

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered by and between MSKP III, Inc. ("Kitson"), and Sierra Club, Inc., Clarke Keller and Gail Giles (collectively, "Petitioners"). All of these entities and individuals shall be referred to collectively as the "Parties".

WHEREAS, Babcock Florida Company ("BFC"), a Florida corporation, whose mailing address is 8000 State Road 31, Punta Gorda, Florida 33982 is the current owner of approximately 81,499 acres in Charlotte County and approximately 9,862 acres in Lee County for a total ownership of approximately 91,361 contiguous acres (the "Babcock Ranch", description attached as "Exhibit A"); and

WHEREAS, Kitson, by and through certain affiliated entities, has entered into a Merger Agreement dated July 1, 2005 to acquire by corporate merger one hundred percent (100%) of the stock of the BFC (the "Merger Agreement"); and

WHEREAS, Kitson will acquire the Babcock Ranch if all of the conditions of the Merger Agreement are satisfied. The closing of the Merger Agreement is scheduled to take place prior to July 31, 2006; and

WHEREAS, this Settlement Agreement addresses a portion of the Babcock Ranch and specifically those lands covered by the Babcock Ranch Overlay District (the "BROD"). The BROD was created by an amendment to the Charlotte County Comprehensive Plan which was adopted by the Charlotte County Commission on April 4, 2006 as Ordinance No. 2006-030 (the "Charlotte County BROD Amendments"); and

WHEREAS, on May 24, 2006 the Florida Department of Community Affairs issued a Notice of Intent to find the Charlotte County BROD Amendments "in compliance".

WHEREAS, the Charlotte County BROD Amendments apply to approximately 13,686 acres of land within Charlotte County which equates to approximately 15% of the entire 91,361 acre Babcock Ranch; and

WHEREAS, on January 24, 2006, Kitson entered into an Interlocal Planning Agreement for the Babcock Ranch with Charlotte County, Lee County, and the Florida Department of Community Affairs regarding the preservation and development of the Babcock Ranch ("Four-Party Agreement"); and

WHEREAS, the State of Florida, Lee County, Charlotte County, the southwest Florida community and environmental organizations have long been desirous of establishing a contiguous wildlife protection area from Lake Okeechobee to the Charlotte Harbor, thus providing a regional habitat corridor for wildlife movement; and

WHEREAS, efforts by the State of Florida and others to purchase the entirety of the Babcock Ranch have been unsuccessful in the past and negotiations for such potential public purchase ceased; and

WHEREAS, State and local officials, environmental organizations, and citizens of Charlotte and Lee Counties desire to permanently preserve as much of the Babcock Ranch as possible, and it is recognized by the Parties that this preservation goal can be achieved with a public/private partnership and a comprehensive long-term preservation and development plan for the Babcock Ranch; and

WHEREAS, Kitson, the State of Florida and Lee County executed an Agreement for Sale and Purchase (the "Conservation Purchase Agreement"), which was approved by the Board of Trustees of the Internal Improvement Trust Fund at their meeting on November 22, 2005. Closing on the Conservation Purchase Agreement would result in approximately 73,000 acres, or 80% of the entire 91,361 acre Babcock Ranch, being acquired by the State of Florida and Lee County for conservation purposes; and

WHEREAS, the finality of the Charlotte County BROD Amendments is an express condition for closing under the Conservation Purchase Agreement; and

WHEREAS, the State approved a legislative appropriation of \$310,000,000 for its portion of the Conservation Purchase Agreement when Governor Jeb Bush signed the Babcock Preserve Act on June 19, 2006. In addition, Lee County approved funding of approximately \$41,000,000 for its portion of the Conservation Purchase Agreement; and

WHEREAS, following the closing on the Conservation Purchase Agreement Kitson will be the master developer and owner of the mixed use community described in and authorized by the Charlotte County BROD Amendments, which will compliment the public ownership and use of the lands subject to the Conservation Purchase Agreement; and

WHEREAS, Kitson will develop approximately 17,890 acres of the Babcock Ranch; 13,686 acres of which are located in Charlotte County and 4,204 acres of which are located in Lee County; and

WHEREAS, the Babcock Ranch, including the portion of it covered by the Charlotte County BROD Amendments, is unique in Florida. The Babcock Ranch represents the largest contiguous parcel of property in private ownership in Charlotte

County. The unique circumstances surrounding the Babcock Preserve Act, the Conservation Purchase Agreement, the Four Party Agreement and the Charlotte County BROD Amendments are singular and not capable of duplication; and

WHEREAS, Petitioner The Sierra Club is a national nonprofit organization of approximately 850,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Club's particular interest in this case and the issues which the case concerns stem from the Charlotte County Comprehensive Plan being amended to accommodate the Babcock Ranch Overlay District and the development associated with it. The Florida Chapter of the Sierra Club has members who reside, own property or operate a business in Charlotte County, some of whom have been very active in the growth, development and environmental issues regarding the Babcock Ranch property and its preservation.

WHEREAS, an individual Petitioner, Clarke Keller, is a Charlotte County resident and business owner whose address is 35380 Washington Loop Road, Punta Gorda, Florida. Clarke Keller is listed as an individual Petitioner representing his personal interests and concerns over the impacts of the proposed project.

WHEREAS, an individual Petitioner, Gail Giles, is a Charlotte County resident whose address is 3850 Bravo Road, Port Charlotte, Florida. Gail Giles is listed as an individual Petitioner representing her personal interests and concerns over the impacts of the proposed project.

