

AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
NOVEMBER 8, 2005

Item 1 **Annual Land Management Review Team Findings**

REQUEST: Consideration of the Annual Land Management Review Team findings.

COUNTY: Statewide

STAFF REMARKS: Section 259.036, F.S., requires the Board of Trustees, acting through the Department of Environmental Protection (DEP), to conduct land management reviews of selected conservation, preservation and recreation lands titled in the Board of Trustees to determine whether those lands are being managed for the purposes for which they were acquired, and in accordance with their adopted management plans. The legislation requires DEP to submit a report of its findings to the Board of Trustees no later than the second board meeting in October of each year. The 2003 Florida Legislature amended chapter 259.036, F.S., to require that all lands that are subject to being reviewed that are over 1,000 acres, be reviewed at least every five years.

Properties reviewed were selected from a database of the Board of Trustees' lands based on: size of the property; plan due-dates; managing agency; when previous land management reviews were conducted; and, geographic location. Regional review team members were selected in accordance with the requirements of the legislation to include representatives of the following: (1) the county or local community in which the parcel is located; (2) the Division of Recreation and Parks; (3) the Division of Forestry; (4) the Florida Fish and Wildlife Conservation Commission; (5) the DEP district office; (6) a private land manager; (7) the local Soil and Water Conservation District board of supervisors; and (8) a conservation organization. Participating state agencies, soil and water conservation districts, and conservation groups have had continual input into the development and ongoing evolution of the review process. Additionally, DEP coordinates with representatives of the Water Management Districts (WMD) to integrate management reviews where WMD lands are adjacent to Board of Trustees' lands and when the Board of Trustees has joint ownership of parcels with a WMD.

Twenty-three reviews were conducted during the 2004-2005 fiscal year involving more than 500,000 acres of managed lands. Twenty-seven reviews were scheduled for the year; however, four reviews were cancelled due to hurricanes in the fall of 2004. Reports of the management review team findings are provided to the managing agency, to the Acquisition and Restoration Council, and are available on DEP's Division of State Lands web site. An overview of the management review team findings of the twenty-three sites follows:

- Public access was adequate on four sites (17 percent) and excellent on nineteen sites (83 percent) the teams visited;

On seventeen sites (74 percent), over 30 percent of the fire dependent lands had been treated according to prescription. On ten sites (45 percent) over 60 percent of the fire dependent lands had been treated according to prescription.

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- On four sites (17 percent), the teams found the burn frequency inadequate to preserve, restore, or maintain the natural communities. On twenty sites (87 percent) the team found fire quality to be excellent (Each managing agency is responsible for prescribed burning the lands they manage);
- Control of non-native invasive plants were a management issue on most of the lands reviewed, and the team found control measures inadequate on two sites (9 percent), adequate on one site (5 percent), and excellent on twenty (86 percent) of the sites reviewed.
- Twelve sites (52 percent) had plans that adequately covered testing for degradation of surface waters, and ten sites (43 percent) had adequate testing for groundwater;
- Fifteen sites (65 percent) were found to be excellent, seven sites (30 percent) were adequate and one site (5 percent) was inadequate in actual management practices to protect listed plants and animals on site;
- At seven (30 percent) of the sites, the team found the management plans inadequate for on-site protection of listed plants and animals or inventories of listed plants and animals;
- On seven sites (30 percent), law enforcement was inadequate to protect the resources; and
- On fifteen sites (65 percent), the public education and outreach programs were found to be excellent, on six sites (26 percent) they were adequate, and on two sites (9 percent) they were inadequate.

The review teams observed many examples of management meriting special mention, including:

- At Balm-Boyette Scrub Preserve, a county managed property in Hillsborough County, the team commended the County for its outstanding fire management accomplishments, recent scrub restoration efforts, and its extensive success in procuring grants for natural resource restoration and management.
- At Marjorie Harris Carr Cross Florida Greenway, primarily in Marion County, the review team commended the Office of Greenways and Trails for its: outstanding invasive plant inventory and control efforts; listed plant and animal inventories; design and construction of recreational facilities; identification of boundaries; surveys and fencing; initial work on timber thinning and burning; and planting over 2,000 acres of pasture areas with longleaf pines.
- At Seminole State Forest in Seminole County, the review team commended the Division of Forestry for its extraordinary and well planned habitat restoration effort, for developing a hydrological restoration list, and for initiating an inventory of the springs within the forest.
- At Triple-N-Ranch Wildlife Management Area in Osceola County, the review team commended the Florida Fish and Wildlife Conservation Commission for its natural community mapping project, efforts to implement the objective based vegetation management program, and the outstanding condition of the natural communities.

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- At the Wekiwa Springs State Park in Orange County, the Division of Recreation and Parks was commended by the review team for the exceptional amount of natural resource management activity that has occurred at the park, particularly considering the myriad of management issues and limited staffing dedicated specifically to natural resource management.

Overall, the review teams found that the managers of these areas are dedicated professionals who are doing an excellent job with the resources available.

Many of the management problems noted in the findings may be directly related to the following:

- On sixteen sites (70 percent) the teams found that staffing levels were inadequate, on two sites (8 percent) the staffing levels were adequate, and on five sites (22 percent) the staffing levels were excellent;
- On seven sites (40 percent) the teams found funding levels were adequate to properly manage resources, on eleven sites (48 percent) inadequate, and on five sites (22 percent) excellent; and,
- On nine sites (39 percent) the teams found the equipment inadequate to properly manage the property, three of the sites (12 percent) were adequately equipped, and eleven sites (49 percent) were excellently equipped.

Pursuant to section 259.036, F.S., if the land management review team determines that reviewed lands are not being managed for the purposes for which they were acquired or in compliance with the adopted land management plan, DEP shall provide the review findings to the Board of Trustees, and the managing agency must report to the Board of Trustees its reasons for managing the lands as it has. All 23 properties reviewed were found to be managed for the purpose for which they were acquired. Actual management practices, including public access, were found to be in compliance with the management plans at all the properties.

The report of the annual review team findings is consistent with section 259.036, F.S., and with the Natural Systems and Recreation Lands section of the State Comprehensive Plan.

(See Attachment 1, Page 1)

RECOMMEND ACCEPTANCE

Item 2

**Anita R. Vargas, Trustee, Purchase Agreement/Survey Waiver/Florida
Keys Ecosystem Florida Forever Project**

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REQUEST: Consideration of (1) a purchase agreement to acquire 1.50 acres within the Florida Keys Ecosystem Florida Forever project from Anita R. Vargas, Trustee; and (2) the authority to waive the survey requirement.

COUNTY: Monroe

LOCATION: Section 02, Township 66 South, Range 28 East

CONSIDERATION: \$468,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Marr (05/14/05)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	CLOSING DATE
Vargas	1.50	\$468,000	\$468,000	\$2,700*	\$468,000** (100%)	120 days after BOT Approval

* Seller purchased 7 parcels on 7/5/1960 and 6 parcels on 12/4/1961.

