

**AGENDA  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND  
JULY 29, 2008**

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**Item 1      Minutes**

**DEFERRED FROM THE JUNE 10, 2008 AGENDA**

Submittal of the Minutes from the April 15, 2008 and April 29, 2008 Cabinet Meetings.

(See Attachment 1, Pages 1-32)

**RECOMMEND APPROVAL**

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**Item 2      Palmer Ranch, LLC, Recommended Consolidated Intent/Lease**

**DEFERRED FROM THE JUNE 10, 2008 AGENDA  
WITHDRAWN FROM THE FEBRUARY 12, 2008 AGENDA  
DEFERRED FROM THE JANUARY 31, 2008 AGENDA  
WITHDRAWN FROM THE NOVEMBER 14, 2007 AGENDA**

**REQUEST:** Consideration of an application for a five-year sovereignty submerged lands lease to contain 22,014 square feet, more or less, for a proposed private docking facility (13 slips over sovereignty submerged lands and 6 slips in an adjacent man-made canal).

**COUNTY:**      Collier  
                 Lease No. 110032365  
                 ERP File No. 11-0196577-001

**APPLICANT:** Palmer Ranch, LLC, an Illinois Limited Liability Company

**LOCATION:** Sections 18 and 19, Township 52 South, Range 27 East, in Coon Key Pass, Class II Outstanding Florida Waters, not approved for shellfish harvesting, within the local jurisdiction of Collier County.  
Aquatic Preserve: Rookery Bay-Cape Romano, Resource Protection Area 1 and 3  
Outstanding Florida Waters: Class II  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: No  
Manatee Protection Speed Zone: Idle/slow speed zone

**CONSIDERATION:**

**Lease Fees:** \$4,005.29, representing (1) \$3,204.23 as the initial lease fee computed at the base rate of \$0.145554 per square foot; and (2) \$801.06 as the initial 25 percent surcharge payment. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C. Fees may be revised upon receipt of an acceptable survey.

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**Item 2, cont.**

**Public Interest:** \$153,200 worth of public land management improvements. This has been addressed as a special approval condition.

**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 chapters 253 and 258, F.S. The Board of Trustees is requested to act on those aspects of the activity which require authorization to use sovereignty submerged lands.

**Project Synopsis**

The applicant is proposing to construct a 19-slip private docking facility, with 13 slips over 22,014 square feet of sovereignty submerged lands and 6 slips in the man-made canal, adjacent to an undeveloped upland property. The proposed docking facility will accommodate private recreational vessels with a maximum draft of 3.5 feet.

**Background**

As originally proposed, the project entailed nineteen boat slips on sovereignty submerged lands along with the other activities on the uplands and in the man-made canal that are presently proposed. Six of those slips would have been located over sponges and other resources that constitute a Resource Protection Area 1 pursuant to chapter 18-20, F.A.C. The project was redesigned to eliminate those six boat slips (the area between Lease Areas A and B on the lease survey), thereby reducing impacts to sovereignty submerged land resources. The project has also been designed to minimize impacts to mangroves along the shoreline.

The upland property is commercially zoned and presently undeveloped except for a wastewater lift station that operates under a Department of Environmental Protection (DEP) wastewater collection permit. Upland development will include two restrooms, a swimming pool and deck, a 16-space paved parking lot, and a gravel cart path.

**Project Detail**

The docks will be floating concrete docks attached to fixed wooden access walkways by aluminum gangways. Boat lengths at the leased docking facility will be limited by the lease boundary, and drafts will not exceed 3.5 feet. An additional six slips will be located in an adjacent man-made canal (not sovereignty submerged lands). Those slips will be for private recreational boats up to 20 feet long with drafts not to exceed 3.5 feet. The applicant intends to sell the right to use all of the boat slips on sovereignty submerged lands. A special approval condition requires the applicant to develop and implement a DEP-approved wet slip user agreement disclosing the lease requirements to slip users. Another special approval condition requires the applicant to provide DEP an acceptable survey and legal description to include the approximate 1,200-square-foot area that is preempted by the proposed docking facility at Lease

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**Item 2, cont.**

Area B because the dock layout will exclude this area from being reasonably accessible to the general public. A special lease condition specifies that the docking facility will be subject to modification, including a reduction in size and associated lease area, if the upland use changes from commercial to residential.

The applicant proposes to dredge 325 cubic yards of material in the adjacent man-made canal. Since none of the dredging will be located on sovereignty submerged lands, no dredge fee is required.

**Public Interest**

The portion of the docking facility on sovereignty submerged lands is located in an aquatic preserve; therefore, the proposed lease must be shown to be in the public interest, pursuant to section 258.42, F.S., and section 18-20.004(1)(b), F.A.C. DEP is of the opinion that the project is in the public interest in light of the following proposal by the applicant: (1) donation of \$153,200 worth of public land management improvements consisting of side scan sonar mapping services to Rookery Bay National Estuarine Research Reserve (RBNERR) to determine presence of seagrass and other submerged aquatic vegetation in the Ten Thousand Islands Aquatic Preserve (within RBNERR) as well as the prevalence and severity of prop scarring within those areas. This project is estimated to yield 5,000 acres of mapping depending on weather conditions; and (2) installation and maintenance of educational displays at the site regarding the aquatic preserve and marine ecosystems. The \$153,200 in item (1) is a reduction from the \$320,000 worth of public access improvements and public land management improvements proposed in the applicant's requests of November 14, 2007, January 31, 2008 and February 12, 2008. It represents 10 percent of the applicant's estimate of \$1.532 million in gross sales of the right to use boat slips on sovereignty submerged lands at the project site. Ten percent of such sales is a guideline DEP suggests as part of the overall public interest assessment. The applicant's estimate is based on 2007 appraisal data and 2006 comparable slip sales data from near the height of the real estate market which has declined significantly. This decline, coupled with significant fuel cost increases, indicates that boat slip values in Collier County (Bonita Springs, Marco Island and Naples) are significantly less than their values at the height of the market.