WHEREAS, Petitioners have challenged the Florida Department of Community Affairs' Notice of Intent to find that the Charlotte County BROD Amendments are in compliance; and

WHEREAS, notwithstanding the objections raised by Petitioners, the Parties have engaged in settlement negotiations and have reached an agreement to resolve their differences, which agreement is memorialized in this Settlement Agreement; and

WHEREAS, this Settlement Agreement resolves all claims as set forth in the Petition for Formal Administrative Hearing, DOAH Case No. 06-22386GM.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to settle their disputes, as follows:

A. Recitals Incorporated: The above recitals are true and correct and are incorporated herein.

B. Kitson Commitments: In settlement of the administrative litigation, Kitson makes the following commitments:

1. Efforts to Further Minimize Impacts From 17,870 Units. The area within the BROD north of the northern limit of Hamlet 1 (the "North Babcock Conservation Area", as shown on the attached "Exhibit B") shall not contain any dwelling units (other than caretakers quarters) nor any retail or office square footage, other than described below. In addition to other uses permitted by the Charlotte County BROD Amendments and the Babcock Ranch Land Development Regulations in the Old Babcock Village, the following uses are permitted: an eco-tourism lodge of approximately 150 rooms on

approximately 50 acres, an environmental education and research center (specifically excluding bio-genetic research on animals and plants) of approximately 25,000 square feet on approximately 25 acres, riding stables of approximately 15,000 square feet and an equestrian facility and accessory uses on approximately 100 acres, a general store of approximately 10,000 square feet on approximately 5 acres, an RV park for approximately 100 spaces on 25 acres and a 4-H youth camp facility on approximately 25 acres. Together these uses on approximately 350 acres shall be referred to as the "Education and Recreation Uses". Kitson will identify the location of these uses within the 350 acres and will coordinate with Petitioners prior to submittal of the DRI application. Kitson shall use best efforts to maintain the access road from SR 31 to the Education and Research Uses as a non-paved road.

Agricultural uses, including the continued operation of the ranch and sod farming, shall be permitted, so long as any sod farm expansion shall not require clearing of trees. Forestry operations shall only include select timber harvesting using best management practices, and clear cut logging shall be prohibited. Together these uses shall be referred to as the "Agricultural Uses".

The dwelling units and retail and office square footage previously contemplated for the Old Babcock Village and as allowed by the Charlotte County BROD Amendments shall be reallocated among the other development areas within the BROD. This provision shall be implemented through the DRI development order.

Kitson shall provide or arrange funding in an amount of \$100,000 for the purposes of conducting a study of those lands in Charlotte and Lee County surrounding the Babcock Ranch including the Caloosahatchee River (the "Study"). The purpose of

the Study will be to assist the Parties, as well as the citizens of Charlotte County, Lee County, Southwest Florida and other interested environmental organizations, with understanding existing and future growth patterns, anticipated conservation objectives, potential development activities in the study area and protection of the Caloosahatchee River. The Study will be a collaborative process between the Parties, Charlotte County, Lee County and other interested environmental organizations and will include broad-based public participation.

Within 90 days of execution of this Settlement Agreement, the Parties shall create a steering committee, a procedure for conducting the Study and an appropriate timetable. The Study shall commence upon a) completion of a budget for the Study by the steering committee, and b) obtaining any funding in excess of Kitson's \$100,000 which may be required to complete the Study. Upon commencement of the Study, Kitson will deposit the funds into an escrow account with a title company selected by Kitson. The title company will pay the contract vendee upon receipt of invoices for services rendered.

2. Expanded Wildlife Corridor and Crossing. As part of the Conservation Purchase Agreement, Kitson has agreed to record a conservation easement over approximately 294 acres of land within the Corridor Greenway (as shown on BROD Map #11f). After receipt of all State and Federal permits, Kitson agrees to record a similar perpetual conservation easement allowing the Agricultural Uses over the balance of land within the North Babcock Conservation Area not covered by the existing conservation easement, in the area as generally shown on "Exhibit B", but excluding the approximately 350 acres where the Education and Recreation Uses will be located.

Kitson shall work with Petitioners and their counsel regarding the specific language of such additional conservation easement.

Sierra Club shall have a seat on the advisory board to be created by Kitson to assist Kitson with the management of the Babcock Ranch Preserve, so long as Kitson is the manager. This advisory board shall also advise Kitson as to the management of the North Babcock Conservation Area.

The approximate boundaries of the land to be covered by this future conservation easement are subject to field verification. At the time that the delineation of more exact boundaries becomes necessary in order to prepare and record conservation easements, Kitson will delineate those boundaries in the field prior to the surveying of property boundaries and make the property accessible for verification of that delineation.

3. Deed Restrictions. Kitson shall record a Deed Restriction on each residential and commercial parcel within the BROD which require the following:

Fertilizer

The Parties agree that protection of the Caloosahatchee River is vital in limiting the impacts from the BROD. As such Kitson agrees to the following: (a) Fertilization will not be permitted during the summer rainy season except in response to special fertilization needs, including but not limited to grow-in or establishment of sod and new plant material establishment, etc. (b) Controlled release fertilizers, or non-chemical water-soluble foliar applied fertilizers, shall be required for all established lawns, landscaped areas and golf course fairways and rough. Quick-release fertilizers shall be permitted during grow-in or establishment of new sod, new sprigs, or plant materials, except that

no quick-release urea nitrogen products shall be applied at any time. (c) For established golf course greens and tees, the majority of fertilization shall be controlled release or non-chemical, foliar applied water-soluble fertilizer products. Quick release fertilizers may be applied as needed to tees and greens during grow-in and establishment or turfgrass transition periods, except that no quick-release urea nitrogen products shall be applied at any time. At all times best management practices shall be utilized.

Water Supply

All homes and businesses shall include low flow showers, faucets and toilets to minimize use of water.

Landscaping and Native Plants

Use of native plants or other approved plant materials, with emphasis on drought tolerant species, shall be used to minimize the amount of turf grass within lawns and common areas, with the understanding that Kitson shall identify plant materials that could be used for landscaping using minimal water. There shall be no planting of invasive exotic plant materials in the BROD.

4. Reuse Water System. Kitson shall design and implement a reuse water system (reuse water is defined as treated water from the wastewater treatment facility) to cover all master development within the BROD. This system will include using reuse water to irrigate public rights-of-way, businesses, landscaping and golf courses, provided that 1) sufficient volume and quality of reuse water is available and 2) use of other water sources, including potable water, shall be permitted for limited application, such as periodic "flushing" of greens.

