

SECTION I

FINAL COMMENT AND RESPONSE, TRANSMITTAL LETTER FOR RECORD OF DECISION, AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT LETTER OF SEPTEMBER 20, 2000, REQUESTING TRANSFERRAL OF LANDS ACQUIRED IN FEE FOR THE PROJECT.

The General Reevaluation Report and Final Supplement to the Environmental Impact Statement for the 8.5 Square Mile Area were distributed to interested parties beginning on July 28, 2000.

The public comment period began with the publication of the Notice of Availability in the Federal Register dated August 4, 2000. Comments on the report were received from the following agencies and individuals:

U.S. Environmental Protection Agency (EPA), Region IV
U.S. Department of the Interior, Fish and Wildlife Service (FWS)
South Florida Water Management District (SFWMD)
Miccosukee Tribe of Indians of Florida (two letters)
State of Florida, State Clearinghouse, Department of Community Affairs (DCA)
State of Florida, Department of Transportation (FDOT)
State of Florida, Department of State, State Historic Preservation Officer
State of Florida, Fish and Wildlife Conservation Commission (FWCC)
State of Florida, Department of Environmental Protection (FDEP)
Southwest Florida Water Management District (no comments)
St. John's River Water Management District (no Comments)
Florida Power and Light
Audubon of Florida
United Friends and Property Owners of the 8.5 SMA, Inc.
Mr. Herbert Zebuth (as an individual)

Comments received have been copied and are reproduced electronically as Section II. Section II also contains an electronic copy of the District Engineer's Memorandum of September 26, 2000, which transmitted the proposed Record of Decision to the Commander of the South Atlantic Division. Section II likewise reproduces the September 20 letter from the South Florida Water Management District, in which the SFWMD requests that lands west of the 8.5 SMA perimeter levee be conveyed in fee from the Federal Government to this Water Management District.

The rest of this Section consists of paraphrased comments and questions, followed immediately by responses. These comments and responses are ordered as above.

1. **U.S. Environmental Protection Agency** Comments and Recommendations

a) *“EPA remains convinced that Alternative 5 would provide the most environmental benefits to the Everglades Ecosystem. However, ...the EPA is prepared to withdraw its objections (to Alternative 6D).”*

R: No response required.

b) *“...EPA agrees with the local sponsor and others, that steps should be taken to ensure that the status quo regarding flood mitigation is maintained...”*

R: USACE concurs. An operations manual detailing the parameters within which the flood mitigation levee/canal system will operate will be prepared cooperatively by the U.S. Army Corps of Engineers (USACE), South Florida Water Management District and the National Park Service, beginning in Fiscal Year 2001.

c) *“...Any stormwater management system developed....(for) residents of the 8.5 SMA must not discharge into the Everglades.”*

R: USACE concurs.

d) *“As the land acquisition and flood mitigation project is being developed, steps should be taken to allow for incremental increases in water flows to the ENP and not wait for the project to be fully completed.”*

R: USACE believes all steps should be taken to expedite the Modified Water Deliveries (MWD) project. To the extent possible and appropriate this would include increasing water flows to Northeast Shark River Slough on a timely basis. However, the USACE believes it is important to address flood mitigation issues in the 8.5 SMA.

e) *“Since this project will drain into the C-111 Project area, these two projects should (be) coordinated to ensure that maximum benefits will be derived and the projects will not negatively impact each other.”*

R: USACE concurs. This coordination between MWD and C-111 is ongoing.

2. **U.S. Department of the Interior, Fish and Wildlife Service.** Comments and acceptance of the Recommended Plan by the DOI agencies Fish and Wildlife Service and National Park Service, were contained in the FCAR, which was included in the FSEIS as Appendix G. The Service, by letter dated August 25, 2000, signaled its concurrence with the conclusions of the biological assessment (BA) prepared by USACE regarding the snail kite, eastern indigo snake and wood stork. USACE concluded that the recommended plan was unlikely to adversely affect these species or their essential habitat, provided that the recommended plan included standard protection measures for the eastern indigo snake. The Service also concurred with the BA's conclusion that the project might affect populations or habitats of the Florida panther and Cape Sable seaside sparrow, and requested additional information. Coordination on the latter two species is ongoing. USACE notes that the Recommended Plan requires that Alternative 6D be adjusted during the final design to maximize environmental benefits while minimizing adverse social impacts.