** \$312,000 per acre or \$36,000 per Rate of Growth Ordinance (ROGO) allocation, (13 ROGO allocations).

Noted Features of Subject Property:

Value based on potential sale as ROGO points.

Non-waterfront, platted residential site

STAFF REMARKS: The Florida Keys Ecosystem project is an "A" group project on the Florida Forever Small Holdings Project Interim List approved by the Board of Trustees on August 23, 2005. The project contains 15,336 acres, of which 3,376.75 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 11,957.75 acres, or 78 percent of the project, will remain to be acquired.

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.

On February 16, 2005, the Board of Trustees approved an item that allowed DEP's Division of State Lands to (1) extend offers and approve any contract for the sale and purchase of land pursuant to section 259.041(1), F.S., at \$7,000 over, or up to 125 percent, per parcel of the current appraised value, whichever is greater, when purchase price per parcel does not exceed \$100,000; (2) recognize and appraise as Rate of Growth Ordinance parcels those parcels that previously qualified for Rate of Growth Ordinance designation; and (3) allow payments in lieu of litigation to settle claims by private landowners to lands that appear to be sovereignty lands, such payments not to exceed \$1,000 per parcel.

A title insurance policy and an environmental site evaluation will be provided by the purchaser prior to closing. It is the opinion of DEP's Bureau of Survey and Mapping that the available

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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; therefore, a waiver of the requirement for a survey of the property is being requested pursuant to section 18-1.005, F.A.C.

The unique pine rocklands and hardwood hammocks of the Florida Keys, forest of West Indian plants that shelter several extremely rare animals, are being lost to the rapid development of the islands. Public acquisition of 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 the Florida Wildlife Conservation Commission as part of the Ramrod Key Hammocks unit of the Florida Keys Wildlife and Environmental Area.

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 1-36)

RECOMMEND APPROVAL

Item 3 Hamilton Harbor Marina, Inc., Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a 20-year sovereignty submerged lands private easement containing 67,330 square feet (1.55 acres), more or less, for a navigation channel; and (2) authorization to dredge 14,253 cubic yards of sovereignty material.

COUNTY: Collier
 BOT No. 110231105
 Easement No. 40636
 Application No. 11-0226196-001

APPLICANT: Hamilton Harbor Marina, Inc., a Florida Corporation

LOCATION: Section 22, Township 55 South, Range 25 East, in Naples Bay, Class II Waters, not approved for shellfish harvesting, within the local jurisdiction of the City of Naples.
 Aquatic Preserve: No
 Outstanding Florida Waters: No

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Designated Manatee County: Yes, with an approved manatee protection plan
Manatee Aggregation Area: No
Manatee Protection Speed Zone: Yes, idle/slow speed zone

CONSIDERATION: \$58,569.25, representing (1) \$26,500 for the easement, including 10 percent of the enhanced value; and (2) \$32,069.25 for the severance of 14,253 cubic yards of sovereignty material computed at the rate of \$2.25 per cubic yard, pursuant to section 18-21.011(3)(a)2, F.A.C. The severance fee may be revised upon receipt of an acceptable survey and legal description showing the area of dredging on sovereignty submerged lands.

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 applicant is requesting: (1) authorization for deepening an historical navigational access channel; and (2) authorization to dredge 14,253 cubic yards of sovereignty material to create sufficient depths (-7 feet mean low water) for navigation in the channel. The channel will be used with the applicant's proposed Hamilton Harbor development as well as providing enhanced public access to a nearby public boat ramp.

Hamilton Harbor is a proposed commercial development on a 175.5-acre tract consisting of tidal creeks, mangrove wetlands, salt marsh, buttonwood forest, hydric pine flatwoods, mesic pine flatwoods, scrubby pine flatwoods, xeric oak scrub, Brazilian pepper, live oak hammock, tropical hardwood hammocks and spoil-created uplands infested with Australian pines. The overall project includes 154 acres in the City of Naples (City) and 21 acres within Collier County. The portion of the project on sovereignty submerged lands is within the City. None of the applicant's property is within a current Florida Forever land acquisition boundary. The overall project will impact 4.9 acres of wetlands. Mitigation will include the enhancement of 36.88 acres and preservation of 119.77 acres of wetlands, uplands, and tidal areas, 3.25 acres of which will be at an off-site location. The applicant proposes to deed this area to the City upon completion of the mitigation and monitoring requirements in DEP's environmental resource permit.

Of the 175.5 acres, approximately 15.12 acres are proposed for development with a full service marina to include 35 private wet-slips, one wet slip for law enforcement, 325 private

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dry storage spaces, public fuel sales, a public loading dock for construction vessels, a private yacht club with a 100-seat restaurant, a marina office, a ship's store, parking, and stormwater treatment system. Vessels to use the channel from the marina will include private recreational boats ranging from 30 to 60 feet in length. A special easement condition will prohibit discrimination at the applicant's upland yacht club.

Section 18-21.0051(2)(c), F.A.C., essentially states that DEP has delegated authority from the Board of Trustees to review and take final agency action on applications for private easements unless they exceed five acres. The proposed easement for the existing channel will be 1.73 acres. However, section 18-21.0051(4), F.A.C., states that "The delegations set forth in subsection (2) are not applicable to a specific application for a request to use sovereignty submerged lands under Chapter 253 or 258, F.S., where one or more members of the Board of Trustees, the Department, or the appropriate water management district determines that such application is reasonably expected to result in a heightened public concern, because of its potential effect on the environment, natural resources, or controversial nature or location." This project has previously generated extensive discussion in the local news media, and has been the subject of lawsuits involving the applicant, the City of Naples, and interested third parties. Although these lawsuits have been resolved through settlement agreements, because of the history related to previously proposed projects at the same location, DEP is of the opinion that the requested easement could reasonably be considered to constitute a project of heightened public concern that justifies Board of Trustees' consideration.