5. Tertiary Treatment Component of Wastewater Treatment System. Concurrent with development approvals, Kitson shall provide tertiary treatment of the permanent wastewater treatment system serving the BROD to remove phosphorus, nitrogen and biological contaminants from the water. The goal will be no discharge of harmful nutrients and contaminants from the wastewater treatment system. The tertiary treatment will complement the use of reuse water with the specific chemical composition of such treated water to be determined through the permitting process. Kitson will review with the representatives and/or agents of the Sierra Club its proposed design for the wastewater treatment plant and its plan to dispose of remaining solids removed through the wastewater treatment process prior to submission of these plans for approval through the permitting process.

6. Road Design. The roadways between the Town Center, the Villages and Hamlets shall be designed as parkways so that there are no cross intersections, other than limited access driveways, for vehicular traffic in the areas between the designated Town Center, Villages or Hamlets respectively.

Kitson will pursue through the DRI process the creation of a new expressway connecting I-75 with the BROD with minimal additional intersections and/or exits so that traffic exiting to I-75 from the BROD can do so with minimal impacts. This design is subject to the rules and regulations of Lee County, Charlotte County and the Florida Department of Transportation. Kitson and Sierra Club agree to advocate that such expressway design should include no additional intersections between the entrance to the BROD on Highway 31 and interstate 75.

7. Buffers Along SR 31, CR 78 (North River Road). For those portions of Babcock Ranch along SR 31 and CR 78 (North River Road) Kitson shall create a buffer between the ultimate road right of way and any development of at least 250 feet, except as described below in Paragraph B.8. This buffer shall be planted with native vegetation and shall contain no development other than roads for access purposes. Signage within buffers shall be limited to signs located at, or identifying entrances to the BROD, including entrance features. This buffer shall be further described in the DRI development order.

8. Shopping and Entertainment. At the Town Center entries, the shopping and entertainment areas will be set back a minimum of 100 feet from the ultimate road right of way of SR 31. For the remainder of the Town Center, the shopping and entertainment areas will be set back a minimum of 250 feet from the ultimate road right of way of SR 31. The shopping and entertainment areas in the Villages and Hamlets shall be located in the interior portion of those areas. There shall be no commercial development on the perimeter of the BROD within the applicable buffers. Commercial development within the BROD 1) shall be phased with residential development according to the requirements of the Charlotte County BROD Amendments and 2) shall be subject to architectural standards as established through the land development regulations and other implementing regulations.

9. Limitation on Pesticides. The Parties agree that protection of the Caloosahatchee River is vital. As such, Kitson agrees to the following: All pesticide use shall be as a last resort. Kitson shall include a phased approach to mosquito control within the community. This phased approach will be based first on education efforts

and biological control such as the use of mosquito fish rather than the use of pesticide. Aerial spraying shall not be used unless other biological controls are rendered ineffective, and if any aerial spraying is to take place, precautions shall be used to minimize locations where any pesticides shall be used. These obligations will be assumed by the Master POA and are subject to all applicable health, welfare and safety laws and regulations of Lee County, Charlotte County and the State of Florida. An education program, including guidelines and standards for pesticide use by residents of the community, shall be developed through a collaborative effort among Kitson, Sierra Club, other environmental organizations and neighborhood/resident groups.

10. Recycling Program. Kitson shall include a comprehensive recycling program for the BROD, including making available land and providing funding for a 3,000 square foot recycling facility to be under the control of Charlotte County, any CDD or independent special district that may be created for the BROD. This recycling program will include a curb-side program, a plan for both business and homes and an education program within the community.

11. Internal Wildlife Underpasses. Kitson shall provide for no less than four Wildlife Underpasses, with a minimum of three having upland crossing areas, in conjunction with the internal collector roads linking the Town Center, Villages and Hamlets within the community. Where possible, these underpasses shall be integrated with planned waterways/flow-ways. Such underpasses shall be maintained by the CDD or independent special district.

12. Wildlife Corridor Study. Kitson shall provide or arrange funding in an amount of \$100,000 for the purposes of conducting a regional wildlife corridor study (the "Corridor

Study"). The purpose of the Corridor Study will be to assist the Parties, as well as the citizens of Charlotte County, Lee County, Southwest Florida and other interested environmental organizations, with understanding regional wildlife corridors. The Corridor Study will be a collaborative process between the Parties, Charlotte County, Lee County and other interested environmental organizations and will include broad-based public participation.

Within 90 days of execution of this Settlement Agreement, the Parties shall create a steering committee, a procedure for conducting the Corridor Study and an appropriate timetable. The Corridor Study shall commence upon a) completion of a budget for the Corridor Study by the steering committee, and b) obtaining any funding in excess of Kitson's \$100,000 which may be required to complete the Corridor Study. Upon commencement of the Corridor Study, Kitson will deposit the funds into an escrow account with a title company selected by Kitson. The title company will pay the contract vendee upon receipt of invoices for services rendered.

13. Further Wildlife Protections. For the protection of nocturnal animals, during the night time hours (sunset to sunrise) speeds on all internal collector roads within the BROD shall be decreased by 10 miles per hour below the posted speed limit; but in no event will the night time speed limit be less than 25 miles per hour, with the exception of limiting the speed from the northern most hamlet to the northern boundary of the BROD to 20 mph at night. This reduced speed limit shall be subject to Florida Department of Transportation rules and regulations. Such reduction will be posted on all speed limit signs. Further, Kitson will provide education information as to the reason for the speed reduction. In the event that Kitson, at their option, constructs a north south roadway

leading to and from Old Babcock Village, the roadway shall be limited to a two lane road.

