opportunity to monitor the corrective actions through multi-media reviews should solidify the facilities improved environmental stewardship making them more favorable for DEP to bring this item back to the Board to request a five-year term at that time.

Item 2, cont.

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 DCA and the local government, an amendment has been adopted which brought the plan into compliance. The facility is consistent with the adopted plan as amended according to a letter received from Clay County dated March 16, 2006.

(See Attachment 2, Pages 1-12)

RECOMMEND APPROVAL OF A ONE-YEAR TERM LEASE SUBJECT TO SPECIAL LEASE CONDITIONS AND PAYMENT OF \$83,347.17

Item 3 BOT/FIU/Declaration of Restrictive Covenants

REQUEST: Impose a Declaration of Restrictive Covenants on 194.991 acres of the Board of Trustees-owned property, currently under lease to Florida International University, for educational purposes.

COUNTY: Miami-Dade

LOCATION: Section 22, Township 52 South, Range 42 East

STAFF REMARKS: Florida International University (FIU) currently leases approximately 539 acres of Board of Trustees-owned property in Miami-Dade County under Board of Trustees' Lease No. 2727. The property was conveyed to the Board of Trustees through a series of deeds from Dade County (County), the City of Miami (City) and Inter-American Center Authority (Authority). The Main FIU Campus is comprised of 343.662 acres that the Board of Trustees obtained from the County and is subject to a deed restriction requiring that the property be used for the specific and sole purpose of constructing and operating a state university. The Biscayne Bay FIU Campus is comprised of the remaining 194.991 acres that were subsequently deeded to the Board of Trustees from the City and the Authority. However, these deeds had less restrictive language than the main campus acquisition. In an effort to be consistent with the intent of the conveyances and ensure that the property continue to be used for educational purposes, Department of Environmental Protection (DEP) staff is recommending the following restrictive covenant be placed on the remaining 194.991-acre parcel: "The Property shall be used specifically and solely for the purpose of developing, improving, operating, maintaining and otherwise managing the Property for Florida International University educational purposes."

Item 3, cont.

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

(See Attachment 3, Pages 1-16)

RECOMMEND APPROVAL

Item 4 DMS/Verizon Sublease/DOA

REQUEST: Consideration of a request for (1) a five-year sublease, with four additional renewal terms of five years each, between the Florida Department of Management Services and Verizon Wireless Personal Communications LP, for an Emergency 911 wireless cell phone tower on an approximately 0.15-acre parcel; and (2) delegation of authority to the Secretary of the Department of Environmental Protection, or designee, to approve additional Emergency 911 wireless cell phone tower sites involving non-natural resource lands.

COUNTY: Leon

APPLICANTS: Department of Management Services (DMS) and Verizon Wireless Personal Communications LP (Verizon)

LOCATION: Section 16, Township 01 South, Range 01 East

CONSIDERATION: \$19,200/first year payment, escalated at 4 percent per annum, payable quarterly

STAFF REMARKS: DMS and Verizon are requesting a sublease for installation of an Emergency 911 (E911) wireless communications tower at the Southwood Office Complex in the southeastern portion of the City of Tallahassee (City). Verizon is requesting an 80-foot by 80-foot parcel (0.15 acre) for the sublease area. This includes a ten-foot landscape buffer area around the site per the City's requirement. The tower will be a free-standing 120-foot-high tower. Also, the antenna support structure will accommodate the co-location of two additional antennas for future users.

Verizon is exempt from the City's zoning approval process for the tower construction, and Verizon will be obtaining a building permit from the City prior to commencement of construction. Section 10-425(b)(2) of the City's Land Development Code exempts towers located on government property or rights-of-way from the requirements of section 10-425. DMS and Verizon are not required to notice adjacent property owners pursuant to section

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253.115(5)(d), F.S., which states, "The notice and publication requirements do not apply to the lease or easement for any land when the land is being leased to a state agency." The requested parcel is within Board of Trustees' Lease No. 3885 with DMS.

Section 365.172(11), F.S., requires DMS to implement the E911 system. Furthermore, section 60H-9, F.A.C., allows DMS to negotiate leases and subleases for wireless communications facilities on state-owned property. Section 60H-9.003, F.A.C., specifically excludes properties acquired for state rights-of-way and transportation purposes. Pursuant to section 365.172(11)(f), F.S., "leases shall be granted on a space available, first-come, first-served basis," therefore the competitive bid process does not apply. Verizon is the first entity to request a wireless cell phone tower site at this location.

Additionally, section 365.172, F.S., authorized DMS to adopt rules for the terms and conditions and granting of any such leases. Subsequently, DMS adopted section 60H-9, F.A.C., entitled, "Lease or Sublease of State Owned Property for E911 System Wireless Communications Facility."