3. **South Florida Water Management District (SFWMD).** (September 7, 2000, letter to Florida State Clearinghouse). (Previous comments and Recommendations of the Board of Directors of the SFWMD were incorporated into Appendix B of the FSEIS). Comments were received to the Federal Consistency Review process, coordinated through the State of Florida Clearinghouse.

a) *“The proposed flood mitigation operations and conveyance of runoff to the C-111 project area are not detailed within the final GRR/SEIS. Since these operations...impact the proposed C-111 Project as previously described...the District recommends that a detailed assessment be provided prior to final design of this project as well as the proposed C-111 project.”*

R: USACE concurs. Design details of these two projects are being coordinated.

b) *“Certain specifics concerning the compatibility of the operations and potential impacts to agriculture east of the L-31N levee are also lacking in the final document...we recommend the USACE determine what additional flood protection measures, if any, are needed for the agricultural lands east of the L-31N canal as a part of a coordinated operating plan for both the C-111 and Modified Water Delivery Projects.”*

R: USACE concurs. A Combined Operational Plan EIS for MWD and C-111 will be initiated in Fall 2000.

4. **Miccosukee Tribe of Indians of Florida.** The Tribe submitted several documents. The first letter, signed by Terry Rice and dated August 31, enclosed additional documents (called Enclosure 1 and Enclosure 2). Enclosure 1, dated June 28, 2000, was reproduced in the GRR/SEIS and responded to in that document's Appendix H, and it will not be further addressed here. Enclosure 2 is a 3-page summary of the history and authorization of the Modified Water Deliveries Project (MWD) and the Tribe's position. No response is deemed necessary, as the points raised are also contained in previous and other current comments. The second letter was signed by Joette Lorion. The comments below are from the first letter, an attachment to Enclosure 1 (a list of "immutables") and the second letter, and are so identified.

a) *(Letter of T. Rice, August 31) "Alternative 6D...(is) a "dead-end excursion" that will never be built...two major reasons:*

Authority- ...the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area....I am confident that the ..Corps interpretation that...condemnation of homes and land is authorized...will be found to be contrary to the plain meaning of the words contained therein..."

R: Please refer to our previous response to this point, reproduced in Appendix H of the GRR/FSEIS in response to comments in your June 28 letter as "a", "c" and "d" on Page H-99. "...allowing a residential structure to remain in place after inundation occurs is not considered to be in the best interest of the government or the landowner...Response (d) same page, states that "Condemnation authority is inherent in approval of the Corps acquisition project. Even though condemnation authority is always present, it is always used only as a last resort to clear title or as an impartial means to resolve honest differences of opinion regarding value."

The inherent authority for taking of land through condemnation, if necessary, is in accordance with the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S. C. 257), as amended, the Act of Congress approved February 26, 1931 (46 Stat 1421, 40 U.S.C. 258a) and acts supplementary thereto, and under the further authority of the Acts of Congress approved April 24, 1888 (25 Stat. 94, 323 U.S.C. 591), March 1, 1917 (39 Stat. 950, 33 U.S.C. 701), July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) and August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) which authorizes the acquisition of land for flood control projects, and Act of Congress approved in 1989, P.L. 101-229, which authorizes this project to improve water deliveries to Everglades National Park and to take the necessary steps to restore the Park's natural hydrologic conditions..

b) *"Cost effectiveness - 6D will require at least \$62 million more in federal funds than the Corps 1992 plan...Even though this project is not an official Corps civil works project, I believe a reasonable and prudent person would conclude that*

Congress expects normal Corps standards to be applied in order to ensure that taxpayer money is being spent wisely. Huge increases in cost without justification will again spell “dead-end excursion.”