14. Community Education Efforts. Kitson shall create and implement a media education program (the "Education Program") for homeowners, businesses and visitors to explain the need for the unique relationship between the Babcock Ranch Preserve and the Babcock Ranch Community. The Education Program will describe the need for lower night time speed limits, the endangered species present on the Babcock Ranch Preserve, the recycling program, the benefits of limited pesticide use and the importance of using native plants. These education efforts will include information kiosks, workshops and printed materials for Babcock Ranch.

15. Green Building Standards/Energy Efficiency. Kitson shall use commercially reasonable efforts to attain Green Development Certification and to encourage builders within the community to adhere to the green building standards for community design set forth in version 4 of the Florida Green Building Coalition guidelines for green developments.

A Green Building education program shall be established by Kitson (or its agent), which will include Kitson team members and specialists requiring 'green' continuing education ("CEU") as well as cross training for select Kitson employees. Kitson will offer or cause to have 'green' courses available to buyers and prospective buyers. Kitson shall encourage all builders to participate in the 'green' education programs. The Master Property Owner's Association (the "POA"), the CDD or independent special district shall assume these responsibilities.

In addition to education efforts with its builders and contractors and within the community, Kitson shall require builders to use building energy efficiency performance standards for all buildings, residential, commercial and public, as follows: at least 10% reduction of total energy use for a standard home. Further, Kitson's goal for residential homes will be to meet or exceed performance standards equivalent to a 2006 National HERS (Home Energy Rating System) index values of 70 or less. Kitson agrees to build at least 10 homes with a HERS index value of 70 or less, representing a 30% energy saving for each home.

Kitson also agrees to study the feasibility of and potential incorporation of native shade trees on all streets, white or light colored roofs instead of gray or brown shingles or barrel tile, solar panels and other energy conservation strategies for residential, commercial, and institutional buildings.

16. Storm Water Treatment. The development will feature the use of natural systems either through preservation, restoration, or other integrative strategies and avoid the more energy-intensive approaches. Kitson shall implement the use of natural solutions for flow ways, water management and landscaping. The stormwater treatment system shall include a combination of ponds, filter marshes, buffers, manmade stormwater ponds, golf course ponds, created wetland treatment systems, wetland buffers or other appropriate storage and treatment methods, based upon site specific conditions. Golf courses tees and greens shall be designed with underdrains. Seepage from these underdrains will be collected and treated in the stormwater treatment system. The water management system shall be subject to South Florida Water Management District rules and regulations.

Kitson shall also establish water quality background to facilitate determinations of existing quality compared to post-development quality.

Man-made landscapes and storm water treatment areas will enhance the existing native systems and a native plant nursery will be built to provide the native trees and landscape plants for the community. Kitson and/or its agent shall pre-approve landscape materials and xeriscape plans which will be used throughout the community.

Oversight of the water management, lake and marsh systems, and the community wide landscape materials will be supervised by the CDD, or other approved special district.

17. No Increases in Density. Kitson will submit development plans for 19,500 dwelling units (17,870 dwelling units in Charlotte County and 1,630 dwelling units in Lee County) and 6 million square feet of non residential space, not including schools and churches. Kitson hereby agrees through this Settlement Agreement that they will not be requesting any future increases in density above these levels either through Charlotte County or Lee County. Kitson will not sell any excess density to off-site landowners and will not sell, convey or transfer any density off-site. Petitioners agree that they shall not request or seek any reduction in density on the BROD or the 1,630 dwelling units in Lee County.

18. DRI Process. To ensure full and complete public participation in the DRI process, Kitson agrees to complete either 1) an AMDA which covers development in both Lee County and Charlotte County or 2) one application in each of Charlotte County and Lee County.

19. Enforcement/Monitoring. To ensure full and complete success of the conditions of this Settlement Agreement, Kitson agrees to appoint a person to monitor the progress of the implementation of the terms of this Settlement Agreement. Kitson agrees to meet with Petitioners, discuss the implementation of this Settlement Agreement and allow access to the site to allow verification of compliance with the Settlement Agreement no more than twice per year upon 30 days notice. Kitson will additionally provide Petitioners with the DRI annual report.

C. Petitioners' Commitments. Petitioners shall dismiss the Petition for Administrative Hearing, DOAH Case No. 06-22386GM with prejudice immediately upon execution of this Settlement Agreement by all Parties, and the Parties agree to bear their own fees and costs. Petitioners shall assist Kitson with the implementation of each of Kitson's commitments above and shall work with Kitson to assist with the creation of such programs.

D. Uniqueness of Babcock Ranch. Because Babcock Ranch is such a unique property, with unique circumstances, including but not limited to, the urgency of the sale of the Babcock Florida Company, the public purchase of approximately 73,000 acres through a special appropriation of the Florida legislature in combination with Lee County funds, the adoption of the Charlotte County BROD Amendments by Charlotte County, the commitments made by Kitson in the Charlotte County Development Agreement and in the Interlocal Planning Agreement between Kitson, Charlotte County, Lee County and the Florida Department of Community Affairs and the commitments made by Kitson in this Settlement Agreement, the Charlotte County BROD Amendments and exemption from the TDU ordinance do not establish any precedent.

E. Negotiated Additional Compensation Related to TDU Exemption. The items set forth in this settlement agreement are designed to address impacts and potential impacts from implementation of the BROD amendments. Kitson's agreement to cover the cost of all items set forth in this settlement agreement has acknowledged value and is in compensation for concerns raised by Petitioners with respect to the exemption of the transfer of development units as set forth in the Charlotte BROD Amendments.

F. Settlement of Contested Disputes. This Settlement Agreement is being entered into in order to settle contested disputes over multiple issues, the resolution of which is uncertain, and regarding which the Parties have differences of opinion. Regardless of these differences, the Parties both acknowledge that these are matters of interpretation and recognize the strength with which the other party holds such opinions.