Section 60H-9.005(4)(c), F.A.C., states that DMS "shall negotiate reasonable fees for leasing State-owned property that reflect the market rate for the type of facility or geographic location of the property." DMS is requesting approval to enter into a sublease with Verizon in accordance with section 60H-9, F.A.C., and Verizon agrees to pay to the Board of Trustees rent in equal quarterly installments paid in advance, with the first year's payment totaling \$19,200, escalated at 4 percent per annum for the remainder of the term of the sublease. Rental amounts are detailed in Rider No. 2 of the sublease. Also, Verizon agrees to submit to the Board of Trustees the following additional payments: (1) the Board of Trustees' 50 percent share of any revenue from subsubleases or licensees to third parties pursuant to section 10 of the sublease, and (2) the negotiated increase in rent based upon Verizon's installation of new equipment pursuant to sections 13 and 14 of the sublease. All sublease and co-location payments received by the Board of Trustees as a result of the sublease are subject to a negotiated percentage share distribution to DMS. Upon receipt by the Board of Trustees, 50 percent of the gross sublease payment proceeds are to be submitted to DMS.

According to the Federal Communications Commission, the number of 911 wireless calls has more than doubled since 1995, totaling more than 50 million annually. Prompt delivery of 911 calls to public safety organizations benefits the public by promoting safety of life and property. Department of Environmental Protection staff is of the opinion that the proposed sublease for the E911 tower will enhance public communication efforts throughout the year and especially during the busy hurricane season in Florida.

(See Attachment 4, Pages 1-39)

RECOMMEND APPROVAL

Item 5 **FAU Board of Trustees Lease Agreement/Scripps Research Institute, Inc. Sublease**

REQUEST: Consideration of a request for (1) a 99-year lease agreement on 132.11 acres, more or less, to The Florida Atlantic University Board of Trustees; and (2) a subsequent 99-year sublease on 30 acres, more or less, to The Scripps Research Institute, Inc.

COUNTY: Palm Beach

APPLICANT: The Florida Atlantic University Board of Trustees (FAU)

LOCATION: Section 23, Township 41 South, Range 42 East

STAFF REMARKS: On December 15, 1997, the John D. and Catherine T. MacArthur Foundation (Foundation) donated 132.11 acres, more or less, in Jupiter, Florida, to the Board of Trustees with a restriction and reverter that the property be used for a public university campus site and education-related purposes or it shall revert to the Foundation. In May 1998, a 50-year lease (number 4189) was granted to FAU to manage the property as its North Palm Beach Campus. There are 42 years remaining on the 50-year lease.

The Scripps Research Institute (Scripps), a California non-profit public benefit corporation, is planning for a Florida headquarters and new biomedical research institution in Palm Beach County (County). On January 28, 2004, Scripps entered into a cooperative agreement with FAU for temporary use of a portion of its property for laboratory space until the new biomedical research institution could be built in phases. Phase I of the construction requires Scripps to sublease a 30-acre tract of land from FAU on which to construct its initial research laboratories. There will be three buildings on the property consisting of 360,000 square feet. Bonds issued by the County will fund the construction. In order for FAU to accommodate Scripps' long-term needs, FAU must have a 99-year lease. The 99-year lease term, if approved by the Board of Trustees, will enable FAU to sublease the parcel to Scripps for the same timeframe. Phase II of the construction of the biomedical research institution is proposed to be built on a private 70-acre parcel of land known as the Briger tract.

The Foundation has agreed that allowing Scripps to sublease the 30-acre parcel for its Florida headquarters and new biomedical research institution will be an appropriate use of the parcel in meeting the restriction and reverter placed on the property when it was donated to the Board of Trustees. The Foundation has also agreed to provide a recordable document to acknowledge its affirmation.

Pursuant to section 18-2.018(1)(a), F.A.C., the decision to authorize the use of Board of Trustees' uplands requires a determination that such use is not contrary to the public interest. Scripps will provide educational and research activities relating to biomedical sciences

Item 5, cont.

involving joint interaction of the faculty, staff and students of Scripps and FAU to encompass long-term, multi-project activities. For this reason, DSL staff believes that the lease and sublease are not contrary to the public interest.

Pursuant to section 18-2.018(3)(a)1., F.A.C., a lease shall not exceed a maximum term of 50 years unless the Board of Trustees determines the extended lease term is in the public interest. Prior to 1978, leases were granted for a term of 99 years. At that time, lease terms were reduced to 50 years to reflect the amortized life of most improvements. Since that time, there have been only three instances where the Board of Trustees has approved a lease term over the standard 50 years. The Department of Environmental Protection staff is of the opinion that an extended lease term is in the public interest and recommends a 99-year lease for FAU and a 99-year sublease for Scripps because of the substantial investment being made by the Florida legislature for the long-term scientific research being conducted, the ongoing doctoral program Scripps is creating as mandated by law in conjunction with the facility's research grant funding requirements on both company and doctoral programs, and the important economic impact the Scripps-FAU partnership will bring to the State of Florida.

