

**AGENDA  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
FEBRUARY 1, 2005**

\*\*\*\*\*

**Item 1 FSU/Tau Kappa Epsilon Fraternity, Inc. of Florida Option Agreement**

**REQUEST:** Consideration of an option agreement to acquire 0.29 acre for the benefit of the Florida Board of Education and Florida State University from Tau Kappa Epsilon Fraternity, Inc. of Florida.

**COUNTY:** Leon

**APPLICANT:** Florida State University (FSU)

**LOCATION:** Sections 35, Township 01 North, Range 01 West

**CONSIDERATION:** \$333,400

PARCEL	ACRES	APPRAISED BY Carlton (10/10/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Tau Kappa Epsilon	0.29	\$355,000	\$355,000	\$120,000*	\$333,400 (94%)	120 days after BOT Approval

\*Parcel which is also known as "FSU parcel 137", was acquired by seller in October 1989.

**Noted Features of Subject Property:**

- Located on the north side of College Avenue, one block west of FSU campus
- Zoned University Transition (university services uses)
- Land is 100 feet X 125 feet or 12,500 square feet
- One story frame residence constructed in 1940 with a two story addition added about 1960 still in overall fair condition
- Original building has 1,575 sq. ft. and the addition has 1,933 sq. ft. for a total of 3,508 sq. ft. of heated and cooled area

**STAFF REMARKS:** This 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 other 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 single-story building, as well as, a two-story addition. The building contains approximately 3,508 square-feet. FSU plans to use the property to expand student life facilities currently contiguous to the property.

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 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.

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

The acquisition is consistent with section 187.201(1), F.S., the Education section of the State Comprehensive Plan.

(See Attachment 1, Pages 1-31)

**RECOMMEND APPROVAL**

\*\*\*\*\*

**Item 2 Conservation Easement Process**

**DEFERRED FROM THE DECEMBER 7, 2004 CABINET MEETING**

**REQUEST:** Consideration of the conservation easement process

**STAFF REMARKS:** Pursuant to section, 259.041(11)(a), F.S., it is the intent of the legislature that public land acquisition agencies develop programs to pursue alternatives to fee simple acquisition and to educate private landowners about such alternatives and the benefits of such alternatives.

During the October 26, 2004, Board of Trustees meeting, Commissioner Bronson suggested the following points be brought forth for discussion and consideration:

- The goal of the state in negotiating conservation easements is to obtain the rights needed to protect the sensitive resources at the lowest possible cost, while ensuring the landowner will be able to continue working the land.
- There has been much discussion of changing the balance of rights under these easements and the relevant statutory provisions dealing with that issue. In some cases, landowners will agree to place more rights with the state, while others will not. The test for proposed easements is not whether the landowner signs over the majority of rights to the state, but whether the proposed easement contains the conditions to ensure protection of the resource the state seeks to protect at a reasonable cost.
- In negotiating easements, the Department of Environmental Protection should make further efforts to address areas of concern to the Board of Trustees in conservation easements.

When a project is proposed for addition to the Florida Forever acquisition list, it is frequently proposed as a conservation easement. In evaluating the proposal, before it is approved for inclusion on the list, staff visits the site and, along with Florida Natural Areas Inventory and with the guidance provided in section 259.105, F.S., determines the appropriateness of a conservation easement by evaluating all the natural and historic resources. The exact resources the state proposes to protect are identified for each project and, even more specifically, for each conservation easement to make sure that a conservation easement will be able to protect these resources.

(See Attachment 2, Pages 1-5)

**RECOMMEND APPROVAL OF THE CONSERVATION EASEMENT PROCESS**

\*\*\*\*\*

**Item 3 Davis Option Agreement/Conservation Easements/Monitoring Agency Designation/Boundary Survey Waiver/Management Policy Statement Confirmation/ Nokuse Plantation Florida Forever Project**

**REQUEST:** Consideration of (1) an option agreement to acquire two perpetual conservation easements over a total of 18,222 acres (17,670 purchasing and 552 to be donated) within the Nokuse Plantation Florida Forever project from M. C. Davis; (2) designation of the Department of Environmental Protection, Office of Environmental Services as the monitoring agency; (3) authority to waive a complete boundary survey; and (4) confirmation of the management policy statement.