R: The cost increase is justified in terms of the greatly increased benefits to ENP restoration, measured either in terms of acres of NESRS with higher stages and longer hydroperiods, or by improved WRAP scores (increased wetlands functions, whereas, under Alt 1, these functions would have decreased), or in terms of improved wildlife habitat as discussed in the Fish and Wildlife Coordination Act Report, or in terms of improvements in water quality in the water to be delivered. These benefits are thoroughly discussed in the GRR/FSEIS and displayed in the report tables and graphics. In contrast, the relatively new “MODBRANCH” modeling showed weaknesses in the “1992 plan”(Alt 1). The 1992, or GDM, plan did not address water quality concerns, which are one of the reasons, in addition to real estate costs, for the cost increases. USACE believes that the recommended plan is a real improvement over Alt 1 in terms of ecosystem restoration.

Enclosure 1 mentioned six “immutables” that in the view of the Tribe must be established in order to make alternative 6D implementable. The USACE response follows

“a). 6D Plan must demonstrate that construction will be completed and operation started by December 31, 2003.”

R: The schedule in the GRR does demonstrate that operation by December 31, 2003 is feasible. The assumptions underlying the schedule are discussed on Pp. 88-89 of the GRR.

“b) 6D Plan must...assure absolutely no condemnation of homes....”

R: USACE does not concur. Due to the anticipated depth of flooding in areas west of the levee, need for restoration of natural cover on these parcels, water quality concerns and other issues discussed in the GRR/FSEIS, buyout of these homes, identified in the report, is considered necessary to the recommended plan.

“ c) 6D Plan must provide property owners west of the 6D levee with choices:...”

R: USACE does not concur. The lands west of the perimeter levee will be restored. Restoration is described on GRR pages 85-86, and is expected to include demolition of structures, removal of fill pads, access roads, re-grading, exotic species removal and land management to promote natural wetland development. Land management cost estimates were based on this assumption.

“d) 6D Plan must be enforced by DOI in writing, to include an explicit commitment to provide the increased funding, prior to the Corps signing a Record of Decision (ROD).”

R: The Corps does not concur. The National Environmental Policy Act (NEPA) prohibits commitment of new Federal funds until a Record of Decision has been signed. The Anti-Deficiency Act (ADA) also prohibits Department of the Interior and other Federal agencies from committing to an expenditure of funds in advance of appropriations by Congress.

“e) 6D Plan ROD must be signed by September 20, 2000.”

R: The target date for signing the ROD is September 29, 2000. However, our schedule is based upon a Project Cooperation Agreement Amendment execution by Winter 2001.

“f) and 6D Plan must stipulate that, if any one of the above 5 immutables is not met, then the Corps must immediately begin final design and construction of the 1992 Corps plan/concept.”

R: The USACE does not concur. The recommended plan is the preferable alternative even if these suggested five conditions are not met. The Tribe’s concerns with delay in implementing a plan have been taken into account.

Miccosukee Tribe Enclosure #2, (3 page document) is not a commentary, but rather a summary narrative that explains the context of the overall Modified Waters Project in Everglades restoration, reiterates the Tribe’s view of damages to Tribal lands and culture caused by ongoing tree island mortality in the WCA’s, and ends with a statement that any plan other than the 1992 recommended plan will lead to unacceptably long delays in restoration of Tribal lands and in implementation of the Comprehensive Everglades Restoration Plan)

R: USACE does not concur that the 1992 GDM plan (called “Alternative 1) in the current GRR/FSEIS Report) is the only implementable alternative. We are aware that the Tribe remains opposed to the recommended plan. We believe that the recommended plan is implementable and represents a better solution to the dilemma of restoring the Everglades than Alt 1. In reference to unacceptably high water levels in Tribal lands located to the north of the 8.5 SMA, these high water levels are not the result of delay in building the 8.5 SMA component of the Modified Water Deliveries Project. Other components of the MWD project will have far more significant impacts on water levels in the Water Conservation Areas than would any of the 8.5 SMA alternatives evaluated.