G. No Further Challenges. In an effort to work cooperatively with the Petitioners, Kitson encourages Petitioners to participate in future public meetings regarding implementation of the Charlotte County BROD Amendments and the development of the Lee County portion of the Babcock Ranch not being purchased by Lee County. Kitson shall provide written notice of all such public meetings to Petitioners and their counsel through the email addresses provided below in Paragraph R, or as specifically directed by Petitioners and their counsel. Petitioners (including all agents, employees, heirs, beneficiaries, devisees, personal representatives, executors, trustees, receivers, guardians, sureties, predecessors, successors, and assigns, including all related entities) agree not to file any additional formal administrative challenges, formal appeals or other formal lawsuits ("Formal Challenges") with respect to implementation of the Charlotte County BROD Amendments, including applications, approvals and permits to

be issued by Lee County, Charlotte County, the State of Florida and/or the United States Federal Government for the development of the BROD and the portion of the Babcock Ranch not being purchased by Lee County for a total of 19,500 residential units (17,870 in Charlotte and 1,630 in Lee) and 6,000,000 sf of non-residential uses not including schools and churches (collectively, "Development Approvals"), so long as the Development Approvals are consistent with this Settlement Agreement and so long as there is no significant change to the project from what is anticipated by the Development Approvals.

In the event that either Party believes the other is in material breach of this Settlement Agreement, the complaining Party shall be required to provide written notice to the non-complaining Party, and the Parties shall have sixty days from the non-complaining Party's receipt of written notice to resolve the alleged inconsistency. The Parties agree to work in good faith to resolve any alleged inconsistency. This procedure shall be a condition precedent to either Party filing any lawsuit to enforce this Settlement Agreement or to the filing of a Formal Challenge pertaining to a Development Approval.

If a breach of this Settlement Agreement is alleged by either party and is not resolved after 60 days notice and opportunity to cure, and a lawsuit to enforce the Settlement Agreement is filed, and a court of competent jurisdiction then determines that either party has materially breached this Settlement Agreement, the non-breaching party shall have the option of requiring compliance or declaring this Settlement Agreement null and void. No monetary damages or attorneys fees shall be awarded to any Party.

H. Binding on Successors and Assigns. This Settlement Agreement and all terms hereof shall be binding on all agents, employees, heirs, beneficiaries, devisees, personal representatives, executors, trustees, receivers, guardians, sureties, predecessors, successors and assigns of the Parties, and related entities including the National, State Chapter and Local Groups of Sierra Club, Inc. and shall run with the land in perpetuity. Where provisions of this Settlement Agreement bind one or more of the corporate entities, the provisions are intended to bind all of the corporate entities. This Settlement Agreement is assignable by Kitson, but assignment shall not in any manner modify or supersede obligations under this Settlement Agreement, and the Settlement Agreement shall be fully binding on the assigns. In the event Kitson sells a portion or all of the land within the BROD, the terms of this Settlement Agreement shall be enforceable against those future Purchasers (an individual or entity which purchases property within the BROD from Kitson) and not Kitson. Kitson shall provide notice of this Settlement Agreement to any potential Purchaser or property within the BROD. Any specific enforcement of this Settlement Agreement shall be limited to the particular portion of property or platted lot where the alleged violation is occurring, and to that property's owner, and shall not affect any other portion of land within the BROD nor Kitson.

I. Attorneys' Fees and Costs. Each party shall bear its respective costs and attorneys' fees relating to the challenge.

J. Entire Agreement. The Parties acknowledge that this Settlement Agreement constitutes the full agreement or understanding between the Parties. Each party acknowledges that no other party, or agent or attorney of any other party, or any

person, firm, corporation or any other entity, has made any promise, representation, or warranty whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Settlement Agreement. The Parties agree that the waiver of any breach of this Settlement Agreement by any party shall not be a waiver of any other subsequent or prior breach.

K. Paragraph Headings. The headings of the paragraphs of this Settlement Agreement are inserted only for the purpose of convenience of reference, and the Parties recognize and agree that these headings may not adequately or accurately describe the contents of the paragraphs which they head. Such headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Settlement Agreement, or any part or portion thereof, nor shall they otherwise be given any legal effect.

L. Venue and Jurisdiction. The Parties agree to be subject to the personal jurisdiction of the courts of the State of Florida with regard to the subject matter of this Settlement Agreement. Venue of any proceeding in connection with this Settlement Agreement shall be in Charlotte County, Florida. The Parties agree that the provisions of this Settlement Agreement are enforceable by specific performance, injunctive relief as to the alleged violation, and other appropriate remedies, but not including monetary damages or attorneys fees.

M. Construction of Agreement. The Parties acknowledge that this is a negotiated agreement and that, in no event, shall any of the terms or provisions hereof, or any of the terms contained within the attachments hereto, be construed against either party on

the basis that such party or counsel for such party drafted this Settlement Agreement or the attachments hereto.

N. Modification of Settlement Agreement. This Settlement Agreement may not be modified except as may be set forth in writing, executed by the Parties.

O. Governing Law. This Settlement Agreement shall be enforced and construed according to the laws of the State of Florida.

P. No Waiver. Failure by the Parties to insist upon performance of any of the terms, conditions or provisions of this Settlement Agreement shall not be deemed to be a waiver of such terms, conditions and provisions, and the Parties notwithstanding such failure, shall have the right to insist upon the performance of any or all such terms and conditions of this Settlement Agreement as set forth herein. Further, the waiver of any of the terms and conditions of this Settlement Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion.

Q. Benefit of Counsel. The Parties acknowledge and agree that: (i) each party has had the benefit of the advice of separate counsel; (ii) each party has participated fully in the negotiation and preparation hereof; and (iii) each party has carefully reviewed this Settlement Agreement and is entering into this Settlement Agreement freely, without duress and for valuable consideration. Accordingly, this Settlement Agreement shall not be more strictly construed against any of the Parties.