**Board of Trustees  
Agenda - February 1, 2005  
Page Three**

\*\*\*\*\*

**Item 3, cont.**

**COUNTY:** Walton

**LOCATION:** Sections 19 and 30, Township 01 North, Range 16 West; Sections 01 through 03, 10 through 16 and 19 through 36, Township 01 North, Range 17 West; Section 06, Township 01 South, Range 17 West; Sections 20 through 29 and 32 through 36, Township 01 South, Range 18 West; Sections 01 and 12, Township 02 South, Range 18 West; and Sections 35 and 36, Township 02 North, Range 17 West

**CONSIDERATION:** \$18,200,000 (\$1,000,000 of which is federal funds)

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u>	<u>TRUSTEES'</u>	<u>OPTION</u> <u>DATE</u>
		<u>(08/05/04)</u>	<u>(08/05/04)</u>		<u>PURCHASE</u> <u>PRICE</u>	<u>PURCHASE</u> <u>PRICE</u>	
M. C. Davis	17,670	\$62,000,000	\$55,900,000	\$62,000,000*	\$23,471,000	**\$18,200,000 (29%)	*** May 31, 2005

\* Approved Appraised Conservation Easement Value is 78% of the Fee Value of \$80,000,000 and the Conservation Easement purchase price is 23% of the Fee Value of \$80,000,000

\*\* Subject and adjoining acreage totaling 23,909 acres were assembled between 7/18/00 and 10/31/03 for \$23,471,000

\*\*\* \$1,030 per acre overall (Federal Funds \$3,509 price per acre and State Funds \$989 price per acre)

**Noted Features Of Subject Property:**

- Located 2.5 miles east of Freeport
- 60% Uplands
- 4.5 miles of frontage along southern right-of-way of SR-20 lying west of its intersection with SR-81
- 3.5 miles of frontage along both sides of SR-20 lying east of SR-81
- 3 miles of frontage along a portion of both sides of CR-3280 and 1 mile along a portion of the north side
- 3.5 miles of frontage along the east side of SR81
- There is more than 2.5 miles of frontage along Black Creek, a tributary of the Choctawhatchee River
- Subject property is situated in the path of future development

**STAFF REMARKS:** The Nokuse Plantation project is an "A" group project on the Florida Forever Less Than Fee Project List approved by the Board of Trustees on February 26, 2004. The project contains 23,895 acres, of which 1,574 acres have been protected by a conservation easement acquired through a donation from M.C. Davis. After the Board of Trustees approves this agreement, 4,099 acres, or 17 percent of the Nokuse Plantation Florida Forever project, will remain to be acquired.

The conservation easements being acquired cover 18,222 acres, of which 17,670 acres are being purchased and 552 acres are being donated. A 285-acre portion of the 17,670 acres is being funded with \$1,000,000 of federal money made available through a cooperative agreement between the Department of Environmental Protection (DEP) and the Eglin Air Armament Center, pursuant to Section 2684a, Title 10, United States Code. The obligation of this funding to purchase lands is to limit development in the vicinity of Eglin Air Force Base in order to ensure the continuing military value of Eglin's test and training ranges. It is the first use of this authority in the Northwest Florida Greenway. The federal money will be applied to a discrete portion of the property for which the seller will issue a separate deed of conservation easement. The need for this procedure arises from the authority granted to the Secretary of the Air Force to demand conveyance of property acquired with such federal funds, apparently without compensation. Therefore, Florida Forever funds will not be commingled with the federal funds, nor will title to the lands purchased with these two sources of funding be commingled.