Miccosukee Tribe Letter #2, Joette Lorion. The letter is 18 pages long, and reiterates many points discussed and documented in public workshops held by USACE and the South Florida Water Management District. Many of these same points appear in previous letters of comment from the Tribe, such as those reproduced in the GRR/FSEIS Appendix H. Below are the principal comments, reference to previous replies, and/or new responses.

a) *“The Final GRR/SEIS is legally insufficient. ...NEPA requires that an EIS include all information...relevant and essential.... Contrary to this, the GRR/FEIS grossly underestimates...significant factors...The Tribe’s Everglades land in WCA-3A and state-owned Everglades, are damaged and the Miccosukee culture threatened...”*

R: USACE has responded to specific comments identified during the NEPA process. USACE cannot respond to general statements that the document is inadequate because it is incumbent on the commentator of the NEPA document to identify specific areas for improvement so the agency can respond.

b) *“The Final GRR/SEIS Rubber Stamps a Non-Federal Decision. The Corps knew from the start that the District’s (SFWMD’s) selection of an LPA was not a federal decision making, and so they entitled one version of their twin document a General Reevaluation Report (GRR). The Corps’ entitlement of the other twin document an SEIS...does not cure this fatal defect”*

R: USACE does not concur. The Corps is required to consider the views of other agencies, including South Florida Water Management District (SFWMD), the local sponsor, and whether there was a locally preferred option to the previously authorized plan. However, the option recommended in the GRR was selected because it is the preferable alternative considering the balance of economics, impacts on the local community and environmental benefits. The two documents could have been integrated into one, but due to the complexity of the issues, and for clarity, they were kept separate. It is customary for a cost-sharing Local Sponsor to participate in plan formulation. SFWMD will bear 25% of the costs of operation and maintenance and 100% of the cost of maintenance of lands west of the perimeter levee. However, the alternatives were not developed by the local sponsor. Some were developed in cooperation with the local sponsor and the Department of the Interior, which will provide the federal funding for implementing the project, while others were an outcome of the many public workshops, meetings and other public activities during which the options for 8.5 SMA were examined since 1992. All of the alternatives were developed, evaluated, adjusted, and modeled by the U.S. Army Corps of Engineers. Alternative 6D was a variation of 6B, also developed by USACE. It was modified from the 6B alignment in an attempt

to optimize the tradeoff between wetlands restoration and adverse effects on residents.

c) “Improper Segmentation of the Modified Water Deliveries Project Violates National Environmental Policy Act (NEPA)”

R: USACE does not concur. Please refer to our previous answer to this comment in the GRR/FSEIS, Appendix H, page H-48, response (d). If tiering of very large and complex projects were not allowed, the size of NEPA documentation on such projects would become unmanageable. The general “Modified Water Deliveries (MWD)” concept was explained in the 1992 FEIS. The entire Central and South Florida Project (C&SF), including MWD and C-111, were re-evaluated in the programmatic Restudy and its EIS, during 1998-99. There will be separate NEPA documents for each of the major components as they develop. However, the 8.5 SMA GRR/EIS is still a planning (conceptual) document. Later in implementation, the Operations Manual for 8.5, and that for C-111, will likewise require coordination.

The decision to prepare separate evaluations, under NEPA, of the various components of the Modified Water Deliveries Project (MWD) received endorsement of the Federal agencies involved, including the President's Council on Environmental Quality (CEQ).

d) “Improper Segmentation and Narrow Scope Fail to Analyze Environmental Impacts and Cost of Delay on Tribal Lands.”

R: USACE does not concur. You refer to abnormally high water levels in Water Conservation Area 3-A. In fact, none of the considered alternatives for the 8.5 SMA would impact the high-water conditions now prevalent in Water Conservation Area (WCA)-3A to a significant degree. The point was, *some alternative had to be developed to mitigate for the increased flooding in 8.5 SMA that these other components were expected to produce.* Other components of MWD (Tamiami Trail, Seepage and Conveyance Control, and Interim Operations) have a far more significant and direct effect on the high water stages that adversely affect tree islands. The fact that the 8.5 SMA *component* of the MWD project was considered to be one of the most difficult and complex, is the reason it was addressed early in the planning/implementation process. However, no additional capacity to convey water out of the WCA's and into northeast Shark River Slough will be provided by construction of the 8.5 SMA component.

e) “Modification of the Project Purpose is Arbitrary and Capricious. The Final GRR/SEIS mistakenly modified the authorized project purpose provided in P.L. 101-229 by selection of an alternative that is so foreign to the original purpose of the statute that it is arbitrary and capricious....”

