



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
1520 ROYAL PALM SQUARE BLVD., SUITE 310
FT. MYERS, FLORIDA 33919

July 2, 2010

Ft. Myers Section
SAJ-2006-6656(IP-MJD)

Thomas J. Danahy, President
Babcock Property Holdings, LLC
17837 Murdock Circle
Port Charlotte, Florida 33948

Mr. Gary Nelson, Chairman Board of Supervisors
Babcock Ranch Community Independent Special District
17837 Murdock Circle
Port Charlotte, Florida 33948

Gentlemen:

The U.S. Army Corps of Engineers (Corps) is pleased to enclose the Department of the Army permit, which should be available at the construction site. Work may begin immediately but the Corps must be notified of:

- a. The date of commencement of the work,
- b. The dates of work suspensions and resumptions of work, if suspended over a week, and
- c. The date of final completion.

This information should be mailed to the Special Projects and Enforcement Branch of the Regulatory Division of the Jacksonville District at the letterhead address. The Special Projects and Enforcement Branch is also responsible for inspections to determine whether Permittees have strictly adhered to permit conditions.

IT IS NOT LAWFUL TO DEVIATE FROM
THE APPROVED PLANS ENCLOSED.

Sincerely,

Don W. Kinard
DK

Donald W. Kinard
Chief, Regulatory Division

Enclosures

Copies Furnished:

Johnson Engineering
2122 Johnson Street
Ft. Myers, Florida 33919

FWS, Vero Beach
EPA, West Palm Beach
CESAJ-RD-PE

JUL 02 2010

DEPARTMENT OF THE ARMY PERMIT

Co-Permittee: BABCOCK PROPERTY HOLDINGS, LLC
17837 Murdock Circle
Port Charlotte, Florida 33948

Co-Permittee: Babcock Ranch Community Independent Special District
17837 Murdock Circle
Port Charlotte, Florida 33948

Permit No: SAJ-2006-06656-(IP-MJD)

Issuing Office: U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To construct a residential community consisting of approximately 19,500 homes; 6,000,000 square feet of commercial development; internal roadways; surface water management systems; eight (8) control structures in canals; utilities; schools; hospital; fire and police facilities; FGCU research facilities; golf courses; lakes; trail system; preserves and open spaces. The project includes discharge of approximately 1,066,750 cy of fill material into 368.93 acres of wetlands and 6.16 acres of waters and the excavation of 1,900,000 cy of material from 60.69 acres of wetlands for a total of 429.62 acres of wetland impacts. The permittee shall enhance and preserve 1,804.33 acres of wetlands, create 136.70 acres of wetlands (with uplands, transitional areas and berms for a total of 192.75 acres) and enhance/ preserve 2,810.20 acres of uplands on-site. The applicant also proposes to enhance and manage 2,704.44 acres of wetlands; 3,135.69 acres of uplands on the adjacent state lands and a 73.90 acre farm field restoration area. The work described above is to be completed in accordance with the 11 pages of drawings in **Attachment 1** [and 11 attachments] affixed at the end of this permit instrument.

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Project Location: The proposed project involves freshwater forested and herbaceous wetlands within the Tidal Caloosahatchee watershed. The site is located east of Interstate 75 (I-75) and State Road 31 (S.R. 31) and north of County Road 78 (C.R. 78) in Sections 29 & 31-33/T41/R26; Sections 4-10, 15-17, 19-36/T42/R26 Charlotte County and Sections 1-7 & 9/T43/R26 Lee County Florida.

Directions to site: From I-75 take Bayshore Road Exit (#143) east approximately three miles to the intersection of Bayshore and S.R. 31. Turn north on State Road 31 and go approximately 1.5 miles to the intersection of S.R. 31 and C. R. 78. The project site begins at the northeast corner of the intersection of CR 78 and SR 31.

Latitude & Longitude: Latitude: 26.777783 North
Longitude: -81.172245 West

Permit Conditions

General Conditions:

1. The time limit for completing the work authorized ends on **2 July 2030**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

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3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Attachments 2-4).