Item (1) is addressed as a special approval condition and item (2) is addressed as a specific condition in the environmental resource permit (ERP).

**Noticing**

The proposed lease was noticed pursuant to section 253.115, F.S. Forty-eight property owners were specifically noticed and nine objections were received. The objections received raised the following concerns:

- (1) the proposed canal dock's potential interference with navigation in the canal;
- (2) disagreement over the location of the applicant's northern riparian line;
- (3) the project's potential inconsistency with the setback requirement in section 18-21.004(3)(d), F.A.C.;

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**Item 2, cont.**

- (4) potential adverse impacts to manatees;
- (5) potential adverse impacts to shoreline mangroves and nearby sponges, seagrass, shrimp and fish species, eagles and other birds;
- (6) potential noise and lighting impacts to neighbors and the lack of upland screening/buffering;
- (7) potential change in upland use;
- (8) the potential use of the boat slips for overnight mooring, commercial tour boats, and other uses;
- (9) how sewage will be removed from the site;
- (10) stormwater runoff from the adjacent upland property if it is developed;
- (11) the potential lack of adequate water depth at and adjacent to the proposed docking facility; and
- (12) the lack of a public meeting to explain the project to area residents.

Additionally, Save the Manatee Club has provided a written objection to the proposed project based on its opinion that the proposed project is inconsistent with the federal Marine Mammal Protection Act. In light of the objections received, DEP determined that the proposed lease requires Board of Trustees' consideration pursuant to the heightened public concern provision of ssection 18-21.0051(4), F.A.C.

DEP is of the opinion that the objections received are addressed as follows:

- (1) although the man-made canal is not sovereignty submerged lands and is thus not subject to chapter 18-21, F.A.C., navigation in the canal will be maintained by marginal mooring of vessels along the canal dock and by the proposed maintenance dredging of the canal by the applicant at the proposed marginal boat slips in the canal, and by the docking facility in the canal extending less than 25 percent of the width of the canal. Additionally, navigation is an issue that must be addressed by the U.S. Army Corps of Engineers (Corps) prior to any permit being granted for the project by the Corps;
- (2) the applicant's surveyor provided a survey with a depiction of the riparian line and has been accepted by DEP's Bureau of Survey and Mapping for the purposes of this application;
- (3) the northernmost portion of the project is within 25 feet of the mouth of the canal. DEP has not been able to conclusively determine the ownership of the man-made canal, other than the canal's dedication to the public as part of the recorded subdivision plat. Therefore, there is no entity to provide a setback waiver other than Collier County, which has provided a local comprehensive plan consistency letter for the project;
- (4) concerns regarding potential manatee impacts have been addressed through the Florida Fish and Wildlife Conservation Commission (FWC) recommendations that will be incorporated into the ERP;
- (5) the project has been designed to minimize impacts to shoreline mangroves to the greatest extent practicable, and the project has been modified to avoid nearby sponges and seagrass, and shrimp and fish species will be protected through maintenance of water quality through the general and specific conditions of the ERP, and the FWC has not raised any concerns regarding adverse impacts to bird species;

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**Item 2, cont.**

- (6) potential noise and lighting impacts to neighbors and the lack of upland screening/buffering are local land development code issues to be addressed by local governments;
- (7) any change in upland use depends in part on the zoning of the property by the local government regulatory agency, and will require a lease modification. If such changes include upland development activities, such changes will also require a modification to the ERP to address stormwater issues;
- (8) overnight occupancy of boats will be authorized by the lease and ERP, although liveaboards will be prohibited. Although the applicant desires commercial tour boats to be authorized, the lease and ERP prohibit commercial tour boats and other commercial vessels to address the objection received. Other uses of boat slips not specifically authorized by the lease and ERP will require a modification to those authorizations;
- (9) the ERP requires installation, use and maintenance of a sewage pumpout facility, and the facility will be connected to the upland sewage system, and the local sewage treatment entity has provided written verification that it has the capacity to accept such sewage;
- (10) stormwater runoff from the upland development will be treated prior to discharge, and is addressed in the ERP. Any potential future upland development that may generate additional stormwater runoff beyond that which is addressed through the ERP will require a modification to the lease and the ERP;
- (11) the applicant has provided bathymetric data showing adequate water depth on sovereignty submerged lands at the project site, and adequate water depths in the canal will be provided by the proposed maintenance dredging that qualifies as an exempt activity pursuant to section 403.813(2)(f), F.S. Additionally, quadrangle maps and navigational charts show navigation aids and depths of at least 5 feet mean low water between the project site and Gullivan Bay to the south, and a hydrographic survey conducted by the applicant's agent shows depths of at least 5.4 feet mean low water between the project site and the Big Marco River to the north. Therefore, a special lease condition will limit boat drafts to 3.5 feet to provide adequate clearance between the bottom of fully loaded vessels and the submerged bottom. Additionally, a condition of the ERP requires the applicant to install and maintain an educational display informing wet slip users about navigation routes and associated bathymetric data between the project site and Gullivan Bay to the south and the Big Marco River to the north, and to update the display at least on an annual basis to reflect to the greatest extent practicable changes to bathymetry as a result of natural or man-made events; and
- (12) the project was noticed pursuant to section 253.115, F.S., and entities receiving notice were provided adequate opportunity to review the application file.