R. Notices. Any notice, demand, consent or communication that the Parties are required to give hereunder shall be in writing and either served personally by hand delivery, next day courier delivery or by registered or certified mail, postage pre-paid addressed as follows:

To Kitson:

**MSKP III, Inc.
9055 Ibis Blvd.
West Palm Beach, FL 33412
ATTN: Syd Kitson**

**MSKP III, Inc.
17837 Murdoch Circle, Building 10
Port Charlotte, FL 33948
ATTN: Syd Kitson**

**Gunster, Yoakley & Stewart, PA
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
ATTN: Ernie Cox, Esq.**

To Sierra Club, Inc.:

**Collins and West, P.A.
Att: Martha Collins, Esq.
500 East Kennedy Blvd.
Suite 100
Tampa, FL 33602**

**Frank Jackalone
Senior Regional Representative
Sierra Club – Florida field office
475 Central Avenue – Suite M-1
St. Petersburg, FL 33701**

**Aaron Isherwood
Senior Staff Attorney
Sierra Club Environmental Law Program
85 Second Street, 2d Floor
San Francisco, CA 94105-3441**

**Dan B. Hendrickson
Florida Chapter Legal Chair
PO Box 1201
Tallahassee, FL 32302**

To Clarke Keller:

**35380 Washington Loop Road
Punta Gorda, FL**

To Gail Giles:

**3850 Bravo Road
Port Charlotte, FL**

The only exception to this notice provision shall be as set forth in Paragraph G above regarding notification of public meetings.

R. Necessary Acts. The Parties hereby covenant and agree that each of them has done or taken all acts necessary to cause this Settlement Agreement to be binding.

S. Compliance with Existing and Future Laws. Any commitments made in this Settlement Agreement are valid only to the extent the commitments are in compliance with Federal, State and local laws and regulations in existence at the time of execution. If laws or rules come into effect which would render a portion of this agreement illegal, that portion of the Settlement Agreement shall be modified to comply and the remainder of the Settlement Agreement will remain in full force and effect.

T. Counterparts. This Settlement Agreement may be executed in counterparts, which together shall constitute one original.

U. Not Binding upon Babcock Florida Company. The Parties acknowledge that on the effective date of this Agreement, Kitson, by and through certain affiliated entities, only holds a beneficial interest in the Babcock Florida Company by virtue of the Merger Agreement. Kitson's obligations to convey any property or take any other actions with respect to property within the BROD are contingent upon Kitson completing the transaction contemplated by the Merger Agreement. Kitson shall have no liability or obligation under this Settlement Agreement in the event that the closing does not occur

under the Merger Agreement for any reason or cause whatsoever. Petitioners' acknowledge that:

- a. In no event shall the Babcock Florida Company or any of its affiliates or shareholders be bound or obligated under the terms of this Settlement Agreement prior to the closing under the Merger Agreement; and
- b. This Settlement Agreement shall not be deemed to bind or otherwise adversely impact or prejudice the rights of the Babcock Florida Company or its shareholders with respect to any future potential transaction with Lee County, Charlotte County and DCA; and
- c. In the event that the closing on the Merger Agreement is not consummated for any reason, this Settlement Agreement shall terminate.

V. Modification. This Settlement Agreement may be modified only in writing by all Parties included as signatories below.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

DONE AND EXECUTED as set forth below, this 19th day of July, 2006.

SIERRA CLUB, INC.

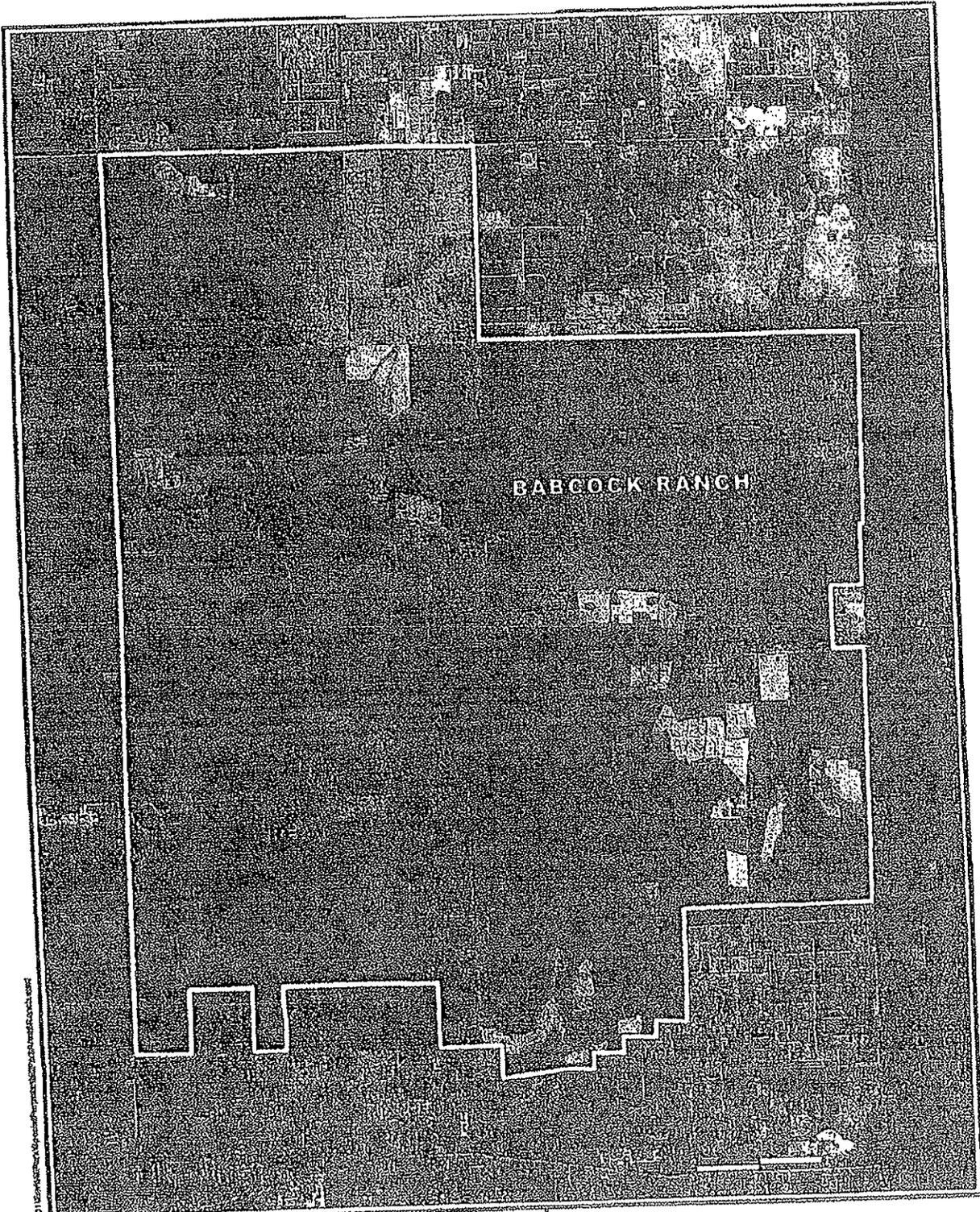
By: [Signature]
Its: Senior Regional Representative
Date: July 19, 2006