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. **Reporting Address:** All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, 1520 Royal Palm Square Blvd. Suite 310, Ft. Myers, FL 33919. The Permittee shall reference this permit number, SAJ-2006-06656-IP-MJD, on all submittals.

2. **Reporting Address:** All reports, documentation, conservation easements and correspondence required by the terms and conditions of the U.S. Fish and Wildlife Biological Opinion shall be submitted to the Corps at the above address with a copy to the following address: USFWS, South Florida Ecological Services Office, Enforcement Section, 1339 20th Street, Vero Beach, FL 32960-3559. The Permittee shall reference this permit number, SAJ-2006-06656-IP-MJD, on all submittals.

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3. Commencement Notification: Within 10 days from the date of initiating each phase of the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of any work authorized by this permit.

4. Water Quality Certification- Phases: The permittee shall provide a copy of each subsequent construction phase of the SFWMD water quality certification to the Corps of Engineers at the address in Special Condition 1 above prior to initiation of construction.

5. Precedence: Where any condition of this permit differs from the attached mitigation plan or Water Quality Certification, the condition within the Corps' permit will take precedence.

6. Wetland Avoidance/Minimization Areas: The Permittee shall avoid the remaining 634.78 acres of onsite wetlands (Identified as Mitigation Areas I, J and K) as shown in Attachment 5, page 2 (as detailed on Drawings 26 through 36 of 43). These natural wetland areas, located primarily within Lee County in the southern portion of the project site, were avoided as part of the permit application review process and therefore will not be disturbed by any dredging, filling, mechanized land clearing, agricultural activities, or other construction work whatsoever. The Corps reserves the right to deny review of any requests, other than proposals for conservation purposes (i.e. mitigation bank) for future impacts to these natural wetland areas.

7. Erosion Control: Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the work area. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work has been completed and the site has been stabilized.

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8. **Compensatory Mitigation:** Within 6 months from the date of initiating the authorized work the Permittee shall commence the following mitigation objectives in accordance with the approved compensatory mitigation plan (Attachment 5) as detailed on Drawings 1 through 43 of 43 and 43a.

a. Onsite Mitigation

1. Wetland Enhancement: Onsite Mitigation: All on-site mitigation will be required in phases associated with phased impacts. The commencement of the project will initiate work on the Town Center near SR 31 and require commencement of work in Mitigation Area A and E. The Permittee shall enhance wetlands by removing exotics, maintaining the wetlands free of nuisance and exotic vegetation and according to the prescribed burn management plan. The permittee shall enhance: 83.19 acres of wetlands in Mitigation Area A; 0.32 acres in Area B; 43.56 acres in Area C; 95.71 acres in Area E; 10.97 acres in Area F; 5.31 acres in Area G and 32.49 acres in Area H by:

- i. Removing nuisance and exotic plant species from preserve areas.
- ii. All mitigation areas are subject to the prescribed fire management plan with rotations that depend on habitat type and management goals. The use of prescribed fire is described on pages 5-10 of the Babcock Ranch Community Mitigation Plan and the burn unit boundaries are shown on mitigation plan sheets 37-40.
- iii. The permittee shall submit an annual burn report with the wetland mitigation monitoring report documenting prescribed burn activities. The report shall include at a minimum:
 1. Burn units completed during previous year
 2. A brief statement of whether goals were met
 3. Remedial action plan for unsatisfactory results (for specific units) include reason for failure
 4. Planned units scheduled for next year

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On-Site Mitigation:

Mitigation Area ID	Wetland Acres enhanced and preserved	Wetland Creation Mosaic*	Upland Acres enhanced and preserved	Total Acres
Mitigation Area A	360.52		518.86	879.38
Mitigation Area E	396.12		960.06	1,346.18
Mitigation Area F	505.11		560.24	1,065.35
Mitigation Area G	359.79	58.88*	488.12	906.79
Mitigation Area H	121.15	133.87*	155.11	410.13
Total Mitigation	1,744.68	192.75*	2,672.40	4,607.83

*Includes created wetlands, transitional areas, uplands & berms

2. Wetland Hydrologic Enhancement: The permittee shall install control structures to improve the hydrology of preserved wetlands. The permittee shall install four (4) control structures in the Curry canal and two (2) control structures in the Big Island Canal (primary function to restore hydrology to Area B, but will improve Area F) to enhance hydrologic restoration by elongating the hydro-period of upstream wetlands.