**Permit Summary**

DEP's ERP will prohibit liveaboards and fueling facilities and authorize a sewage pumpout facility. The ERP will incorporate several requirements designed to prevent and/or reduce water quality impacts, including stormwater management for the proposed upland parking lot and golf cart paths and implementation of a marina operations plan. With these requirements and the 3.5-foot vessel draft limit in the lease, DEP is of the opinion that the project will not result in unacceptable long-term secondary and cumulative impacts to water quality and aquatic preserve resources.

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**Item 2, cont.**

**Commenting Agency**

The recommendations of FWC regarding the protection of manatees have been addressed in the ERP and/or lease. Collier County is a designated manatee county with an approved manatee protection plan (MPP). FWC has stated that the proposed project is consistent with the MPP. FWC has also stated that because the docks and moored boats will not shade seagrass, and if the water depth is at least -6 feet MLW, that use of the proposed docking facility in the area over sovereignty submerged lands by boats with a 5-foot vessel draft would not significantly impact submerged aquatic vegetation in the mooring area and the ingress/egress area. In addition to the FWC recommendations, a special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between the applicant and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Collier County and approved by FWC, and/or any speed zones established by Collier County and approved by FWC.

**Comprehensive Plan**

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

(See Attachment 2, Pages 1-52)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$4,005.29**

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**Item 3      Leeward, LLC, Recommended Consolidated Intent/Lease Modification**

**WITHDRAWN FROM THE JANUARY 31, 2008 AGENDA**

**REQUEST:** Consideration of an application for (1) modification of a five-year sovereignty submerged lands lease to (a) combine two existing leases into one lease; (b) increase the term from five to ten years; (c) increase the preempted area from 67,657 square feet to 251,781 square feet, more or less, for a proposed reconfigured commercial docking facility with (108 slips all or partially over sovereignty submerged lands and 20 slips over privately-owned submerged lands; and (d) create an approximate 78,563-square-foot No Entry Zone; and (2) authorization for the severance of 7,080 cubic yards of sovereignty material.

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**Item 3, cont.**

**COUNTY:** Lee  
Lease No. 360025905 (f/k/a Hansen Marine Ways)  
ERP File No. 36-0148146-002

**APPLICANT:** Leeward, LLC, a Florida limited liability company (Leeward)

**LOCATION:** Section 34, Township 43 South, Range 25 East, in the Orange River, Class III waters, within the local jurisdiction of Lee County  
Aquatic Preserve: No  
Outstanding Florida Waters: No  
Designated Manatee County: Yes, with an approved manatee protection plan  
Manatee Aggregation Area: Yes  
Manatee Protection Speed Zone: Idle/slow speed zone

**CONSIDERATION:** \$48,283.41, representing: (1) \$25,653.41 as the initial lease fee for the proposed reconfigured commercial docking facility computed at the base rate of \$0.145554 per square foot, discounted 30 percent because 90 percent of the slips are open to the public for rent on a first-come, first-served basis; (2) \$6,700.00 as the initial 25 percent surcharge payment for the proposed reconfigured commercial docking facility's additional area; and (3) \$15,930.00 for the severance of 7,080 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. Sales tax and county discretionary sales surtax will be assessed pursuant to sections 212.031 and 212.054, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual income pursuant to section 18-21.011(1)(a)1, F.A.C. Fees may be revised upon receipt of an acceptable survey and legal description.

**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.

**Project Synopsis**

The proposed project consists of: (1) combining two existing sovereignty submerged lands leases into one ten-year lease and constructing a 128-slip commercial docking facility, with 108 slips over, or partially over, 251,781 square feet of sovereignty submerged lands and 20 slips over privately-owned submerged lands; and (2) creating a No Entry Zone for vessels over approximately 78,563 square feet of sovereignty submerged lands adjacent to the proposed docking facility lease area. The docking facility will accommodate private recreational boats, commercial tour boats, commercial fishing boats, and rental boats. Boat sizes will range in lengths from 30 to 80 feet, with drafts of less than 5 feet.

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**Item 3, cont.**

**Background**

Lease No. 360025905, f/k/a Hansen Marine Ways

This site has operated as a commercial marina / boat repair business since 1886. On August 25, 1985 the former Department of Natural Resources registered the docking facility as a grandfathered structure (GSR No. 360059). On October 8, 1997, the Department of Environmental Protection (DEP) issued a five-year sovereignty submerged lands lease containing 94,823 square feet to the former lessee (A. Ernest Hansen, Trustee) pursuant to a delegation of authority. DEP subsequently renewed the lease pursuant to a delegation of authority. The leased facility accommodated liveboards from the 1950s until Leeward purchased it and the upland riparian property on August 1, 2005.

DEP site inspections on April 25, 2003 and September 9, 2003, revealed several lease violations had occurred. Leeward, DEP, and the former owner/lessee entered into Consent Order No. 03-1622-36-DF and a Temporary Use Agreement (TUA) on August 15, 2005 to resolve the former owner/lessee's lease non-compliance. Leeward is currently in compliance with the terms and conditions of the Consent Order and TUA. The Lease was renewed and modified by DEP on November 30, 2007 pursuant to a delegation of authority to reflect the change in upland ownership to Leeward and the requirements of the Consent Order and TUA. The lease authorizes mooring of commercial and recreational vessels in conjunction with upland marina sales and service, without fueling facilities, with a sewage pumpout facility, and without liveboards. The lease expires on October 8, 2012.