On July 1, 1986, the Board of Trustees granted conceptual approval of a 25-year sovereignty submerged lands easement to Collier Development Corporation for two parcels containing approximately nine acres to be used for a navigational access channel and a flushing channel. In 1987, Collier Development Corporation submitted an application (no. 111314809) to the former Department of Environmental Regulation (DER) for a proposed multi-use development called Sabal Bay. That 1,968-acre project proposed a marina with 610 wet slips, 200 dry storage slips, 4,000 residential units, two 300-room hotels, a conference center, and 796,000 square feet of office, retail and commercial space. The Sabal Bay project entailed dredging and filling of approximately 43 percent of the property that consisted of wetlands. The two channels conceptually approved by the Board of Trustees were to be used in conjunction with that project. The Department of Community Affairs determined that the proposed project constituted a Development of Regional Impact pursuant to Section 380.06, F.S. In 1989, DER issued an Intent to Issue a wetland resource permit for that project. Interested third parties filed for an administrative hearing with the Division of Administrative Hearings (DOAH Case Nos. 88-6212, 89-4159 and 89-4407, DER OGC Case Nos. 88-1172, 89-0844 and 89-0772) challenging that action. On October 16, 1990, the Hearing Officer issued a Recommended Order recommending denial of the permit. On November 30, 1990, DER remanded the matter to the Hearing Officer for clarification of certain findings of act. The Hearing Officer entered an Order Declining Remand on May 9, 1991. On April 28, 1992, the consolidated cases affecting this project were reassigned to a successor Hearing Officer. On October 26, 1993, the successor Hearing Officer issued his Recommended Order on remand, recommending that

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DER enter a Final Order denying the permit application. On September 16, 1994, DEP adopted the Recommended Order on Remand and denied the permit.

The property that encompassed the original Sabal Bay development was subsequently divided. Some of the parcels were conveyed to the applicant, and other parcels are currently owned by one or more other entities. The mixed-use portion of the original Sabal Bay development was redesigned and is now the subject of a pending Environmental Resource Permit application (no. 040629-37) submitted by WCI Communities, Inc., and Collier Development Corporation, to the South Florida Water Management District in 2004. That 2,416-acre development is not physically linked to the Hamilton Harbor project, and there is no agreement for reservation of boat slips in the Hamilton Harbor project for residents of the Sabal Bay project. Marina related development is not currently proposed as part of the Sabal Bay project. And while the project boundary includes three connections to Naples Bay – a kidney shaped tidal embayment, a tidal creek, and a man-altered tidal creek – that could result in future requests to use sovereignty submerged lands for dredging or other water access development, Collier Development Corporation agreed in settlement of litigation with The Conservancy of Southwest Florida and Citizens to Preserve Naples Bay, Inc., not to seek approvals or construct any additional marinas on that property.

In 1999, the City approved Resolution 99-8540, Ordinance 99-8544 and Ordinance 99-8545, consisting of a small-scale local comprehensive plan amendment, a rezoning and approval for the Hamilton Harbor project. The City's approvals were challenged by third parties. On April 5, 2000, the City repealed the previously listed approvals for the project. The applicant filed suit against the City (Collier Enterprises Ltd., et al. v. The City of Naples, Collier County Circuit Court Case No. 00-1562-CA), claiming damages in the amount of \$25,000,000. The applicant also filed a claim with the City pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act (Chapter 70.001, F.S. / Chapter 95-181, Laws of Florida), which was not filed in Circuit Court, claiming damages in the amount of \$19,192,000. The City and the applicant subsequently entered into a Settlement Agreement to resolve all existing and potential claims between the parties relating to the Circuit Court Case and the Harris Act Claim. The Settlement Agreement provides, in part, the following project parameters: the marina basin, navigational access channel and related facilities shall be constructed essentially as is currently proposed in the Environmental Resource Permit application. This includes a maximum of 40 wet slips and 325 dry slips, and a public commercial loading dock and fueling facility. One wet slip and related access are to be dedicated for use by a City patrol or safety vessel at no charge. Access to the commercial loading dock and fueling facility for the City's vessels and/or vehicles and contractors retained by the City for City projects shall be provided without charge. Private users of the facilities shall be charged a commercially reasonable fee. Pursuant to the Settlement Agreement with the City, approximately 108 acres of the project property are required to be placed under a conservation easement in favor of the City and/or any other designee of the City. The applicant retains the right to make these lands available to a third party for educational or scientific purposes, subject to prior written approval of the City. The City is also provided with the right to acquire fee simple title to this property within

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90 years of the Settlement Agreement. The Settlement Agreement also requires the applicant to remove exotic vegetation from areas indicated in a base map that is part of the pending Environmental Resource Permit application. The Settlement Agreement also includes provisions for rights of the City and the applicant if a disagreement over the Settlement Agreement provisions occurs.

The existing navigational access route serves a public boat ramp at Bayview Park owned by the City and operated by Collier County. The park is located across a tidal creek that was altered by intermittent dredging and filling activities beginning in the 1940s. A dredging event appears to have occurred between 1962 and 1979, which created a man-made canal through a spoil site to provide public access to the park and boat ramp. No permits from DEP's predecessor agencies (the former DER and the former Department of Pollution Control), the U.S. Army Corps of Engineers, or authorizations from the Board of Trustees were located for any of those dredging and filling activities. Bathymetry, bottom sediments and aerial photos of the site do not conclusively show the extent of dredging on sovereignty submerged lands. In light of the inconclusive information about the prior dredging, a significant portion of the proposed dredging in Naples Bay is considered to be new dredging rather than maintenance dredging. Four proposed aids to navigation adjacent to the channel will not be included in the requested easement and will be authorized by a consent of use pursuant to section 18-21.005(1)(c)4, F.A.C.

The area to be dredged in Naples Bay is approximately 800 feet long by 60 feet wide; the area in the tidal creek is about 350 feet long by 60 feet wide, with the portion on sovereignty submerged lands in the tidal creek varying in width. Existing depths vary from above mean high water adjacent to the tidal creek to approximately 14 feet deep at the proposed channel's confluence with the existing federal channel, with the average being approximately -3 feet mean low water. The proposed channel will be dredged to a consistent depth of -7 feet mean low water to accommodate larger vessels proposed at the marina as well as to remove siltation from the canal portion of the project. The channelized tidal creek and the applicant's proposed channel will provide enhanced access to boaters using the City's boat ramp at Bayview Park.

The applicant does not qualify for a waiver of the dredge fee pursuant to section 18-21.011(3)(c), F.A.C.; therefore, a special approval condition requires the applicant to pay the dredge fee prior to receipt of a fully executed easement. There are no significant benthic resources (e.g., seagrasses) in or immediately contiguous to the area proposed to be dredged. The spoil material will be disposed of at an appropriate self-contained upland site.

The proposed new marina basin will create new surface waters that must meet state water quality standards or result in a net improvement to surface waters. Although, the applicant has not conclusively demonstrated that the proposed marina basin will meet state water quality standards, water quality data provided by the applicant has demonstrated that the marina basin's design will provide adequate flushing between it and Naples Bay. Additionally, water quality testing data provided by the applicant shows that the portion of Naples Bay adjacent to

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the project site meets state water quality standards. As a means to provide a net improvement to surface waters, the project includes several design features and operational controls to reduce nutrient loading and mitigate for potential adverse resource impacts that are addressed in the draft environmental resource permit. These include, but are not limited to: installation of two Stormceptors® (or their equivalent) to treat surface water runoff from the existing public road (Bay Street) adjacent to the project; installation of stormwater runoff controls at Bayview Park; implementation of a boater education program; creation and implementation of a marina operations plan for the docking facility; providing stormwater treatment for the upland dry storage facility to standards for Outstanding Florida Waters; wrapping existing CCA pilings at the Bayview Park seawall along the canal to minimize future leaching of CCA into surface waters; and exotic removal from mangrove wetlands. As a result, DEP is of the opinion that the proposed project will provide a net improvement to water quality in Naples Bay, thereby qualifying for issuance of an environmental resource permit.