Under the proposed conservation easements, the property will be restricted in perpetuity by the provisions of the easements, a summary of which includes, but is not limited to, the following prohibited uses:

\*\*\*\*\*

**Item 3, cont.**

- Dumping of trash, waste, hazardous materials and soil will be prohibited;
- Exploration by the grantor for and extraction of oil, gas, minerals, peat, muck, limestone, etc., by means of surface exploratory and extractors operations will be prohibited, except as reasonably necessary to combat erosion or flooding or except as necessary and lawfully permitted for the conduct of permitted activities. (See third-party note in paragraph four of these staff remarks);
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife preservation will be prohibited, unless otherwise provided in the easement;
- Acts or uses detrimental to the preservation of any historical or archaeological area will be prohibited;
- The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation will be prohibited, unless otherwise specifically provided in the easement;
- Commercial and industrial activities will be prohibited, except as may be incidental to the exercise of grantor's reserved rights;
- New construction or placing of temporary or permanent structures or buildings on the property will be prohibited except as may be necessary for maintenance, normal operation or emergency situations or as permitted in Article V, H, I and J and otherwise specifically provided for in the easement;
- Construction of new roads or jeep trails will be prohibited except as associated with restoration activities allowed under the provisions of Article V of the easement;
- The operation of motorized vehicles will be prohibited except on established trails and roads unless (1) necessary to protect or enhance the conservation values of the property; and (2) for emergency purposes;
- Subdivision of the property is prohibited;
- Commercial water wells on the property are prohibited; and
- The Board of Trustees will have the right of first refusal to purchase the property or any interest therein, in fee if the grantor proposes to sell the property or any interest therein to a third party other than a lineal descendant, an entity in which grantor owns a controlling interest or a non-profit conservation organization regionally or nationally recognized and acceptable to grantee.

The proposed conservation easements will allow the owner to retain certain rights. The summary of owner's rights includes, but is not limited to, the following:

- The right to observe, maintain, photograph, fish, hunt and introduce and stock native fish or wildlife, to use the property for non-commercial, passive, resource-based recreation not inconsistent with the purpose of the easement. In addition, the owner reserves hunting and fishing rights related to the property and may lease and sell privileges of such rights;
- The right to conduct controlled and prescribed burns with proper authorization;
- The right to mortgage the property;
- The right to engage in silviculture in accordance with the best management practices of the Division of Forestry until such time that the area has been cut to an approximate natural condition. As each tract regains its approximate natural condition (30 to 60 pine trees per acre), all commercial harvesting of trees shall cease forever;
- The right to engage in management and ecological restoration activities to foster, preserve, protect and restore the natural, ecological, scenic, historical, archaeological, wildlife and plant features and values of the property in consultation with qualified public or private land management agencies;
- The right to construct a caretaker residence, not to exceed 1,500 square-feet, and a field

\*\*\*\*\*

**Item 3, cont.**

office, not to exceed 5,000 square-feet, in connection with the management and ecological restoration activities, all of which shall be located at least 150 feet from any wetland area; however, this is not an allowed right on the federally funded parcel;

- The right to construct additional structures, not to exceed 10,000 cumulative square-feet, as may be required for restoration operations; however, this is not an allowed right on the federally funded parcel;
- The right to use the property for scientific, environmental resource and educational programs provided the programs are conducted by a non-profit organization for the benefit of the public;
- The right to construct an educational center in connection with the scientific, environmental and educational programs allowed. The area shall be limited to two contiguous acres, including new access driveways and parking; however, this is not an allowed right on the federally funded parcel; and
- The right to create a lake or lakes in a designated area, not to exceed a total of ten acres, for the purposes of avian habitat enhancement. However, this is not an allowed right on the federally funded parcel.