R: USACE does not concur. We believe that there is ample legal authority for including land acquisition and relocation of residents in USACE Flood Control projects. Please refer to our answers to Mr. Rice’s letter, above, and to our responses to your June 28, 2000 letter, which is reproduced in the GRR/FSEIS Appendix H, especially responses b) and c) which are on pages H-98 and H-99. The Corps does not propose “condemning people” as stated in your letter, p. 7. The recommended plan proposes buyout of all parcels west of the Alt 6D perimeter levee alignment. Condemnation is considered a last resort, as discussed in these previous responses. The proposed alignment is neither arbitrary nor capricious, but rather the result of a protracted and careful development of alternatives characterized by several iterations of developing alignments, evaluating their consequences, and re-alignment, followed by re-evaluation. The alternatives analysis conducted during the past year has been, if anything, cautious, conservative and exhaustive in its examination of engineering and environmental consequences.

f) “A Fair and Objective Evaluation Would have Resulted in the Fascell/Corps Plan.” An objective and impartial evaluation of the Final GRR/SEIS leads to the same logical conclusion that was reached in 1992...”

R: USACE does not concur. Alternative 6D strikes the best balance between those alternatives that heavily favor the environment and those with the least impact to the landowners. Your citation of the GRR text is out of context as it stopped at the cost/engineering effectiveness statement. In terms of the other objective of PL-101-229 (restoration of Everglades hydrology) Alternative 1 was the worst alternative, not the best.

g) “The action alternative (was) Incorrectly Called “No Action.”

R: For purposes of this study the “no-action” alternative was defined as the authorized plan (Alternative 1). Inaction, i.e., to do absolutely nothing, was not acceptable as an alternative, because there was a Congressional mandate to restore water levels in NESRS, and provide flood mitigation to residents.

h) “The Corps’ Acceptance of the FWS CAR is Contrary to Law.”

R: USACE does not concur. Under the Fish and Wildlife Coordination Act, The Corps is required to receive and consider FWS recommendations, although we are not required to agree with all recommendations, and we cannot determine the evaluation methods FWS will use. We have provided this information to the Tribe on previous occasions. (Reference FSEIS Appendix H, Page 104, Comment W-18). In several areas the Corps was able to favorably respond to the Coordination Act Report (CAR). However,

we did not agree with all recommendations contained in the Draft CAR, and examination of both documents will indicate many areas where these recommendations changed as the SEIS and the CAR were revised in the light of project development. Since DOI will provide the funding for the MWD project, and is a full cooperator in the study that led to the report and FSEIS, it was important for our agency and DOI to jointly develop documents that reached compatible conclusions.

i) “New Commitments Made in Final GRR/SEIS Violate NEPA and ADA (the Anti-Deficiencies Act -Ed.). (Also cites a letter from USACE to the EPA Regional Administrator, reproduced in the GRR/FSEIS). Commitments concerning land management, additional land acquisition from willing sellers, up front development of water quality treatment, operations and other issues...were not disclosed in the Draft GRR/SEIS.”

R: It is not a violation of NEPA to revise Draft document or report text, figures and details of a proposed plan as a result of public coordination of a Draft NEPA document. On the contrary, such revision of the proposed project to reflect agency and public review comments is customary. The 8.5 SMA draft document did not identify a recommended plan, because USACE desired to provide the most objective analysis possible of all the alternatives developed. All of the “additional commitments” you cited were documented in the final GRR/SEIS. Please refer to GRR pages 99-109.

i) “Corps Failed to Adequately Respond to Tribe’s Key Points.” The Corps narrowly described the Miccosukee Tribe’s position on the MWD project in the Final GRR. Rather than reiterate the Tribe’s long standing concerns associated with failure to implement the MWD project...chose to reprint a letter...that solely addressed..concerns about...implementability...” The Corps did not address the Tribe’s point about.. unwilling seller(s)...., increased acquisition costs...increased land restoration costs....and delays in implementation.”