During review of the environmental resource permit application, DEP expressed concerns to the applicant that secondary impacts could result from increased demand for construction of more commercial and/or residential development on adjacent properties owned by the applicant or others, resulting in increased use of the proposed marina facility that may not have been adequately assessed by the applicant. To address these concerns, the applicant proposes to: (1) record a restrictive covenant on the remaining 116.52 acres of the applicant's property at the project site that will prohibit development on that property; and (2) grant a conservation easement to the Board of Trustees that will protect mangroves and prohibit development on that same remaining 116.52 acres of the applicant's property at the project site, and an additional 3.25 acres off-site. That property includes approximately 13,900 linear feet (2.6 miles) of riparian shoreline adjacent to Naples Bay. The restrictive covenant and conservation easement are addressed in the draft environmental resource permit. A special approval condition will require the applicant to submit an acceptable restrictive covenant. A special easement condition will require the applicant or its successors in title to obtain Board of Trustees approval of a modification to the sovereignty submerged lands easement if the restrictive covenant is subsequently released or modified. The draft conservation easement submitted by the applicant does not specifically eliminate riparian rights to that shoreline. Therefore, a special approval condition requires the applicant to provide an acceptable regulatory conservation easement or separate proprietary conservation easement that will eliminate the applicant's riparian rights to that shoreline. Such a conservation easement will significantly minimize potential secondary and cumulative impacts from potentially similar projects in the vicinity of this project.

DEP's Bureau of Appraisal hired an independent appraiser to conduct an appraisal to determine the value of the easement and the enhanced value of the easement. The applicant paid for the appraisal. DEP's Bureau of Appraisal accepted the conclusion of \$500 for the easement value with \$260,000 as the enhanced value. The Board of Trustees typically assesses 10 to 25 percent of the enhanced value of the easement, depending on the degree of preemption by the proposed project. In this case, the preemption will be minimal since the dredged area

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will continue to be used for navigation by the public that launch vessels at the nearby public park in addition to boaters using the Hamilton Harbor facility. Therefore, DEP recommends that the Board of Trustees assess 10 percent of the enhanced value. This is consistent with previous Board of Trustees' actions.

The proposed private easement was not noticed, pursuant to section 253.115, F.S., because the only property owners within 500 feet of the project are the City of Naples, the Collier County Board of County Commissioners, and the applicant. However, the Save the Manatee Club has provided written objections to the proposed project based on its opinion that the proposed project is inconsistent with the Florida Marine Sanctuary Act and the federal Marine Mammal Protection Act.

Recommendations from the Florida Fish and Wildlife Conservation Commission, Bureau of Protected Species Management regarding protection of manatees include requiring the applicant to: comply with the standard manatee protection construction conditions for all in-water construction; develop a marina manatee educational program; install grating over pipes in which manatees could become trapped; install wharf fenders at locations where vessels or barges longer than 75 feet may moor; implement a hydrocarbon monitoring plan for the mangrove preserve areas; create a restoration and mitigation plan to address mangroves impacted by the project; and execute and record a conservation easement prohibiting the construction of any additional docking facilities or other such water access development along the shoreline. These recommendations are addressed as specific conditions in the draft environmental resource permit.

The subject navigational access channel is not located within an aquatic preserve and will not result in the sale of sovereignty submerged lands. Therefore, to receive approval, the easement is not specifically required by rule or statute to demonstrate that it is "in the public interest," only that it be "not contrary to the public interest," pursuant to section 18-21.004(1)(a), F.A.C. The project is located approximately 0.5 miles north of the Rookery Bay National Estuarine Research Reserve (RBNERR) and Rookery Bay Aquatic Preserve. Because of this proximity, the project has the potential to affect the aquatic preserve through water quality impacts associated with the proposed project, including impacts from boaters originating from the proposed marina basin. Therefore, comments were obtained from RBNERR staff. RBNERR staff provided written comments on March 15, 2004, September 2, 2004 and April 5, 2005. In its April 5, 2005 comment letter, RBNERR staff stated that based on the information provided, both engineering and planning has been undertaken to minimize potential environmental impacts of the proposed development. In light of the project's present design and mitigation requirements incorporated into the draft environmental resource permit, staff is of the opinion that the proposed project is not contrary to the public interest.

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 the DCA

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and the local government, an amendment has been adopted which brought the plan into compliance. The proposed action is consistent with the adopted plan as amended according to a letter from Collier County and the City of Naples. Additionally, the DCA has determined that the proposed project is exempt from the Development of Regional Impact review process because the City and Collier County have entered into an agreement regarding the adoption of marina siting standards into their comprehensive plans that have been approved by (DCA).

(See Attachment 3, Pages 1-91)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL
CONDITIONS, THE SPECIAL EASEMENT CONDITIONS, AND
PAYMENT OF \$58,569.25**

Item 4 Bruce Kendeigh Private Easement

REQUEST: Consideration of a private easement across state-owned lands for construction of a single-family dock to reach a tidal tributary of the Tolomato River.

COUNTY: St. Johns

APPLICANT: Bruce Kendeigh

LOCATION: 240 Redfish Creek Drive, St. Augustine 32095

STAFF REMARKS: On or about September 8, 2003, the applicant submitted a request to construct a single-family dock to access a tidal tributary to the Tolomato River. The subject tributary below the mean high water line is sovereignty lands and within the Guana River Marsh Aquatic Preserve. The applicant's property is Lot 8 of Casa-Cola Landing Subdivision, platted and recorded in the county records. The eastern boundary of the subject Lot 8, as platted, is the landward edge of a marsh and is not indicated to be adjacent to the mean high water line of the tidal tributary. Therefore, the applicant's title does not establish a riparian parcel that would be subject to chapter 18-21, F.A.C., and the application to construct a dock was denied.

Pursuant to section 18-21.004(3)(b), F.A.C., satisfactory evidence of sufficient upland interest is required for activities on sovereignty lands. This would require either a deed describing lands adjacent to, and landward of, the mean high water line, or a lease or easement in the absence of fee ownership. Since the applicant is not a riparian owner in fee, an easement or lease over the riparian lands would be necessary to qualify under the current rule.

The riparian lands lying between the applicant's property and tidal tributary are state-owned consisting of upland marsh that was conveyed to the state pursuant to the Swamp and

Item 4, cont.