On August 11, 2005, DEP issued a Butler Act Disclaimer (No. 40223 [5467-36]) to the former owner/lessee for 36,157.22 square feet of submerged lands, of which 13,663.20 square feet was within the former lease area. DEP also determined that approximately 56,903 square feet of submerged lands, of which 39,771.67 square feet was within the landward portion of the original lease area, had been dredged from privately-owned uplands and therefore is not sovereignty submerged lands. As a result of the DEP ownership determinations, Leeward owns approximately 93,060 square feet of submerged lands at the site. The portion of the existing marina on sovereignty submerged lands currently preempts 48,315 square feet. The existing marina currently includes approximately 102 wet slips (56 over sovereignty submerged lands and 46 over privately-owned submerged lands). All of the slips over sovereignty submerged lands are available for rent to the general public on a first-come, first-served basis for periods of one year or less.

Lease No. 360020975, f/k/a Manatee World

This commercial marina has operated on the east end of the site since 1965. From 1965 to 1996, Manatee World was a full service marina consisting of large, high-speed powerboat sales, dry storage capacity for 100 vessels including ground and rack storage, boat repair, and 21 wet slips. Since then, the 21-slip docking facility has been used for mooring of commercial, recreational, and rental vessels in conjunction with an upland commercial marina, dry storage building (current capacity is 60 vessels), and a boat yard with fueling facilities, with a sewage pumpout facility, without liveboards, and preempting 20,111 square feet of sovereignty submerged lands.

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**Item 3, cont.**

DEP issued a five-year sovereignty submerged lands lease containing 20,111 square feet for this facility in 1996 and subsequently renewed the lease pursuant to a delegation of authority. DEP issued a modified lease in 2005 to reflect a change in ownership to Leeward pursuant to a delegation of authority. A January 24, 2006 inspection by DEP found the marina to be in compliance with the lease. DEP issued a renewed and modified lease on November 30, 2007 to reflect a change in upland ownership to Leeward and now contains 19,342 square feet. The lease expires on May 31, 2012. All 21 wet slips located over sovereignty submerged lands are available for rent to the general public on a first-come, first-served basis for periods of one year or less.

The existing configuration of sovereignty submerged lands and private submerged lands ownership is somewhat fragmented, thereby potentially making lease compliance complex for both DEP and Leeward. Therefore, Leeward and DEP are working to develop a submerged lands exchange that meets the applicable public interest requirement for sovereignty submerged land conveyances. If that exchange is subsequently approved by the Board of Trustees, this sovereignty submerged lands lease will be modified pursuant to a delegation of authority unless the Board of Trustees directs DEP to submit that lease modification for Board of Trustees' consideration.

Leeward proposes to redevelop its 4.63-acre riparian upland property into a commercial marina office (Steamboat Marina), restaurant, retail buildings and 140-space vehicle parking area. Adjacent to Leeward's property is a separate 14.75-acre property owned by Steamboat LLC that is proposed to be developed into a 300-unit resort hotel. The South Florida Water Management District issued an environmental resource permit (no. 36-06532-P) for that project on September 11, 2007. Leeward has provided an affidavit stating that there are no business agreements between Leeward and Steamboat LLC and between the two parcels. A resolution adopted by the Lee County Board of County Commissioners for the two projects authorizes commercial, not residential, uses at the two sites.

**Project Detail**

Leeward proposes to remove the existing docks and pilings and construct the 128-slip docking facility. Ninety percent of all of the boat slips located over, or partially over, sovereignty submerged lands will be available for rent to the general public on a first-come, first-served basis, pursuant to section 18-21.003(23), F.A.C., with no longer than one-year rental terms, and with no automatic renewal rights or conditions. Boat slips located entirely over privately-owned submerged lands may be rented, leased, or sold to members of the public depending on market factors. To date, DEP has not discovered any boat slips on sovereignty submerged lands at the leased facilities that have been sold.

Leeward proposes to dredge 12,170 cubic yards of material (7,080 cubic yards of material on sovereignty submerged lands and 5,090 cubic yards of material on privately-owned submerged lands) from a 213,165 square foot area to provide adequate water depth (approximately -6 feet MLW) for the vessels proposed to be moored at the modified docking facility. The dredging will

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**Item 3, cont.**

increase depths in areas that are currently -3 feet to -6 feet deep at mean low water. The material to be dredged consists of sand, silt, and debris consisting of crushed shell fragments, an estimated 440 creosote pilings, and the remnants of three wood and metal barges sunk in the 1930s that have become colonized with mangroves. Other than the mangroves, there are no significant benthic resources in or adjacent to the area proposed to be dredged. Leeward proposes to offset the mangrove impacts by water quality benefits from removal of potential metal-laden sediments and creosote pilings. The spoil material will be disposed of at an appropriate self-contained upland site. All dredging on sovereignty submerged lands will be included in the proposed lease. Leeward 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 Leeward to pay the dredge fee for the 7,080 cubic yards of material on sovereignty submerged lands to DEP prior to receipt of a fully executed modified lease.