R: In addition to Section 8.4 of the GRR, which lays out the key points of the Tribe, and the explicit identification of avoidance of delay as a performance measure for all alternatives, we incorporated all of the tribe’s comment letters and most significant oral comments at workshops in Appendix H. You appear to have misunderstood our comments about condemnation authority. Please refer to our response to comment e) above. You further state that our project cost estimate is in error. However, cost estimates are based on the best available information at this time. Restoration costs are included in initial project costs, not ongoing land maintenance costs. Acquisition costs are based on available information. Depending on Congressional appropriations, we stand by the GRR/SEIS conclusion that the recommended plan can be built according to the timetable shown in the GRR.

k) *The Corps prejudged the NEPA decision making by not identifying the Corps preferred alternative (“Cart before the horse”)*

R: The Corps did not identify a preferred alternative in the Draft report and SEIS because it desired to benefit from review by outside agencies, the Miccosukee Tribe and the public. This review was beneficial in developing an optimum plan.

l) *“Congress was clear” (Questions whether flood mitigation and buyout are authorized).*

R: Please refer to our response a) to Terry Rice’s letter of August 31. We believe that flood mitigation, as defined in the GRR/FSEIS, is fully compliant with PL 101-229.

m) *“ 1994 amendment is being misused.”*

R: Your objection is noted. There are other sources of funding for the land acquisition. These sources are also identified in the Final Coordination Act Report.

a) *“ Use by Miami-Dade County...of EEL and SAMP Funds to cost-share land acquisition.”*

R: No state cost share in land acquisition is foreseen in the GRR/SEIS.

b) *“Commitment of Federal Funds above the 1992 GDM plan cost is arbitrary, capricious and unlawful...”*

R: Re-evaluation of project design and economics is authorized under Corps planning laws and regulations, especially when new information becomes available. The GRR does not actually “commit” funds, in a legal sense. It recommends a plan and details the associated costs of that plan.

o) *Property Rights and Public Purpose... “It is a violation of property rights and the constitution to remove people from their homes.....”*

R: The legal authority for condemnation has been discussed in our response to point a) in Mr. Rice’s letter. By definition, a flood control program is a public purpose, as is restoration of the Everglades.

c) *“Human Rights. The GRR/SEIS...defines the 8.5 SMA as a minority, Hispanic community... EO 12898..requires agencies to see that Everglades Restoration does not have a disproportionate impact on minority and low income communities...”*

R: You refer to the Executive Order on Environmental Justice. Compliance with that E.O. is discussed in the body of the GRR and FSEIS. The recommended plan would allow most residents of the 8.5 SMA community to remain while providing ecosystem benefits nearly equal to those that would have occurred under total buy-out. Residents have been provided many opportunities to make their strong wishes known, and these views have been reflected accurately in the GRR/FSEIS. Environmental documentation was provided in Spanish, and public workshops and meetings were conducted with simultaneous translation available. The document is in compliance. There are literally thousands of Hispanic residents of Miami, and many other neighborhoods exist with high percentages of Hispanic residents, including Cuban immigrants and their descendants. Miami-Dade also has more economically disadvantaged neighborhoods, where parcel sizes are far smaller, houses are smaller and closer together, and space for large domestic animals or family farms is nonexistent. In fact, many of the parcels in the 8.5 appear to reflect a comfortable, middle-class lifestyle. Buyout of the households west of the perimeter levee is by no means a “disproportionately” adverse effect on the Hispanic or Cuban-descended population of Miami-Dade.

d) “Administrative Hurdles”. The Corps...failed to take a hard look at them. The alternative...will result in a dead –end excursion.”

R: The timetable presented in the GRR is, the USACE believes, based on realistic, although admittedly demanding schedules for plan administration. With a firm commitment from all project sponsors implementation is feasible.

q) “Money” . The Final GRR/SEIS...contain no time frames for obtaining...funds or assurances of certainty....many years will be lost in implementing MWD and the environmental cost of delay will be greatly increased.