Overflowed Lands Act of 1850. This act gave to the states all federal lands that were wet and unfit for cultivation that were previously unsold. Selection of these lands were accomplished by field agents for the state and approved by the U.S. Secretary of Interior. As the lands were identified and approved, federal patents to the state were issued. Statewide over 20 million acres were conveyed to the state pursuant to this act. In 1882, St. Augustine Patent No. 16 was issued to the State of Florida. This instrument described over 28,000 acres of swamp and overflowed lands in the region including the subject marsh adjacent to the applicant's property. Although most of the lands described in this patent were subsequently conveyed into private ownership by the state, the subject parcel adjacent to the applicant's lot was never sold and remained state-owned continuously through the years.

Mr. Kendeigh appeared and presented this issue before the Acquisition and Restoration Council (ARC) in February 2004. The Secretary of the Department of Environmental Protection (DEP), at the time, agreed to send a DEP survey crew to the site to determine the location of the mean high water line relative to the site. On March 4, 2004, staff from DEP's Bureau of Survey and Mapping met with Mr. Kendeigh at his lot. It was determined that the mean high water line was located approximately 125 feet waterward of the applicant's southeast property corner, and approximately 250 feet waterward of the applicant's northeast property corner. The work verified that the applicant property was not riparian.

Since the applicant does not retain sufficient upland interest under chapter 18-21, F.A.C., such authorization from the Board of Trustees of the marsh is subject to chapter 18-2, F.A.C., Management of Uplands Vested in the Board of Trustees.

There are two examples of how the Board of Trustees has treated these issues in the past. On October 24, 2000, the Board of Trustees withdrew from consideration a similar request for consent of use and lease for a single-family dock running from a non-riparian parcel across state-owned lands to reach submerged lands. The state lands in that instance were conveyed to the state pursuant to a 1982 settlement with Deltona Corporation in Collier County. To this date, no known easement or lease has been issued for purposes of establishing riparian interest for allowing a single-family dock.

On June 12, 2001, the Board of Trustees approved a settlement agreement with H. Smith, Inc. regarding a proposed development located a few miles north of the subject location. One of the issues in that dispute was the ownership of an upland marsh acquired by the state by the same U.S. patent that conveyed the marsh at subject Lot 8. Pursuant to the settlement agreement, easements are to be issued from the Board of Trustees over the upland marsh for boardwalks. However, the easements provide for public access to the boardwalks and there were other concessions in the settlement agreement that limited activities on sovereignty lands.

DEP recommends denial for the following reasons:

1. The applicant is not an upland riparian landowner;

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2. Granting the applicant the easement across the state-owned parcel would provide the riparian interest necessary to obtain authorization to cross adjacent sovereignty submerged lands that are within the Guana River Marsh Aquatic Preserve. DEP staff does not recommend authorizing any activity that would result in impacts to resources within an aquatic preserve when the application can be denied;
3. In this area staff is currently evaluating parcels owned by the Board of Trustees not currently under management in the Guana-Tolomato-Matanzas National Estuarine Research Reserve (GTMNERR). The parcel adjacent to the applicant's property is proposed for addition to the GTMNERR. The introduction of a privately-owned dock into lands that will be managed by CAMA for conservation purposes is not recommended;
4. There are other landowners nearby the applicant that have unauthorized docks that cross the subject marsh. DEP's Division of State Lands is working through the Office of General Counsel to identify unauthorized docks on state-owned uplands. Additionally, the Florida Fish and Wildlife Conservation Commission (FWC) currently manage the Guana Wildlife Management Area, including nearby Guana Lake. The docks prevent the FWC from managing the lake, including controlling invasive vegetation. Granting the applicant an easement could affect FWC's ability to enforce removal of the docks and open the door for these landowners to seek similar easements to construct the docks; and
5. Pursuant to section 18-2.018(1)(a), F.A.C., the decision to authorize the use of Trustees-owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. Relevant factors considered in this instance include:
 - a. Conservation – Under the Florida Forever acquisition program, the state is actively seeking to purchase lands similar in nature to swamp and overflow parcels for the purpose of conserving them and preventing future development when permitting does not offer sufficient protection. In 2003, the state acquired other privately-owned marshland very near the subject site for protection. In this instance the state already owns the property and has the ability to offer the same protection without using taxpayer dollars;
 - b. General environmental and natural resource concerns – The applicant's proposed dock will cross approximately 300 feet of wetlands to reach open water. DEP actively seeks to protect wetlands from development;
 - c. Fish and wildlife values – Protection of state-owned wetlands is instrumental in providing habitat for fish and wildlife. The subject waters are Class II -

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Shellfish Harvesting Waters, Aquatic Preserve, and Outstanding Florida Waters;

- d. Aesthetics – Privately-owned docks break up the natural scenic beauty of the surrounding marsh lands;
- e. Safety - Docks result in a hazard to navigation;
- f. Cumulative impacts – Riparian rights previously required an ownership interest in the lands abutting sovereignty submerged lands; however, as a result of changes adopted on December 11, 2001, chapter 18-21, F.A.C., now affords riparian rights to individuals that can obtain an easement across uplands that separate their properties from coastal or inland waterbodies. Many state conservation lands have associated wetland buffers that separate privately-owned uplands from lakes and rivers;
- g. Relative extent of the public need for the proposed use or activity – There is no public need for the proposed dock; and
- h. Reasonable alternative locations and methods to accomplish the objective of the proposed use or activity – the applicant has access to the same boat ramps available to other boaters in the area;

In this instance the state's denial would not require use of controversial regulatory authority that limits a landowner's ability to develop his property. The state has the ability to deny the application based on its proprietary interest and should capitalize on the opportunity. Approval of the applicant's request would create a precedent and make it difficult to deny future similar applications.

Staff made a recommendation to the applicant that the non-riparian marsh front homeowners be approached to present a case that allows multi-family use to a single dock that would limit cumulative impacts. There are two existing unauthorized docks in the subdivision. Authorizing and allowing one to remain as a multi-family structure would alleviate the Board of Trustees from setting a precedent to allow exclusive rights for single family docks to cross these or other intervening state-owned lands as a means to reach sovereignty submerged lands. Staff has spoken with the neighbor with an unauthorized dock immediately adjacent to the applicant's lot and he has agreed to this recommendation. This recommendation was not acceptable to the applicant and he wishes to proceed with his original request.

Although the applicant has previously questioned the validity of state ownership of the marsh, he admits that he does not have an ownership interest of the riparian marsh and is now requesting an easement to provide riparian rights so that he would meet the criteria of chapter 18-21. If there is a bona fide dispute regarding the ownership to the marsh waterward of the applicant's lot, this would be a legal matter that could affect many other property owners, and

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would be resolved in the appropriate circuit court. At this time there is no litigation regarding the ownership of the lands.