Because the County is to pay for the construction of the buildings but will not be reimbursed for any construction costs, the County is requesting that it be added to the sublease so that if Scripps defaults on any of the provisions in the sublease, all interest in the sublease will be transferred to the County. In addition, on February 23, 2006 the Governor sent a letter to the County and cooperating municipalities listing the following plans and commitments that must be met. Below is the list of items and based on the report received from FAU and the County on April 13, 2006, the status of each item is noted below in **bold** letters.

- One hundred acres of land secured for Scripps:
 - In addition to the subject parcel that will be subleased, the 70-acre Briger tract must be acquired with no conditions to closing other than Board of Trustees action on the FAU 99-year lease and sublease, due diligence by the County, execution of the amended Grant Agreement and payment of the purchase price; **On April 18, 2006, County Commissioners voted to have Commissioner Aaronson negotiate unresolved contract terms with Scripps. The Grant Agreement has not been executed;** and
 - Access from the 30-acre Scripps sublease parcel to Central Boulevard must be secured prior to closing. **Driveway permit will be submitted in June 2006.**

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- A plan to secure eight million square feet of space for educational research and development uses to achieve the economic cluster including:
 - Execution of inter-local agreements among the County and all the North County municipalities to secure eight million square feet of space and to establish the mechanisms to complete the economic cluster; **Completed March 14, 2006;**
 - Formation of an advisory board consisting of local members; **Completed and the first meeting is scheduled for April 20, 2006;**
 - Arrangements for the receipt and expenditure of the \$3,000,000 authorized by the City of Palm Beach Gardens for economic development purposes; **Completed per Palm Beach County letter dated April 13, 2006;**
 - Adoption by the County and participating municipalities of ordinances addressing the problems related to the highest and best use of the properties inventoried and providing incentives for research and development uses; **The Master Interlocal Agreement was approved by the Board of County Commissioners on March 14, 2006. The Interlocal Agreement creates the Bioscience Land Protection Advisory Board providing for consideration of local comprehensive plan amendments to establish and protect bioscience research protection overlays;**
 - A plan by the County or participating municipalities to enter into developer agreements with local property owners to encourage educational research and development uses; **The North County municipalities have drafted a template for a Developer's Agreement. It is envisioned that each municipality will provide for specific incentives to encourage the execution of individual Developer's Agreements;**
 - Binding commitments to the County or others by Dyadic, which promised to provide incubator space; **No binding commitment; however, Dyadic is planning a site across the street from the FAU Campus. The Town of Jupiter staff is working with the private sector to prepare existing buildings to serve as incubator facilities and will provide resources for the development of incubator space in the cluster area;**
 - Identification of a specific site for a potential University Consortium near Scripps; **FAU and Scripps are working with the Town of Jupiter to develop recreational facilities on 10 to 15 acres of Town property to allow the recreational area previously identified on the campus master plan to be used for the University Consortium; and**

Item 5, cont.

- Draft legislation making any changes to the 'technology overlay' by any participating municipality subject to the approval of the Department of Community Affairs or some other entity of the State that will review such changes in light of its potential effects on the economic cluster. **Representatives from the state are evaluating changes to the statute after a meeting discussing the Bioscience Land Protection Advisory Board and efforts by county municipalities to protect industrial and Bioscience zoned lands from residential and commercial conversion. The Advisory Board will meet on April 20, 2006.**

- Binding commitments for:
 - \$5,000,000 in pledges by local businessmen for minority scholarships, job training, job placement, business support services, office space, etc; **Funding for the pledges made by local businesses continues to be coordinated by Commissioner Greene;**

 - A timeline for developing and maintaining 370 workforce housing units in Abacoa; **The Town of Jupiter has scheduled the following meeting dates related to the Abacoa Town Center, phase IV-site pan approvals schedule which will incorporate 396 workforce housing units:**

May 9, 2006 – Jupiter Planning & Zoning Commission
June 20, 2006 – Jupiter Town Council; and

 - Donation of 15 acres of land to FAU and Scripps from the Town of Jupiter. **It was not the Town's intent to donate 15 acres but rather to work with FAU and Scripps to develop recreational facilities on 10 to 15 acres of Town property to meet the needs of the three parties.**

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.

(See Attachment 5, Pages 1-48)

RECOMMEND APPROVAL