- i. The permittee shall install a control structure CS-CL4 in the Curry Canal in Mitigation Area H (later mitigation Phase) as shown on pages 18 and 42 of the Mitigation Plans (Attachment 5).
- ii. Wetland Restoration: Fill approximately one (1) acre of ditches to restore hydrologic flow in Areas E & G as shown on pages 12 & 16 and page 41 of the Mitigation Plans (Attachment 5).

3. Wetland Creation: Create 58.88 acres of wetland mosaic in Mitigation Area G and 133.97 acres of wetland mosaic in Mitigation Area H for a total of 192.75 acres of wetland mosaic creation.

4. Upland and Wetland Preservation: Preserve wetlands, uplands and upland buffers within: Mitigation Area A

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(277.33 acres wetlands/447.95 acres uplands/41.50 acres buffers); Mitigation Area E (300.41 acres wetlands/904.34 acres uplands/43.28 acres buffers); Mitigation Area F (494.14 acres wetlands/465.56 acres uplands/50.73 acres buffers); Area G (354.48 acres wetlands/365.82 acres uplands/ 53.85 acres buffers, 7.32 acres berms around created wetlands); and Area H (88.66 acres wetlands/137.55 acres uplands/8.02 acres buffers, 19.78 acres berms around created wetlands).

5. On-site Panther interim habitat management: A prescribed number of acres of habitat will be managed by prescribed burning and by removing nuisance and exotic vegetation for the benefit of the Florida panther. These areas shall be maintained at baseline levels consistent with the mitigation plan with increasing acres being managed and funded as development continues. The 3,484 acres of habitat is identified as "Onsite Panther Mitigation on page 2 (Figure 1) of the Babcock Ranch Community Panther Mitigation Plan, Attachment 6 dated March 17, 2009. The annual acres to be managed is specified on page 10.

The onsite compensatory mitigation areas shall be preserved in perpetuity in accordance with the **Conservation Easement** Special Condition of this permit.

b. Offsite Mitigation:

1. Wetland Enhancement: Remove Category I and II invasive exotic plant species from Mitigation Areas B, C and D according to the required minimum acreage of treatment per year found on page 9 of the Babcock Ranch Community Panther Mitigation Plan (date March 17 2009 (Attachment 6). The Preserve areas will be managed by prescribed fire as described in the above document. The permittee shall enhance: 0.32 acres in Area B and 43.56 acres in Area C by:
 - i. Removing nuisance and exotic plant species from preserve areas.
 - ii. All mitigation areas are subject to the prescribed fire management plan with rotations

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- that depend on habitat type and management goals. The use of prescribed fire is described on pages 5-10 of the Babcock Ranch Community Mitigation Plan and the burn unit boundaries are shown on mitigation plan sheets 37-40 (Attachment 5).
- iii. The permittee shall submit an annual burn report with the wetland mitigation monitoring report documenting prescribed burn activities. The report shall include at a minimum:
1. Burn units completed during previous year
 2. A brief statement of whether goals were met
 3. Remedial action plan for unsatisfactory results (for specific units) include reason for failure
 4. Planned units scheduled for next year
2. Wetland Hydrologic Enhancement: The permittee shall install a total of six (6) control structures to improve the hydrology of preserved wetlands (see Special Condition 8 (a)(2)). Three of these control structures (CS-CL1 and CS-BI 2 &3) will improve hydrology for offsite wetlands. The permittee shall install one (1) control structure in the Curry Canal and two (2) control structures in the Big Island Canal to enhance hydrologic restoration by elongating the hydro-period of upstream wetlands.
- a. The permittee shall install one (1) control structure (CS-CL1) in the Curry Canal in Mitigation Area A (Phase I) as shown on pages 5 and 42 of the Mitigation Plans (Attachment 5).
 - b. The permittee shall install two (2) control structures in the Big Island Canal (CS-BI 2 & 3) as shown on pages 14, 15 & 42 of the Mitigation Plans (Attachment 5).
3. Upland Enhancement: Remove Category I and II invasive exotic plant species from Mitigation Areas B, C and D according to the required minimum acreage of treatment per year found on page 9 of the Babcock Ranch Community Panther Mitigation Plan (date March 17 2009).