(See Attachment 4, Pages 1-17)

RECOMMEND APPROVAL OF AN EASEMENT OVER STATE-OWNED UPLAND MARSH FOR A MULTI-FAMILY/COMMUNITY PIER IN LIEU OF A SINGLE-FAMILY PIER TO ACCOMMODATE THE NON-RIPARIAN MARSH FRONT HOMEOWNERS AT AN EXISTING UNAUTHORIZED STRUCTURE

Item 5 **MSKP III., Purchase Agreement/Managing Agency Designation/Management Policy Statement Modification and Confirmation/Direction/Babcock Ranch Florida Forever Project**

DEFERRED FROM THE OCTOBER 4, 2005 AGENDA

REQUEST: Consideration of (1) a purchase agreement to acquire approximately 73,476.5 acres within the Babcock Ranch Florida Forever project from MSKP III, Inc.; (2) designation of the Florida Fish and Wildlife Conservation Commission as the managing agency; (3) modification and confirmation of the management policy statement; and (4) direction to Department of Environmental Protection staff to develop legislation for creation of a non-profit corporation to operate the Babcock Ranch.

COUNTIES: Charlotte and Lee

LOCATION: Sections 01 through 36, Township 41 South, Range 26 East; Sections 01 through 36, Township 42 South, Range 26 East; Sections 01 through 07, 09, and 12, Township 43 South, Range 26 East; Sections 19 through 36, Township 41 South, Range 27 East; Sections 01 through 36, Township 42 South, Range 27 East; and Sections 04 through 09, 17 and 18, Township 43 South, Range 27 East

CONSIDERATION: Total of \$350,000,000 in a series of five phases for the five phases as follows:

	Option Term	Purchase Price
Phase I and II	July 2006	\$162,500,000*
Phase III	July 2007	\$ 62,500,000*
Phase IV	July 2008	\$ 62,500,000*
Phase V	July 2009	\$ 62,500,000*

* Amounts are approximate, based on value of the acreage acquired in each Phase.

Funding Sources: \$200M BOT Florida Forever, \$100M General Revenue (proposed), \$10M FWC, \$40M Lee County (subject to Lee County vote of approval)

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<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u> <u>VALUE</u>	<u>SELLER'S</u> <u>PURCHASE</u> <u>PRICE</u>	<u>TRUSTEES'</u> <u>PURCHASE</u> <u>PRICE</u>
		<u>Holden</u> <u>(09/17/05)</u>	<u>Boyd</u> <u>(09/08/05)</u>			
<u>MSKP III, Inc</u>	73,476.5	\$379,695,000	\$390,150,000	\$394,695,000	TBA*	\$350,000,000 (89%)

*Seller entered into a merger agreement in July 2005, with closing scheduled for April 2006. The Babcock family bought the property in pieces over time beginning in early 1900's. Purchase price unknown.

STAFF REMARKS: The Babcock Ranch is an "A" group project on the Florida Forever Full Fee Project Interim List approved by the Board of Trustees on August 23, 2005. After the Board of Trustees approves this agreement, the project will be complete.

The Department of Environmental Protection (DEP) was notified on July 20, 2005, by Mr. Sydney Kitson of Kitson & Partners, LLC (Kitson&Partners), that MSKP III, Inc. had entered into an agreement to merge into the Babcock Florida Company and was interested in selling a major portion of the real estate assets known as Babcock Ranch to the state if the state was still interested. Since that time, Kitson&Partners and DEP's Division of State Lands (DSL) have been working with representatives of Charlotte and Lee Counties and a myriad of state, regional and local interests to put together a plan to provide for the purchase of approximately 81 percent of the land associated with Babcock Ranch, preservation of the natural and cultural resources that come with the property, and creation of a unique management regime that will support what has been a successful commercial ranch.

Details of the Purchase Agreement:

Pursuant to section 259.041(9)(a) F.S., a purchase agreement is being utilized for this acquisition. Patterned after the successful Board of Trustees' acquisition of the Guana Tract in the mid 1980's, the purchase agreement is designed to provide for approval today of five separate closings contingent on future appropriations of funding by the Florida Legislature and from our funding partners. DSL proposes to make the purchases starting on the eastern boundary and working to the west. The first closing will occur no later than July 31, 2006, with each subsequent closing occurring no later than the following July 31st, and the final closing no later than July 31, 2009. Because we are in the middle of the 6th year of the Florida Forever Program and only have four more years of funding to go, staff has recommended the Legislature fund a portion of this purchase with General Revenue in the amount of \$100 million. If appropriated during the 2006 Legislative Session, the \$100 million General Revenue will enable DSL to close on the first two phases simultaneously. Lee County has also committed to participating in the acquisition to protect the lands that are within that county. Pursuant to Lee County's funding source, Lee County Conservation 2020 Land Program, Lee County will take title to the property in Lee County to the extent of its contribution to the purchase price. On March 17, 2005, the Board of Trustees approved a similar Lee County acquisition, the Boomer Tract located in the Estero Bay Florida Forever Project area. The property owned by both Lee County and the Board of Trustees will be managed together as

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one piece. The Florida Fish and Wildlife Conservation Commission (FWC) will also be a funding partner with \$10 million of that agency's Inholdings and Additions funding.

The following unique attributes of this acquisition prevent it from establishing a precedent for future purchases:

1. The Board of Trustees has never before had a project with an existing, fully certified private water utility under the rules and statutes of the Public Service Commission (PSC). Town & Country Utilities Company (Utility) authorized as the sole provider of water across the entire parcel of land proposed for purchase and authorized to distribute water commercially offsite, provided the utility secures the necessary consumptive use permits (CUPs) from the South Florida Water Management District. The Utility has been in existence since 1999 and currently provides over 450 wells across the 91,000 acres for potable and non-potable agricultural needs. Thirty-one wells are potable. The Utility and the Babcock Corporation-Florida entered into a lease arrangement across the entirety of the property to provide the Utility with access for the wells and easements for pipelines that might be needed in the future. The Utility pays the Babcock Corporation \$0.20 per 1,000 gallons per day from the wells on the property under the terms of the lease.
2. Lee and Charlotte counties intervened in the certification process before the PSC and the outcome was two separate stipulations between the Utility and the counties. Lee County's stipulation requires the Utility to evaluate its ability to deliver water to the county and the county has the choice to receive the service. Charlotte County's agreement addresses the operations of the Utility, as it relates to protecting the integrity of the ecosystem of Telegraph Cypress Swamp.
3. In order to facilitate the sale to the Board of Trustees, the seller has to also be able to secure a specific number of development units from Lee and Charlotte counties for the portion of the ranch it is retaining (19,500 acres). The seller may use the Rural Lands Stewardship Program (RLSP) under chapter 163, F.S., as the means for providing those credits and working with each county to secure those credits. However, each county has made it abundantly clear that the approval of the credits, and comprehensive plan amendments are contingent upon Town and Country Utilities' ability to deliver water to the counties.