**Noticing**

The lease modification request was noticed pursuant to section 18-21.004(1)(m), F.A.C. Ninety property owners were specifically noticed and no objections were received by the end of the comment period (January 4, 2008). However, DEP received written objections from Save the Manatee Club, Inc., and three concerned citizens including a previous liveaboard vessel resident of the former Hansen Marine Ways facility. The concerns raised in those objections pertained to potential adverse impacts to manatees and have been addressed through the Florida Fish and Wildlife Conservation Commission (FWC) recommendations that have been incorporated into the ERP and as special lease conditions. Leeward also proposes to address these concerns by creating a No Entry Zone for vessels over: (1) approximately 73,563 square feet of sovereignty submerged lands north of and adjacent to the proposed docking facility lease area; and (2) approximately 5,000 square feet of sovereignty submerged lands on the west side of the mangrove island north of the proposed 73,563-square-foot No Entry Zone. The total 78,563-square-foot No Entry Zone will be demarcated pursuant to FWC requirements and will prohibit all human activity each year from November 1 through April 1 except for access by riparian owners consistent with sections 68C-22.002(12) and 68C-22.003(5), F.A.C. That is the time of year in which manatees are more frequently found in the vicinity of the Leeward site because of the warm water discharge from the Florida Power and Light Company's electric power facility approximately 1.5 miles upriver. Special approval conditions require Leeward to submit: (1) satisfactory evidence of sufficient upland interest for the shoreline adjacent to the No Entry Zone; (2) an acceptable survey and legal description for the No Entry Zone; and (3) regulatory permits from FWC for the No Entry Zone demarcation devices. Save the Manatee Club, Inc., has also recommended seven additional No Entry Zones in several areas of the Orange River upstream from the project site that are not within Leeward's riparian area. Leeward has not agreed to request a sovereignty submerged lands lease from the Board of Trustees for those zones.

Chapter 68C-22, F.A.C., provides authority for the FWC to create and enforce No Entry Zones, which are defined by section 68C-22.002(11), F.A.C., as controlled areas where all vessels and all persons, either in vessels or swimming, diving, wading, or fishing (except from an adjacent bank or bridge when using poles or lines which are not equipped with a fishing line retrieval

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**Item 3, cont.**

mechanism, e.g., a cane pole) are prohibited from entering. FWC has indicated its support for Leeward's proposed No Entry Zone. Since Leeward's proposed No Entry Zone will not be created by FWC consistent with chapter 68C-22, F.A.C., FWC cannot enforce the requirements of the No Entry Zone. However, including this area in Leeward's sovereignty submerged lands lease will provide Leeward with management authority over the No Entry Zone. A special lease condition addresses Leeward's management responsibilities for this zone.

Section 18-21.011(1)(b)7, F.A.C., provides "A waiver from payment of annual lease fees for government, research, education or charitable entities that are either not-for-profit or non-profit shall be granted if the following conditions are met: a. Any revenues collected from the activity or use of sovereign submerged lands are used solely for the purposes of operation and maintenance of the structure; and b. The activity or use of sovereignty submerged lands is consistent with the public purposes of the applicant organization and is not an adjunct to a commercial endeavor." Since Leeward is a for-profit corporation, it does not qualify for the lease fee waiver for the No Entry Zone. Therefore, the rule requires assessment of the standard lease fee and 25 percent surcharge payment for this area. However, because Leeward proposes to manage this area for manatee protection each year from November 1 through April 1, DEP recommends that the Board of Trustees consider not assessing the lease fee and 25 percent surcharge payment for the No Entry Zone. If the Board of Trustees requires payment of the lease fee for the No Entry Zone, the annual lease fee will increase by approximately \$11,435.16 and the one-time 25 percent surcharge payment will be \$2,858.79.

In addition to establishing a No Entry Zone adjacent to the proposed reconfigured docking facility, Leeward proposes to meet the concerns about potential adverse impacts to manatees by: (1) obtaining a permit from FWC to install a navigational advisory sign on a piling in the Orange River on the east side of the project site to discourage large vessels from proceeding upstream; and (2) granting the Board of Trustees a proprietary deed of conservation easement over its riparian property prohibiting the use of the property for dry storage of boats. Upland dry storage would not include storage of work boats, non-motorized vessels such as canoes or kayaks, or vessels temporarily on-site associated with temporary (less than 7 days) special events such as boat shows. Prohibiting upland dry storage is also addressed as a specific condition in DEP's environmental resource permit.

**Permit Summary**

The lease will authorize sewage pumpout facilities and fueling facilities but will prohibit liveaboards. The DEP environmental resource permit will authorize liveaboard slips on privately-owned submerged lands and will required hard-piped sewage connections to those slips. Water quality testing shows no violations of state water quality standards at the site. The permit will also incorporate several requirements designed to prevent and/or reduce potential water quality impacts, thereby resulting in a net improvement to water quality at the site. As a result, DEP is of the opinion that long-term secondary and cumulative impacts from this project will be improved as compared to historic conditions at the site, and that the proposed project will provide a net improvement to water quality in the river, thereby qualifying for issuance of an environmental resource permit.

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**Item 3, cont.**

**Commenting Agency**

The recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) regarding protection of manatees have been addressed in the environmental resource permit and as special lease conditions. Lee County is a designated manatee county with an approved manatee protection plan (MPP). FWC stated that the proposed project is consistent with the MPP. In addition to the FWC recommendations, a special lease condition will require the applicant to ensure that the user of any slip at the docking facility enters into a signed agreement, between the applicant and the user, stating that the slip user agrees to comply with the speed zones contained in the MPP, and/or any revisions adopted by Lee County and approved by FWC, and/or any speed zones established by Lee County and approved by FWC.

FWC's Office of Waterway Management has requested that the modified lease address the following: (1) a requirement that Leeward provide FWC written notice advising that: (a) the former Hansen Marina sign, pilings, and all associated structures will be removed immediately upon the beginning of construction of the new docking facility, and (b) at the time of removal of same Leeward will send FWC a written notice confirming that the piles, markers and all associated structure have been removed; and (2) no navigation aids shall be installed until a permit from FWC has been issued. These items have been addressed as special approval conditions.

**Comprehensive Plan**

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

(See Attachment 3, Pages 1-78)

**RECOMMEND APPROVAL SUBJECT TO THE SPECIAL APPROVAL  
CONDITIONS, THE SPECIAL LEASE CONDITIONS, AND  
PAYMENT OF \$48,283.41**

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**Item 4      Falzone Option Agreement/DACS/DOF/Blackwater River State Forest  
Additions and Inholdings Project**

**DEFERRED FROM THE JUNE 10, 2008 AGENDA**

**REQUEST:** Consideration of an option agreement to acquire 104.8 acres within the Department of Agriculture and Consumer Services' Division of Forestry's Blackwater River State Forest Additions and Inholdings project from Timothy D. Falzone.