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4. The Off-Site Upland Preserves will be managed with prescribed fire as described in 6(b)(1) above.

MITIGATION TABLE

Area	Wetland Enhance	Wetland Preserve	Created Wetland Mosaic	Upland Enhance	Upland Preserve + buffer	Ag to remain	Total Acres
Area A	83.19	277.33		29.41	489.45		879.38
Area B	0.32	1113.16		5.68	664.29		1783.45
Area C	43.56	970.11	5.59*	77.83**	1532.33	252.88	2882.30
Area D		576.12		6.99	523.76	141.51	1248.38
Area E	95.71	300.41		2.44	947.62		1346.18
Area F	10.97	494.14		43.95	516.29		1065.35
Area G	5.31	354.48	51.56 ***	68.45	426.99		906.79
Area H	32.49	88.66	114.10 ***	9.53	165.35		410.13
Total Acres	271.55	4174.41	171.25	244.28	5266.08	394.39	10,521.96

* Created for FWS (stork), no UMAM credit given
 ** Includes 68.41 acres upland restoration
 *** Includes wetland transitional zones not given UMAM credit, see specific cross sections for details

9. **Performance Standards:** To meet the objectives of the approved compensatory mitigation plan, the Permittee shall achieve the following performance standards:

a. At least 80 percent cover by appropriate wetland species (i.e., FAC or wetter).

b. Cover of Category I and II invasive exotic plant species, pursuant to the most current list established by the Florida Exotic Pest Plant Council at <http://www.fleppc.org>, and the nuisance species, dogfennel (*Eupatorium capillifolium*), Bermudagrass (*Cynodon* spp.), Bahiagrass (*Paspalum notatum*), and cattail (*Typha* spp.) and species listed on page 2 of the mitigation plan shall total less than 5 percent (torpedo grass not to exceed 10%).

c. Less than 20 percent mortality of planted wetland species.

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d. Hydrologic enhancement will result in soils that are saturated to the surface between 5 and 12.5 percent of the growing season.

The Permittee shall achieve the above performance standards by the end of the 5-year monitoring period. The wetland areas must meet the performance standards for a minimum of three consecutive years following supplemental planting. Any required supplemental planting should occur prior to the end of the second year of monitoring to meet the requirement for three consecutive years of success. All adjustments to hydrology should also occur prior to the end of the second year.

During the 4th and 5th year of monitoring only removal of nuisance and exotic vegetation is permitted and no artificial manipulation of hydrology and no supplemental planting is permitted to meet performance standards (80% coverage of appropriate wetland species). In the event that the above performance standards have not been achieved, the Permittee shall undertake a remediation program approved by the Corps in accordance with the **Remediation** Special Condition of this permit. Monitoring reports shall be submitted for each mitigation area within A-H as completed and can be released before entire mitigation area is completed.

10. **Monitoring and Reporting Timeframes:** To show compliance with the performance standards the Permittee shall complete the following:

a. Perform a time-zero monitoring event of the wetland mitigation area(s) within 60 days of completion of the compensatory mitigation objectives identified in the **Compensatory Mitigation** Special Condition of this permit.

b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include at least one paragraph depicting baseline conditions of the mitigation site(s) prior to initiation of the compensatory mitigation objectives and a detailed plan view drawing of all created, enhanced and/or restored mitigation areas.

c. Subsequent to completion of the compensatory mitigation objectives, perform semi-annual monitoring of the wetland

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mitigation areas for the first 2 years and annual monitoring thereafter for a total of no less than 5 years of monitoring.

d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event. Semi-annual monitoring will be combined into one annual monitoring report.

e. Monitor the mitigation area(s) and submit annual monitoring reports to the Corps until released in accordance with the **Mitigation Release** Special Condition of this permit.