To summarize, this is the first time the Board of Trustees has considered purchase of property with an existing, fully PSC certificated water utility serving not just the operations of the landowner's ranch but being a necessary component for the retained property and the local governments.

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Staff is researching the projects on the Florida Forever list to verify whether any other large landowners have pursued creation of private utilities over their landholdings. We are not aware of any, but we will have that information prior to the Board of Trustees' meeting on Nov. 8, 2005.

Additionally, the Purchase and Sale Agreement is specifically based upon the seller's ability to apply for participation in the RLSP under section 163.3177, F.S. However, if the seller chooses to apply RLSP credits to lands the state is acquiring, and in so doing the property is determined to have diminished in value prior to takedown, the seller has only one of two choices: provide additional acreage or accept the lesser price. The seller does not have the option to cancel this contract for this specific diminution in value.

Appraisals

Appraisals of the entire Babcock Ranch, containing approximately 91,361 acres, were conducted in August 2004 by David W. Boyd, MAI and in July 2004 by Philip M. Holden, MAI. Updates to the appraisals were conducted as of September 2005. The updated appraisals are of a 73,471-acre portion of the total ranch that is included in this transaction. An additional revision was made in October 2005 as a result of a change in the configuration of the boundaries. The acreage of this transaction changed slightly to approximately 73,476.5 acres. With the new configuration, roughly 2,552 acres north of Curry Lake are to be retained by MSKP III, Inc., and an equivalent amount toward the southern boundary are to be included in this transaction. The shifted boundary results in additional acreage in this transaction in a higher value area as projected by the appraisers. However, there is no change in the purchase price as a result of the boundary change.

The appraised values do not include the value of any business currently in operation on the ranch such as the utility company, tenant farming, cattle, timber, eco tours or any other business operation. The appraisals value the fee simple interest. Any title exceptions not already considered will be examined by the appraisers and adjustments will be made to the values if appropriate. Also, there is potential that portions of the property may be used as part of the RLSP. If this happens, the affect on value would be considered prior to closing.

Management Agreement

Pursuant to section 259.032(9)(e), F.S., staff recommends that the Board of Trustees designate FWC as the managing agency for this site. FWC will receive management money for hunting and wildlife management. The management of the working ranch will continue under a Management Agreement (MA) among the Board of Trustees, Lee County, FWC, and Babcock Ranch Management, LLC, that will incorporate the management plan as adopted by the Board of Trustees and continue the predecessor's successful management of the property. It also directs the Ranch Manager to cooperate with FWC in the management of wildlife and game species on the property. Under the proposed MA, the management entity will manage the property for five years, commencing on the closing date of the first phase, with an option to

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extend management for an additional five years. For the purposes of this acquisition, the managing agencies are FWC and Babcock Ranch Management, LLC, until such time as the management agreement terminates.

The MA provides for the following: (1) the manager will be responsible for the traditional activities associated with the business operation of the ranch; (2) continuation of the existing silviculture, cattle and equine operation, in accordance with the Natural Resources Conservation Service, local soil and water district and/or State of Florida Department of Agriculture and Consumer Services' Best Management Practices while researching improved ways to ranch and farm to better protect environmental resources and water quality; (3) the manager may establish a nursery to propagate native species for commercial sale and for use by the Board of Trustees and seller; (4) the manager shall establish a Research and Education Center, in cooperation with the Florida Gulf Coast University, on the property; (5) off highway vehicles, as defined in section 317.0003(1), F.S., shall not be allowed on the property except for maintenance activities; (6) pastures currently improved for cattle and equine operations may continue to be used as improved pasture; (7) the manager may exercise the rights to wildlife viewing and nature study on or related to the property during the term of the MA; (8) the manager shall operate and manage the Cypress Lodge until the management plan is in place, and shall cooperate with the Board of Trustees to develop and place a camping and cottage system within the area as provided for in the future management plan of the property; (9) the manager, in concert with FWC and the management planning process, may develop a comprehensive greenway system for the use of the public; and (10) in addition, the manager shall continue to manage and operate the ecosystem tour program currently in operation on the property, while working with the Board of Trustees (or its designees) to improve the quality of the experience.

The management agreement also provides that in the event the approved management plan makes changes to the operations of the ranch that causes it to operate at a loss, then the managing agency (FWC) will make up for the loss of net revenue so the ranch operations break even, subject to a legislative appropriation for the purpose.

Donation of Conservation Easement

Kitson&Partners agreed to donate a conservation easement to the state to allow for an ecological connection between Curry Lake on the western boundary of the property and Telegraph Cypress Swamp. The conservation easement provides for public access across the easement for hiking and birdwatching, based on the results of the management plan, and Kitson&Partners will be able to build a road through the easement and will elevate it if necessary to protect the ecological attributes of the property.

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Gopher Tortoise Mitigation Park:

FWC has funds to establish a Gopher Tortoise Mitigation Park (GTMP) at Babcock Ranch provided the habitat is conducive to do so. Staff will work with the manager to perform the necessary studies to determine appropriate sites and if it's determined that there is adequate habitat and acreage to accommodate a GTMP at Babcock Ranch and if the seller agrees, FWC will be able to offset some of the land acquisition costs for Florida Forever (\$5,000/acre) for up to \$10 million.

Creation of A Non-Profit Corporation to Operate Babcock Ranch:

The 73,476.5-acre parcel the Board of Trustees is acquiring has many complex activities associated with it. For example, there is cattle ranching, timbering, an ecotourism business and a sod farm. The traditional plans for public use add their own complexities: hunting, hiking, bicycling, horse stable with trail rides, various types of camping, state park-type cabins, etc. The local community (at-large) has embraced the opportunities provided by this acquisition of Babcock Ranch with their own contributions for increasing value. For example, Florida Gulf Coast University wants to establish educational opportunities both on the property the Board of Trustees will buy and within the proposed development for a number of its programs. These programs include the university's Hospitality, Bio-Technology, Environmental Education, and Urban Planning Programs. The area's environmental organizations want to be involved in environmental education, science, and other efforts on the ranch.

The Babcock Ranch is currently managed with a staff of 75 employees: ranch hands, office staff, field crews, tour guides, etc. Most of these employees have been with the Babcock Corporation over a long period of time and have a good working knowledge of both the land and the operations of the ranch. Many live on the ranch and their housing is factored in as part of their compensation package.

The manager states that it intends to keep the current 75 employees on the payroll. The manager also states that it intends that the area businesses that have depended on the ranch for their livelihood will continue to have that business relationship; and with the addition of the public recreational uses, the surrounding area will receive the additional economic benefits attendant with money spent on bird watching, camping, hunting, and recreating on state recreational lands.