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**Item 4, cont.**

**COUNTY:** Santa Rosa

**APPLICANT:** Department of Agriculture and Consumer Services' Division of Forestry (DOF)

**LOCATION:** Section 25, Township 05 North, Range 27 West

**CONSIDERATION:** \$475,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Brown <u>(8/2/07)</u>	APPROVED <u>VALUE</u>	SELLER'S PURCHASE <u>PRICE</u>	TRUSTEES' PURCHASE <u>PRICE</u>	OPTION <u>DATE</u>
Falzone	104.8	\$475,000	\$475,000	\$468,500*	\$475,000** (100%)	90 days after BOTapproval

\* Purchased in March 2007

\*\* \$4,532 per acre

**STAFF REMARKS:** This acquisition was negotiated by DOF under its Florida Forever Additions and Inholdings Program.

**Project Description**

This parcel is an inholding of the Blackwater River State Forest to the north and west, and County Road 191 to the east. The parcel was previously owned by Paul and Elizabeth Brown, who initially advertised it for sale in February 2007. DOF attempted negotiations but was unable to secure the purchase within the timeframe required by the Browns. The current owner acquired the property in March 2007, which met the Browns' closing time constraints. Mr. Falzone purchased the property with the intention of possibly conveying the property to DOF which would prevent the subdivision and development by a third party. Mr. Falzone's intervention has enabled the state to purchase this important property that will improve DOF's over-all ability to manage the Blackwater River State Forest, afford natural resource conservation, and expand outdoor recreational opportunities under the multiple-use management regime practiced by DOF.

**Mortgages and Liens**

All mortgages and liens will be satisfied at the time of closing. There is a right-of-way easement in favor of Escambia River Electric Cooperative, Inc. This right-of-way easement has been considered by the Bureau of Appraisal and does not affect the value. Escambia River Electric Cooperative, Inc. reports that at this time it may be willing to release this right-of-way easement at 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 this and any other title issues that arise prior to closing.

**Closing Information**

A title insurance policy, a survey, and an environmental site assessment of the property will be provided by DOF prior to closing.

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**Item 4, cont.**

**Management**

The parcel will be managed by DOF as an addition to the Blackwater River State Forest approved management plan.

**Comprehensive Plan**

This acquisition is consistent with section 187.201(22), F.S., the Agriculture section of the State Comprehensive Plan.

(See Attachment 4, Pages 1-36)

**RECOMMEND APPROVAL**

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**Item 5      Spohrer Option Agreement/Fort George Island Cultural State Park/ Division of Recreation and Parks' Additions and Inholdings Project**

**REQUEST:** Consideration of an option agreement to acquire 2.6 acres under the Department of Environmental Protection's Division of Recreation and Parks' State Park Additions and Inholdings Program from George V. Spohrer, Jr.

**COUNTY:** Duval

**LOCATION:** Section 19, Township 01 South, Range 29 East

**CONSIDERATION:** \$283,000

<u>PARCEL</u>	<u>ACRES</u>	APPRAISED BY Rogers <u>(01/08/07)</u>	APPROVED <u>VALUE</u>	SELLER'S <u>PURCHASE PRICE</u>	TRUSTEES' <u>PURCHASE PRICE</u>	<u>OPTION DATE</u>
Spohrer	2.6	\$300,000*	\$300,000*	\$225,000**	\$283,000 (94%)***	150 days after BOT approval

\* Represents the land value only. The manufactured housing unit currently on the property will be removed prior to closing and has a contributory value of \$25,000.

\*\* Seller purchased the property on February 18, 2005.

\*\*\* \$108,846 per acre.

**STAFF REMARKS:** The Spohrer parcel has been identified on the Department of Environmental Protection's (DEP) Division of Recreation and Parks' (DRP) Additions and Inholdings List. This agreement was negotiated by DEP's Division of State Lands (DSL) on behalf of DRP under the State Parks Additions and Inholdings Florida Forever program.

**Project Description**

This parcel is an inholding completely surrounded by state-owned lands and located within the southern portion of Fort George Island Cultural State Park (Park). The property contains approximately 2.6 total acres, with 2.2 acres of jurisdictional wetlands.

\*\*\*\*\*

**Item 5, cont.**

Fort George Island (Island) is a partially undeveloped barrier island located on the northeast coast of Florida in the City of Jacksonville. The Island is separated from the mainland by a network of meandering creeks and estuarine marshes. The open water and salt marsh surrounding the Island are part of the Nassau River – St. Johns River Aquatic Preserve (Preserve). The Preserve is also recognized at the Federal level as part of the Timucuan Ecological and Historic Preserve, as well as being within the Pumpkin Hill Creek Florida Forever project.

The site partially consists of Class II marshes, an indicator of low pollution and good water quality. Maintaining the quality of these marshes by managing adjacent uplands is an important aspect of the management of the Park. The property is also important as it is part of a rare shell mound natural community and connects to a historic causeway leading from the parcel across Haulover Creek to Xalvis Island. The historic oyster shell causeway may also have a prehistoric component used by aboriginal peoples.

Public ownership of the property will prevent further development of the Island, thus allowing for better management of the Park. In addition to improved management, preservation of the parcel will protect valuable ecological and historical resources.

**Mortgages and Liens**

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.