11. **Reporting Format:** Annual monitoring reports shall follow a 10-page maximum report format for assessing compensatory mitigation sites. Supplemental reports (burn reports, Endangered Species habitat management reporting, panther mitigation areas) shall be provided as attachments. The Permittee shall submit all documentation to the Corps on 8½-inch by 11-inch paper, and include the following:

- a. Project Overview (1 Page):
- (1) Department of the Army Permit Number
 - (2) Name and contact information of Permittee and consultant
 - (3) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted
 - (4) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.
 - (5) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitudes, UTMs, state plane coordinate system, etc.).
 - (6) Dates compensatory mitigation commenced and/or was completed

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(7) Short statement on whether the performance standards are being met

(8) Dates of any recent corrective or maintenance activities conducted since the previous report submission

(9) Specific recommendations for any additional corrective or remedial actions.

b. Requirements (1 page): List the monitoring requirements and performance standards, as specified in the approved mitigation plan and special conditions of this permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

c. Summary Data (maximum of 4 pages): Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8½-inch by 11-inch piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

d. Maps and Plans (maximum of 3 pages): Maps shall be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s). Each map or diagram should be formatted to print on a standard 8½-inch x 11-inch piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

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e. Conclusions (1 page): A general statement shall be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the Permittee or sponsor, including a timetable, shall be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

12. **Remediation:** If the compensatory mitigation fails to meet the performance standards 5 years after initiation of the compensatory mitigation objectives for each area, the compensatory mitigation will be deemed unsuccessful. Within 60 days of notification by the Corps that the compensatory mitigation is unsuccessful, the Permittee shall submit to the Corps an alternate compensatory mitigation proposal sufficient to create the functional lift required under the permit. The alternate compensatory mitigation proposal may be required to include additional mitigation to compensate for the temporal loss of wetland function associated with the unsuccessful compensatory mitigation activities. The Corps reserves the right to fully evaluate, amend, and approve or reject the alternate compensatory mitigation proposal. Within 120 days of Corps approval, the Permittee will complete the alternate compensatory mitigation proposal.

13. **Mitigation Release:** The Permittee's responsibility to complete the required compensatory mitigation, as set forth in the **Compensatory Mitigation** Special Condition of this permit will not be considered fulfilled until mitigation success has been demonstrated and written verification has been provided by the Corps. A mitigation area which has been released will require no further monitoring or reporting by the Permittee; however the Permittee, Successors and subsequent Transferees remain perpetually responsible to ensure that the mitigation area(s) remain in a condition appropriate to offset the authorized impacts in accordance with General Condition 2 of this permit.

14. **As-Builts:** Within 60 days of completion of each phase of the authorized work or at the expiration of the construction

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window of this permit, whichever occurs first, the Permittee shall submit as-built drawings of the authorized work and a completed As-Built Certification Form (Attachment 10) to the Corps. The drawings shall be signed and sealed by a registered professional engineer and include the following:

a. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings (8½-inch by 11-inch). The drawing should show all "earth disturbance," including wetland impacts, water management structures, and any on-site mitigation areas.

b. List any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the As-Built Certification Form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or As-Built Certification Form does not constitute approval of any deviations by the U.S. Army Corps of Engineers.

c. The Department of the Army Permit number.

d. Include pre- and post-construction aerial photographs of the project site, if available.