All mortgages and liens will be satisfied or subordinated at the time of closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately. Preliminary title work indicates there are four, outstanding oil, gas and mineral reservations owned by third parties. Two of these interests appear to have an associated right of entry. One is owned by Pure Resources, L.P. over 17,123 acres and appears to reserve hydrocarbons but not sand and gravel. The other is owned by AMAX Forest Products, Inc. over 9,556 acres and appears to reserve phosphate but not sand and gravel. Florida Geology Survey has stated all oil and gas wells in the area have been dry and abandoned and current data does not suggest the presence of hydrocarbons. They also state small quantities of phosphate found in the panhandle are not suitable for mining. Mr. Davis has stated in writing that Pure Resources has refused his attempts to acquire the outstanding interests. The appraisers were aware of the outstanding reservations and considered them in determining the final value. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and, therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing.

A title insurance policy will be provided by the seller and reimbursed by the purchaser. A baseline documentation report/environmental site assessment will be provided by the seller with the seller paying half of the approved cost of the baseline documentation not to exceed \$15,000 and the purchaser reimbursing the cost of the environmental site assessment. A survey may be provided if necessary by the purchaser.

DEP's Bureau of Survey and Mapping (BSM) has reviewed the available survey data and deeds, performed a visual inspection of the site and considered the following conditions:

- The majority of the un-surveyed parcel boundaries adjoin lands that are owned by the Northwest Florida Management District and are located in the floodplain areas of the Choctawhatchee River; the majority of the remaining parcel boundaries are the right of way lines of State Roads 20 and 81 and County Road 3280; parcel boundaries adjoining private ownership with improvements and occupation will be inspected and may be surveyed to determine if any encroachments exist;
- Global Positioning System technology was utilized to determine the area of the parcel; and
- The parcel is in its natural unimproved condition.

\*\*\*\*\*

**Item 3, cont.**

It is the opinion of BSM that the available boundary information is sufficient to reasonably protect the public's interest and any additional benefit derived from a survey is minimal relative to its cost.

The primary purposes for state acquisition of these conservation easements are to protect significant natural communities, restore disturbed areas and to protect native wildlife, especially the Florida black bear, while allowing continued timber management and other land uses that are not detrimental to current resource values. The project site includes several different vegetative communities ranging from cypress swamps and pitcher plant prairies to sandhills. The current landowner has begun removing slash pine from the sandhills and other upland areas in an ongoing effort to restore the site to its original longleaf pine communities. There are many listed plant species on the site, including the only known Florida population of the endangered Cooley's meadow-rue. Portions of the property are located within the ecological greenway network "Eglin to Econofina" critical linkage identified by the Office of Greenways and Trails and the University of Florida. The project is also located within the planning corridor for the Northwest Florida Greenway, which is a joint effort between DEP, the Department of Defense, the U.S. Fish and Wildlife Service, the U. S. Forest Service, the Florida Department of Community Affairs, Florida Fish and Wildlife Conservation Commission, Northwest Florida Water management District, Department of Agriculture and Consumer Services, The Nature Conservancy, and Okaloosa County to create a conservation corridor/military base buffer from Eglin Air Force Base to the Apalachicola National Forest.

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate DEP's Office of Environmental Services as the monitoring agency for this site.

Section 259.032(9)(e), F.S., requires that the Board of Trustees, concurrent with its approval of the initial acquisition agreement within a project, "evaluate and amend, as appropriate, the management policy statement for the project as provided by section 259.035, F.S., consistent with the purposes for which the lands are acquired." The management policy statement for this project was included in the 2004 Florida Forever Annual Report adopted by the Board of Trustees on February 26, 2004. Staff recommends that the Board of Trustees confirm the management policy statement as follows:

As a proposed conservation easement or other less-than-fee interest, this project will be managed by the private landowner with restrictions on land conversions and developments that might impact the natural or archeological resources. Public access for recreation trails and hunting may be compatible with the objectives of the landowner and should be included in the final boundaries of the managed area.

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

(See Attachment 3, Pages 1-100)

**RECOMMEND APPROVAL**