Taking into account the varied interests, complex issues, and desire on everyone's part to see Babcock Ranch continue to be run as a successful ranch, but adding a wide variety of public recreational activities as well, DSL staff has prepared a unique proposal for the overall management of this fabulous state/regional resource. After consulting with FWC staff, DEP is

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recommending that a legislatively created non-profit corporation be established to operate the Babcock Ranch. An appointed Board of Directors with a wide range of backgrounds, such as business administration, agribusiness, timber management, environmental engineering, etc., that benefit the ranch operations would help ensure a successful business with any profits going back into the operation of the ranch. Additionally, these profits would provide the means for the Babcock Ranch operation to fund itself, as well as, provide additional funds to benefit scientific studies and wildlife management on these lands and the adjacent public lands to the west (Fred C. Babcock-Cecil M. Webb Wildlife Management Area) by enhancing the long-term viability and protection of significant wildlife populations and their habitats. Currently, FWC does not receive management dollars for the management of the Fred C. Babcock-Cecil M. Webb Wildlife Management Area.

Development of the Management Plan:

Legislative establishment of the non-profit corporation in 2006 would allow the non-profit board to begin initial work with the seller and the state and local governments as the management plan and business plan are developed, even though the non-profit won't take control until termination of the MA. The management plan alone will take at least 18-24 months to prepare and approve. Additionally, the Board of Trustees may want this management plan to come to it for review due to the statewide importance of this purchase.

As with all of the Board of Trustees' conservation lands, the Babcock Ranch property will require the preparation of a management plan. Even the least complex management plans have taken about a year to develop. These are done with a lot of public input, with staff holding workshops and working with stakeholder groups on a variety of issues. Again, the complexity of issues involved with this property and running a ranch add to the time and effort required to draft, workshop, finalize, and implement this management plan. The four-year take down schedule with ongoing management, by Babcock Ranch Management LLC, will give staff and all interested parties adequate time to map out a strategy for accommodating a variety of public recreational opportunities, while protecting the wildlife and natural areas and providing for restoration in those areas where it's desired.

Development of Business Plan for the Ranch Operations:

The state has never acquired an operating ranch before, and certainly not one that the community at large desired to continue to run as a business. This will require that we prepare a business plan for the ranch. Mr. Kitson has agreed to assist the state/non-profit corporation in the preparation of that plan as he learns from his experience as the CEO for the Babcock Florida Company. Clearly, this is one of the most important benefits of having a private board of directors to oversee the operations of the ranch once the manager turns over operation of the ranch to the state at the end of the MA period.

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Water Facilities

Town and Country Utilities Company holds Florida's Public Service Commission Certificate No. 613-W as the exclusive water service provider for the Babcock property. Town and Country is also the lessee under the provisions of a lease for well sites and access thereto granted by The Babcock Corporation.

Under the terms of the Purchase Agreement, the seller is retaining fee ownership of up to 75 water well sites on the property. No later than 90 days prior to each closing of a takedown parcel, the seller will identify the location of the well sites. The seller will also reserve easements for access, piping and providing utilities to the well sites. The location of such water well sites and easements will be subject to the state's approval. It is estimated that the size of each well site will be approximately 100 feet by 100 feet. The seller shall use its best effort to reserve existing well sites and place the proposed water facilities easements along existing roads and in previously impacted areas or will design the reservations in such a way as to create the least environmental impact as reasonably practicable. In no event will any well site or any easement for the benefit of a well site be located in wetlands or natural areas, including but not limited to Telegraph Cypress Swamp. At each closing, the Utility will release its lease and remove those well sites not reserved from the Public Service Commission Certificate. The Utility will pay the Board of Trustees a Water Facilities Easement Fee in the amount of \$0.20 per 1,000 gallons of water withdrawn per active well. This will be payable to the Board of Trustees on February 1 of each year based on the active wells in existence on the Board of Trustees' property as of the immediately preceding January 1. Staff is recommending this easement structure for several reasons: (1) it is the one already in place (with the exception of the "active wells" language) under the current arrangement between Babcock Corporation and Town and Country Utilities; (2) it has been approved by and is part of the Utility's rate filing under the PSC; and (3) with the addition of the "active wells provision the utility is encouraged to place the wells on the retained parcel first, and use the least number of wells necessary on the Board of Trustees property to reduce the amount of wells it is required to make payments for the Water Facilities Easements.

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 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 and phase survey will be provided by the purchaser prior to each closing. The seller will provide a perimeter survey of the entire property and environmental site evaluation or site assessment for each closing, for which purchaser will reimburse seller 50 percent prorated at each closing.

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The mixture of old-growth forests and mesic (wet) flatwoods in the Babcock Ranch area not only provides habitat for endangered species, but it also provides a vitally needed water-recharge area for the Southwest Florida area. As demand for water increases across the state, protection and management of ground water recharge areas will have to increase so that both natural systems and the citizens of the state have sufficient quantities of water. This project also provides significant natural habitat for the Florida panther, the black bear, the red-cockaded woodpecker, and for many other species of concern. Protecting the Babcock Ranch uplands and wetlands would also contribute to a large landscape-sized protection area of more than 400,000 acres, strategically closing the gap between conservation land projects that now extend from Charlotte Harbor east to Lake Okeechobee. Acquisition of the Babcock Ranch project would meet Florida Forever goals of ensuring sufficient quantities of water for Southwest Florida, and increasing protection of Florida's biodiversity of species. Varied public recreational uses could include camping, picnicking, nature appreciation, hiking, biking and horseback riding. This would depend on how the project is acquired, and what management plan is adopted.

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 2005 Florida Forever Interim Report adopted by the Board of Trustees on August 23, 2005. At the time the project was put on the list, staff did not anticipate the strong desire to continue the operation of Babcock Ranch. So at this point, staff recommends that the Board of Trustees confirm the management policy statement as modified:

Babcock ranch is proposed eventually to be managed by a legislatively created non-profit corporation consisting of an appointed board of directors with a range of backgrounds such as business administration, agribusiness, forest management, ecotourism, and environmental engineering in cooperation with Florida Fish and Wildlife Conservation Commission. Initially Seller's entity will manage the ranch until such time that the non-profit corporation assumes on-site management responsibilities. Management activities will enhance the operations of the existing working ranch and help ensure the conservation, protection, and restoration of environmentally unique native habitats, important ecosystems, landscapes, forests, water resources, and the protection of threatened or endangered species. The tract will also be managed to provide public recreational opportunities as well, such as hunting, camping, hiking, horseback riding, environmental and cultural resource education and interpretation, ecotourism, and other natural resource-based activities.

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 5, Pages 1-195)

RECOMMEND APPROVAL