15. **Notice of Permit:** The Permittee shall complete and record the Notice of Department of the Army Permit (Attachment 11) with the Clerk of the Circuit Court, Registrar of Deeds or other appropriate official charged with the responsibility of maintaining records of title to or interest in real property within the county of the authorized activity. Within 90 days from the effective date of this permit the Permittee shall provide a copy of the recorded Notice of Permit to the Corps clearly showing a stamp from the appropriate official indicating the book and page at which the Notice of Permit is recorded and the date of recording.

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16. Conservation Easement: The Permittee is providing large tracts of land for conservation over the course of the development of this property. As each phase of development receives water quality certification and commences construction and the wetland impacts authorized by the permit, the Permittee shall provide phased mitigation.

The Permittee shall have a legally sufficient conservation easement prepared to ensure to the Corps' satisfaction that the areas referenced in the **Compensatory Mitigation** Special Conditions will remain in their natural state in perpetuity. The total conservation easements for mitigation areas A, E-H will encompass approximately 1,742.68 acre(s) of wetlands, 192.75 acres of wetland creation mosaic and 2,672.40 acre(s) of uplands. These natural preserve areas will not be disturbed by any dredging, filling, land clearing, agricultural activities (other than existing and continuing authorized cattle grazing and farming activities), planting, or other construction work (other than the authorized trail system and rain shelters) whatsoever except as required or authorized by this permit. The Permittee agrees that the only future utilization of the preserved areas in question will be as a purely natural area. To show compliance with this condition the Permittee shall complete the following:

a. Within 30 days from the date of initiating the authorized work and 30 days from the initiation of each subsequent phase authorized by this permit submit to the Corps the draft conservation easement document(s) with a legal description, survey, and scale drawings, of the area in question. The Corps shall have all rights of the Grantee in the conservation easement. The following paragraph shall be incorporated in the conservation easement document:

"Rights of U.S. Army Corps of Engineers (Corps)- The Corps shall be a party to any modification, alteration, release, or revocation of the conservation easement, and shall review and approve as necessary any additional structures or activities that require approval."

b. Within 30 days of Corps' approval of the draft conservation easement, record the easement in the public records

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of Lee and Charlotte County, Florida (as appropriate). A certified copy of the recorded document, plat, and verification of acceptance from the grantee shall be forwarded to the Corps within 60 days of Corps' approval of the draft conservation easement.

c. Within 30 days from the date of initiating the authorized work and 30 days from the initiation of each subsequent phase authorized by this permit submit to the Corps a title insurance commitment with the draft conservation easement document, IN FAVOR OF THE GRANTEE, for the property which is being offered for preservation to show that the Permittee has clear title to the real property and can legally place it under a conservation easement. Any existing liens or encumbrances on the property shall be subordinated to the conservation easement. At the time of recordation of the conservation easement, a title insurance policy shall be provided to the Corps in an amount equal to the current market value of the property.

d. In the event this permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent Permittee or Permittees shall be submitted to the Corps together with the notification of permit transfer.

The Grantee shall not assign its rights or obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws, including §704.06 Florida Statutes, and committed to holding this conservation easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and shall approve the selection of the grantee. The new grantee shall accept the assignment in writing and a copy of this acceptance delivered to the Corps. The conservation easement shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the recorded conservation easement furnished to the Corps.

17. **Biological Opinion:** This Corps permit does not authorize the Permittee to take an endangered species, in particular the Florida panther and the wood stork. In order to legally take a

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listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which the Permittee must comply). The enclosed U.S. Fish and Wildlife Service (FWS) Biological Opinion (BO) (Attachment 7) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Authorization under this Corps permit is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with this Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

18. FWS Endangered Species Condition: The FWS Biological Opinion contains non-discretionary Terms and Conditions (page 109) that require the permittee to fund and/or construct two (2) panther road crossing structures to allow the passing of panthers on S.R. 31. The FWS instructs the Permittee to coordinate the location of the proposed crossings with the FWS and the Florida Department of Transportation (FDOT). The requisite road improvement and panther crossings are not included as permitted elements of the project. Panther crossings are generally constructed in uplands and may not require Department of the Army authorization. If construction of the panther crossings require additional wetland impacts please coordinate the proposed road crossings with the Corps at the address in Special Condition 1 above.