[Signature]
Clarke Keller, Individually
Date: July 18, 2006

[Signature]
Gail Giles, Individually
Date: July 18 2006.

MSKP III, INC.
By: [Signature]
Its: President & CEO
Date: 7/18/06

EXHIBIT A



JOHNSON
ENGINEERING

2158 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE (239) 334-0046
FAX (239) 334-3681
E.O. 1082 & L.B. 5002

Babcock Ranch Area 6

DATE	PROJECT	FILE NO.	SCALE	SHEET
April 2006	2005S003		As Shown	1

EXHIBIT "A"

BABCOCK RANCH
LYING IN
TOWNSHIP 41 SOUTH, RANGE 26 EAST,
TOWNSHIP 41 SOUTH, RANGE 27 EAST,
TOWNSHIP 42 SOUTH, RANGE 26 EAST,
TOWNSHIP 42 SOUTH, RANGE 27 EAST,
TOWNSHIP 43 SOUTH, RANGE 26 EAST
AND
TOWNSHIP 43 SOUTH, RANGE 27 EAST,
CHARLOTTE AND LEE COUNTIES

All of Sections 1 through 36, Township 41 South, Range 26 East, Charlotte County, Florida, LESS right-of-way for County Road No. 74 and right-of-way for State Road No. 31.

All of Sections 19 through 36, Township 41 South, Range 27 East, Charlotte County, Florida.

All of Sections 1 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, LESS right-of-way for State Road No. 31.

All of Sections 1 through 11, The West one-half of Section 12, All of Sections 13 through 36, all being in Township 42 South, Range 27 East, Charlotte County, Florida.

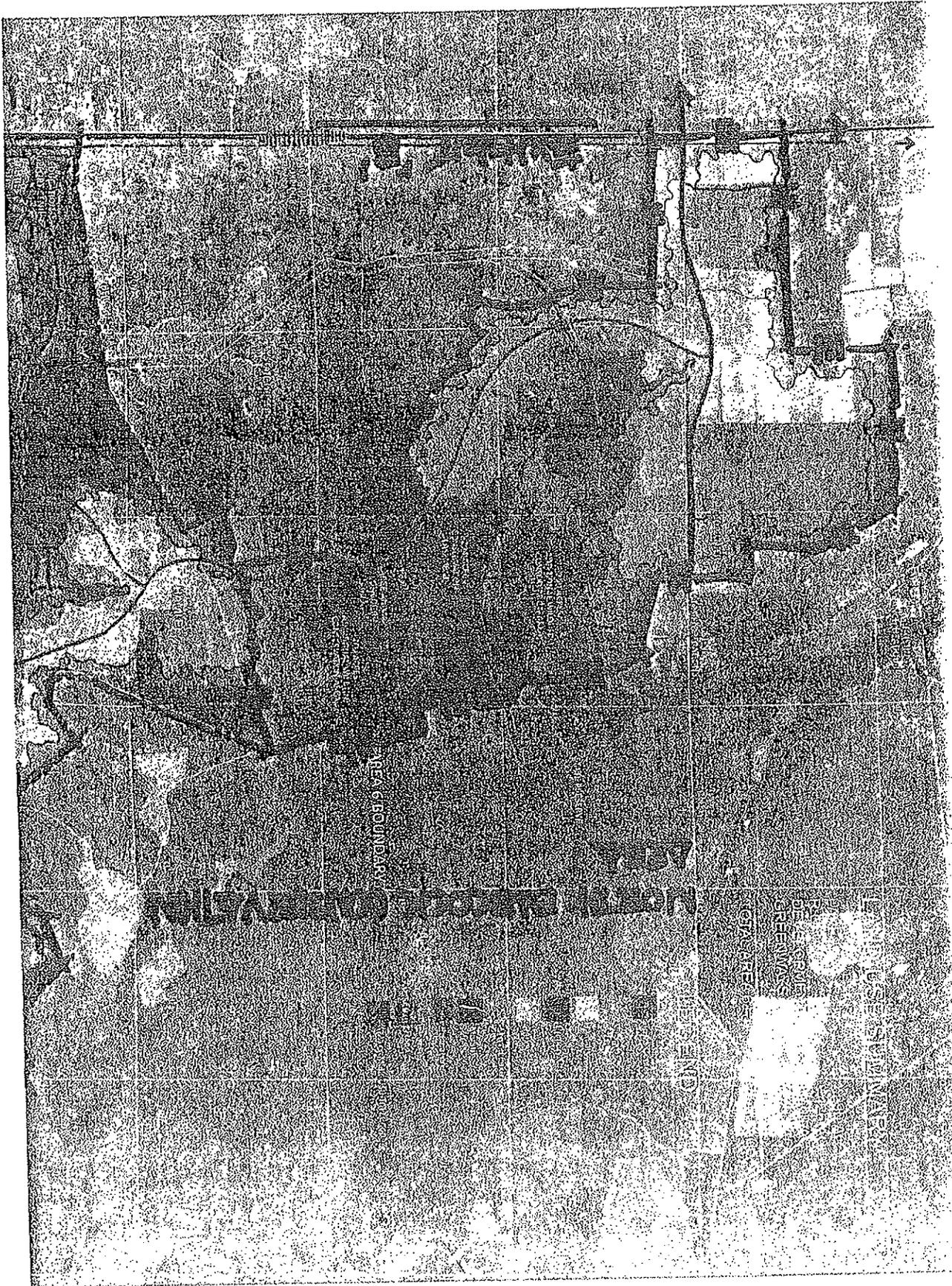
All of Sections 1 through 7, The West one-half of Section 9, The West 150.00 feet of the Southeast one-quarter of Section 9, All of Section 12, all being in Township 43 South, Range 26 East, Lee County, Florida, LESS right-of-way for State Road No. 31 and right-of-way for County Road No. 78.