The western-most 0.1-acre, upland portion of the property is bisected by Fort George Road. The easterly 2.5 acres are currently improved with a single-wide, manufactured housing unit (mobile home). The seller has agreed, prior to closing, to remove the mobile home from the property. The appraiser considered the improvement in the valuation of the property, but is not part of the Board of Trustees' purchase price.

**Closing Information**

A title insurance policy, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing. A survey will be waived pursuant to section 18-1.005, F.A.C.

**Management**

This parcel will be managed by DRP as an addition to Fort George Island Cultural State Park.

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**Item 5, cont.**

**Comprehensive Plan**

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 1-14)

**RECOMMEND APPROVAL**

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**Substitute Item 6     **Emerald Coast Development Partners, LLC, Option Agreement/  
Managing Agency Designation/Management Policy Statement  
Confirmation/Flagler County Blueway Florida Forever Project****

**REQUEST:** Consideration of (1) an option agreement to acquire 59.187 acres within the Flagler County Blueway Florida Forever project from Emerald Coast Development Partners, LLC, in partnership with Flagler County; (2) designation of the Department of Agriculture and Consumer Services' Division of Forestry and Florida Fish and Wildlife Conservation Commission as co-managing agencies for this project, with Flagler County as the managing agency for this parcel; and (3) confirmation of the management policy statement.

**COUNTY:** Flagler

**LOCATION:** Section 24, Township 12 South, Range 31 East, and Section 19, Township 12 South, Range 32 East

**CONSIDERATION:** \$395,000 (Board of Trustees' 50 percent share of the total purchase price of \$790,000, with Flagler County paying the remaining 50 percent)

<u>PARCEL</u>	<u>ACRES</u>	<u>APPRAISED BY</u>		<u>APPROVED</u>	<u>SELLER'S</u>	<u>TRUSTEES'</u>	<u>CLOSING</u>
		<u>Hamilton</u>	<u>Page</u>				
Emerald Coast	59.187	(12/13/06)	(12/13/06)	\$1,050,000	\$1,008,000*	\$395,000**	10/3/08

\* Seller originally purchased the property on 8/01/01 for a consideration of \$1,300,000. The property was sold to Harbour Island North, LLC on 11/15/05 for \$1,650,000. A mortgage was retained by Emerald Coast Development Partners, LLC, in the amount of \$1,550,000. On 6/13/08, Emerald Coast Development Partners, LLC, received the property back through a deed in lieu of satisfaction of mortgage. This transaction was valued at \$1,008,000 by the seller.

\*\*Total purchase price is \$790,000, or \$13,348 per acre. This equals 76 percent of the approved value. The Trustees' purchase price is 50 percent of the total purchase price. This equals 38 percent of the approved value.

**STAFF REMARKS:** Flagler County Blueway is a full fee "A" group project on the Florida Forever Priority List approved by the Board of Trustees on February 26, 2008. The project contains 4,429 acres, of which this will be an initial purchase. If the Board of Trustees approves this agreement, 4,369.81 acres or 99 percent of the project will remain to be acquired.

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**Substitute Item 6, cont.**

**Project Description**

Public acquisition of this project will contribute to the following Florida Forever goals: (1) Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels – will help close gaps and gain public ownership of some remaining hammock, marshes, flatwoods, and swamps; (2) Increase the amount of open space available in urban areas - several parcels have future potential for serving as urban open space which will increase the amount of open space available in urban areas; and (3) Increase natural resource-based public recreation and educational opportunities – recreational opportunities may also increase if the land is managed carefully.

Overall, the Flagler County Blueway comprises a landscape of three distinguishable groups of conservation lands. They are as follows: (1) northern perimeter conservation lands include the northernmost extent of the project adjacent to Washington Oaks Gardens State Park (SP), Pellicer Creek Conservation Area (CA), and Princess Place Preserve; (2) southern perimeter conservation lands are at the southern end of the proposal boundary, including Bulow Creek SP, Gamble Rogers State Recreation Area and North Peninsula SP; and (3) the central, connecting part of the proposed blueway project that is proximal to northern and southern borders of the Graham Swap CA. This project is significant as an ecological greenway according to the Florida Natural Areas Inventory Florida Forever Measures Evaluation.

This proposed acquisition is a partnership between the Board of Trustees and Flagler County, with each entity providing fifty percent of the purchase price. Title to the property will be held fully by the Board of Trustees. This acquisition was approved by the Flagler County Board of Commissioners on June 16, 2008.

**Mortgages and Liens**

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.

There are a total of 1.48 acres of platted roads and 1.43 acres of platted canals within the boundaries of the subject property. The canals appear to be used by boat traffic of property owners abutting the canal that runs parallel to South 23<sup>rd</sup> Street. Usage of these canals will be monitored as part of the management plan for the property.

**Closing Information**

A title insurance policy, a survey and an environmental site assessment will be provided by the purchaser prior to closing, with Flagler County and the Board of Trustees each responsible for one-half of the costs.

\*\*\*\*\*

**Substitute Item 6, cont.**

**Management**

Pursuant to section 259.032(9)(e), F.S., DEP staff recommends that the Board of Trustees designate the Department of Agriculture and Consumer Services' Division of Forestry (DOF) and the Florida Fish and Wildlife Conservation Commission (FWC) as co-managers for the Flagler County Blueway project, while appointing Flagler County as the managing agency for this site as an addition to the 217-acre Betty Steflik Memorial Preserve. DOF and FWC have agreed to the designation of Flagler County as the managing agency for this acquisition. The site will be managed as a geological, wildlife, and environmental area.

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 2008 Florida Forever Annual Report adopted by the Board of Trustees on February 26, 2008. DEP staff recommends that the Board of Trustees confirm the management policy statement that is described in the Florida Forever five-year plan's management prospectus and management goals for the Flagler County Blueway project.