19. FWS Endangered Species Condition: This Corps permit does not authorize the Permittee to take an endangered species, in particular the eastern indigo snake, RCW, scrub jay, beautiful pawpaw and Audubon's crested caracara. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which the Permittee must comply). The enclosed

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U.S. Fish and Wildlife Service (FWS) consultation letter dated August 21, 2007 (Attachment 8) contains management measures for the beautiful pawpaw and Florida scrub jay; and conservation measures for the Audubon's crested caracara and RCW proposed by the applicant during the consultation process. The applicant also agreed to implement the Standard Protection Measures for the Eastern Indigo Snake during construction activities (Attachment 8). Authorization under this Corps permit is conditional upon compliance with term and conditions associated with the FWS consultation letter, which terms and conditions are incorporated by reference in this permit. Failure to comply with the management measures and conservation measures, where a take of the listed species occurs, may constitute an unauthorized take, and it may also constitute non-compliance with this Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its consultation letter dated August 21, 2007, and with the ESA.

20. **Eastern Indigo Snake Protection Measures:** The Permittee shall comply with U.S. Fish and Wildlife Service's "Standard Protection Measures for the Eastern Indigo Snake" dated February 12, 2004 and provided in Attachment 9 of this permit.

21. **Fill Material:** The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

22. **Regulatory Agency Changes:** Should any other regulatory agency require changes to the work authorized or obligated by this permit, the Permittee is advised that a modification to this permit instrument is required prior to initiation of those changes. It is the Permittee's responsibility to request a modification of this permit from the Fort Myers Regulatory Office.

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Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

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d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

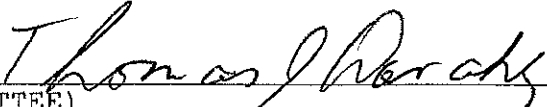
Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

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6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.




(PERMITTEE)

JULY 2, 2010
(DATE)

THOMAS J. DANAHY, AS PRESIDENT OF
BABCOCK PROPERTY HOLDINGS, LLC

(PERMITTEE NAME-PRINTED)



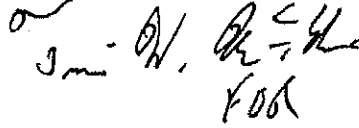
(PERMITTEE)

JULY 2, 2010
(DATE)

GARY NELSON, AS CHAIRMAN OF
BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT

(PERMITTEE NAME-PRINTED)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



(DISTRICT ENGINEER)

7/2/10
(DATE)

Alfred A. Pantano, Jr.
Colonel, U.S. Army
District Commander

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When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE-SIGNATURE)

(DATE)

(NAME-PRINTED)

(ADDRESS)

(CITY, STATE, AND ZIP CODE)

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***Attachments to Department of the Army
Permit Number SAJ-2006-06656***

1. PERMIT DRAWINGS: 11 pages, dated June 10, 2010
2. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit. 56 special conditions 8 pages.
3. FDEP Mining Permit, EarthSource Mine Expansion, dated August 31, 2009: 52 conditions, 23 pages
4. FDEP Mining Permit, EarthSource Mine Expansion, dated October 19, 2007: 32 conditions, 14 pages
5. Mitigation Procedures: Babcock Ranch Community Mitigation Plan (Dated May 1, 2009, Updated May 2010) (57 pages, 2 appendices, Plan Set 43 pages, and 43a, phased mitigation plan)
6. Babcock Ranch Community Panther Mitigation Plan (11 pages, Modified May 21, 2010)
7. USFWS Biological Opinion (41420-2007-FA-1048) Dated August 21, 2009 (192 pages)
8. FWS Endangered Species Conditions: Letter dated 21 August 2007, 11 pages
9. Standard Protection Measures for the Eastern Indigo Snake (rev. February 12, 2004, 1 page)
10. As Built Certification Form - 2 pages
11. Notice of Permit- 7 pages