AGENDA ITEM SUMMARY

1. NAME OF ITEM: Hirundo Lawsuit Settlement Property Acquisition

2. INITIATED BY: Norman L. Fournier, Chair

3. BOARD INFORMATION: BOARD ACTION: X

4. BACKGROUND:

This is a request of the Trustees to authorize pursuant to Board of Trustee Policy #801 the future acquisition of a forested parcel recently agreed to by the University as part of a settlement to pending legal action.

In brief, Coldbrook LLC, a logging enterprise, brought a Declaratory Judgment action against the University and the Hirundo Trust seeking access to property it owns which is completely surrounded by University property, within property commonly known as the Hirundo Wildlife Refuge. The Court granted an easement by necessity and the dispute then revolved around the exact extent of the easement. The nature of the parcel and its intended use was a complicating factor in determining what kind of access could and should be granted via the easement, as the extent of an easement by necessity is determined by what use the parcel could be put at the present and is not limited to any earlier usage.

The lawsuit was settled on December 26, 2013, as the trial was set to begin. As part of that settlement, the University has agreed to provide certain access to Coldbrook LLC until the earlier of the completion of the logging of the parcel and April 1, 2017. After that time, the access will terminate and the parcel currently owned by Coldbrook LLC will be transferred to the University. Both the deed and the purchase price will be held in escrow until that time.

The agreement to acquire the parcel was an unforeseen event and timing was of the essence given the imminent trial and nature of pre-trial settlement negotiations.

As part of the settlement, the University agreed to pay $60,000 for the new parcel. The Hirundo Trust will pay $15,000. It will terminate any disputes as to the existence of an easement and add approximate 58 acres to the 2,400 acre reserve. The $60,000 value is $10,000 greater than the amount delegated to management and requires Trustee approval through the Finance, Facility and Technology committee pursuant to Board of Trustee Policy #801 and the associated delegation of authority matrix.
5. TEXT OF PROPOSED RESOLUTION:

That the Finance, Facilities and Technology Committee on behalf of the Board of Trustees approves the expenditure of $60,000 for the acquisition of approximately 58 acres in the Hirundo Wildlife Refuge by April 1, 2017 to preserve its integrity and to resolve the related-legal dispute.

02/04/2014