**Comprehensive Plan**

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

(See Attachment 6, Pages 1-45)

**RECOMMEND APPROVAL**

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**2<sup>nd</sup> Substitute Item 7      Babcock Ranch Preserve Management Plan and 2008 Business/  
Operational Plan**

**REQUEST:** Approval of the Management Plan and 2008 Business/Operational Plan for the Babcock Ranch Preserve.

**COUNTY:** Charlotte and Lee

**STAFF REMARKS:** This 73,239-acre property is located in southern Charlotte and northern Lee Counties. Ownership of the Babcock Ranch Preserve is held by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (as to the portion of the property located in Charlotte County) and the Lee County Board of County Commissioners (as to the portion of the property located in Lee County).

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**2<sup>nd</sup> Substitute Item 7, cont.**

Babcock Ranch Management, LLC, (Babcock Management) a for-profit limited liability company, is managing the Babcock Ranch Preserve (Preserve), for a term of up to ten years under the provisions of the Management Agreement approved by the Board of Trustees on November 22, 2005. Babcock Ranch, Inc., a legislatively created not-for-profit corporation, is an advisor to the Preserve Manager during the term of the Management Agreement. The Florida Fish and Wildlife Conservation Commission (FWC) and the Department of Agriculture and Consumer Services, Division of Forestry (DOF) are lead managing agencies acting in a technical advisory role to the Preserve Manager. Lee County, in addition to being an owner, is acting in a technical advisory role to the Preserve Manager for the Lee County portion of the property. When the Management Agreement terminates, Babcock Ranch, Inc. will assume management responsibility for the Preserve.

Babcock Ranch, Inc. was established by the Babcock Ranch Preserve Act, section 259.1053, F.S., as a not-for-profit corporation. Babcock Ranch, Inc., is comprised of a nine-member board of directors including four members appointed by the Board of Trustees, the executive director of FWC, the Commissioner of Agriculture, a representative from the Babcock Florida Company, a representative appointed by the Charlotte County Board of County Commissioners, and a representative appointed by the Lee County Board of County Commissioners.

The Management Plan (MP) for the property is required to be prepared in accordance with sections 253.034(5) and 259.032(10)(d)2, F.S. The MP is required by statute to be approved by the Board of Trustees no later than two years following the date of acquisition. The property was acquired on July 31, 2006. Lee County approved the plan on February 16, 2008. Babcock Ranch, Inc. approved the MP as required by the Management Agreement, on March 17, 2008. The Department of Environmental Protection's Division of State Lands (DSL) received the MP in March 2008. On April 11, 2008, ARC approved the Management Plan with the provision that Section 3.4 of the plan dealing with silviculture (pages 66-70) be removed. Babcock Ranch Management, LLC will continue to follow Section 21 (silviculture) of the Management Agreement until completion of the Red-cockaded Woodpecker (RCW) and Timber management plans for the property. These plans were completed in June of 2008 and a revised Silviculture Guidelines section has been added to the plan. As is the case with all management plans, any member of the Board of Trustees may request a management plan be placed on the agenda for consideration.

The MP states that it is the mission of Babcock Management to maintain the ongoing practices that have long established Babcock Ranch as a model for sustainable preservation of natural lands with significant species diversity through a balanced program of complimentary agricultural, timber, livestock and eco-tourism initiatives and management practices. Babcock Management is to work with the managing agencies to develop long-term land management practices, uses and public access that will:

- a. maintain the ecological and economic integrity of the Preserve;
- b. preserve the historic and conservation values of the Preserve; and

\*\*\*\*\*

**2<sup>nd</sup> Substitute Item 7, cont.**

c. align with the unique objectives of Babcock Management, including:

- ♦ the sustained operations of a working cattle ranch;
- ♦ selective timbering;
- ♦ eco-tourism operations;
- ♦ limited grazing and hunting; and
- ♦ the use of prescribed burning and other ongoing land management practices.

1. The Management Agreement requires an annual Operational Report detailing all activities on the property including funding, expenditures, permit applications, and design or building contracts for the prior year. A report was submitted to DSL on January 31, 2008 for the period August 1, 2006 through July 31, 2007. A revised 2006 report has been prepared by Babcock Management. Babcock Management also ordered a detailed financial audit in January 2008 for the 2007 calendar year. During a discussion between Babcock Management and DSL staff on March 18, 2008, it was suggested that the reporting period for the Operational Report be changed to the calendar year to coincide with the Babcock Management's audit reporting period. It was agreed that the revised Operational Reports (one for 2006 and one for 2007) and audit would be provided to DSL. The 2006 Operational Report was received on May 16, 2008. The audit was received on July 1, 2008. As of July 17, 2008 the 2007 Operational report has not been received.
2. A Business Plan is required to be developed for the Preserve as stated in paragraph 2 of the Management Agreement which states in part that "The parties understand that the management plan will be adopted in accordance with the provisions of section 253.034(5), F.S. by the Board of Trustees after review by ARC. The Business Plan will be approved by the Board of Trustees in accordance with the requirements of the adopted management plan." At a meeting on May 20, 2008, Babcock Management agreed to combine the requirements of the Operational Plan required by the MP, with the Business Plan. The 2008 Business/Operational Plan was received on June 12, 2008.
3. The Lee County Board of County Commissioners approved the MP and Business/Operational Plan on June 24, 2008. Babcock Ranch, Inc. approved the MP on July 14, 2008. ARC approved the MP on July 17, 2008.

The Management Plan will be submitted separately.

(See Attachment 7, Pages 1-47)

**RECOMMEND APPROVAL**