That part of the Southwest one-quarter of the Northeast one-quarter of Section 9, Township 43 South, Range 26 East, Lee County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Southwest one-quarter of the Northeast one-quarter as the Point of Beginning and run East, along the South line of said Southwest one-quarter of the Northeast one-quarter, a distance of 150.00 feet. Thence Northwest to the Northwest corner of said Southwest one-quarter of the Northeast one-quarter. Thence South, along the West line of said Southwest one-quarter of the Northeast one-quarter, to the Point of Beginning.

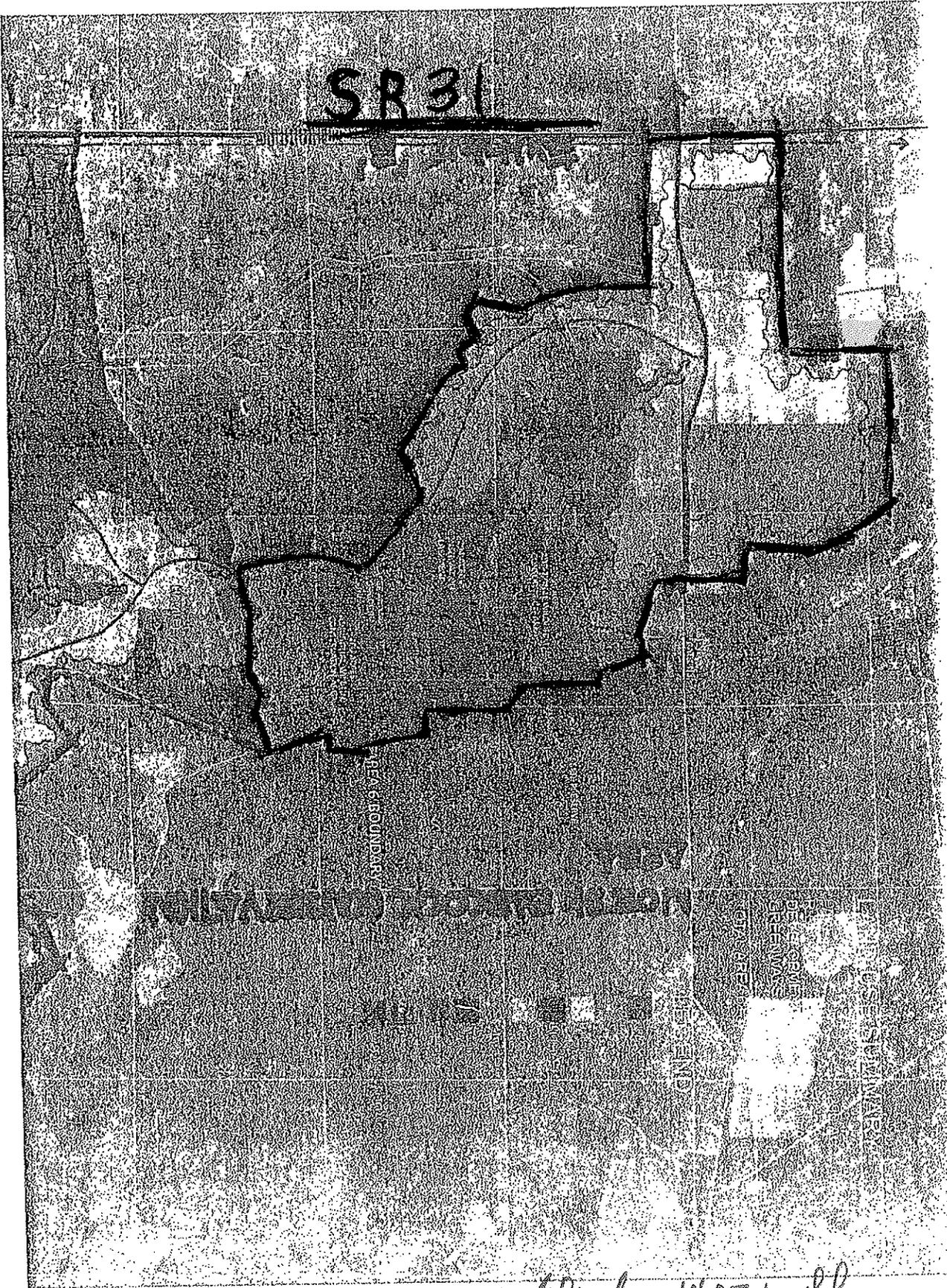
All of Sections 4 through 8; Section 9, LESS the South one-half of the Southeast one-quarter, The Northwest one-quarter and the North one-half of the Northeast one-quarter of Section 17; The North one-half of Section 18, all being in Township 43 South, Range 27 East, Lee County, Florida.

FOR CONTRACT PURPOSES ONLY
THE BABCOCK RANCH
OVERALL LEGAL DESCRIPTION
BABCOCK FLORIDA COMPANY
Page 1 of 1

SEEN APPROVED
By *[Signature]* Date *9/22/06*



SR 31



copy of previous page - Modified 2.14.07 by *sf* for clarity