R: According to the National Environmental Policy Act, no commitment of appropriated Federal funds may be made until after signing the ROD. To the extent that further funds must be appropriated by Congress, they will not be committed until Congress makes them available.

r) “ Congressional Approval...acquisition alternatives...would require new Congressional Approval”

R: As stated above and in the SEIS (Appendix H, P H-98-99) in response to your previous exploration of this objection, USACE does have authority to acquire lands for flood control.

s) *“Corps Approval”...does not contain a realistic time frame for the associated steps and risks entailed in Corps approval of alternative 6D.”*

R: A decision by Corps approving authorities about Alternative 6D is not expected to be an impediment to plan implementation. Due to the importance of resolving flood mitigation issues for the 8.5 SMA, Corps approving authorities have been continuously aware of the status of the GRR and NEPA coordination.

t) *“Corps Redesign” the GRR/SEIS does not realistically lay out the steps, time line and associated risks of alternative 6D... (it) does not layout the steps, time line and associated risks (to modify the PCA)”*

R: The schedule in the GRR demonstrates that operation by December 31, 2003 is feasible. The assumptions underlying the schedule are discussed on Pp. 88-89 of the GRR.

u) *“Condemnation Authority: The Corps did not respond to the Tribe’s contention that the Corps does not have condemnation authority... The Corps knew that there were ...unwilling sellers, and so ...(it) decided to arbitrarily and capriciously remove all unwilling sellers as a performance measure in the Final GRR/SEIS.”*

R: The Corps explained, in the GRR/SEIS response to previous comments from the Tribe and property owners, that it did have condemnation authority. Refer also to our response to Mr. Rice’s comment (a) in this document. Of course, without this authority, even one unwilling seller could delay project implementation. With regard to removal of the “unwilling sellers” performance measure, the problem was that data collected from various sources, indicating very widely different numbers of “unwilling sellers” at different times, appeared so contradictory as to be difficult to reconcile. We did not state that residents’ survey input stating they were unwilling to sell was unreliable. We stated that other previous surveys had given different results. We have also received other letters and telephone inquiries from different individuals, in response to the draft documents, stating a strong desire to sell. Because we had doubts it was judged more prudent not to attempt to evaluate this measure quantitatively. The report and FSEIS indicate that there is strong opposition to buyout among some residents and groups of residents.

v) *“Environmental Justice. Community was described in a pejorative way, and attitude of the document is discriminatory, offensive and dehumanizing. Finally, it fails to adequately address the affirmative duty described in EO 12898 and federal civil rights laws not to create disproportionate and undue burdens on minorities, such as the 8.5 SMA, and the Miccosukee Tribe, especially when there are alternatives that would not create such impacts”*

R: USACE disagrees with this comment. The GRR/SEIS process was conducted in public. Many public workshops, forums, and meetings were held. Bilingual materials were prepared and translation was available. No community member was ever subjected to discriminatory, offensive or dehumanizing behavior on the part of the study/planning group or agency cooperators. When the Tribe and others objected to some language in the Draft documents this language was changed. With regard to the Corps' inability to use the signed documents provided by the "unwilling sellers" directly as a scoring factor, the Corps has a very strict policy regarding not only the content of surveys, but their manner of administration. We have not rejected the data provided by residents. It simply appears to conflict with other data provided by other sources. This was one performance measure of many that we could not quantify. We certainly considered the residents' reluctance to relocate, in plan evaluation and selection. The recommendation of a plan that includes some relocation, even if unfavorable to some households whose residents do not want to sell, is not necessarily evidence of environmental injustice or actions that are taken in disregard of, or disproportionately adverse to, a particular minority or disadvantaged group. In the case of the 8.5 SMA project, it appeared that the structural alternatives that would have allowed the entire community to remain in place would not have provided the full hydrologic benefits to NESRS that were the objective of PL-101-229, nor were these structural plans as effective as thought or described in the 1992 GDM.

w) "Use of confusing, conflicting and unreliable data: The Corps continues to use data from DERM, not from the Tribe,...it continues to use water quality data from after Hurricane Irene which the Corps knows is not legally sufficient...The Corps is required under NEPA to verify the validity of this information."

R : The GRR/FSEIS used data from many sources. The FSEIS includes considerable new water quality data and its conclusions about the need for water quality treatment are not based on the Hurricane Irene data. That data was included as an extreme or "outlier" condition. There is general consensus among Federal and State regulatory agencies that water quality treatment will be required. Exact details on the parcels to be acquired and those subject to easements will be developed in the detailed design phase. Please refer to the special conditions that form a part of the recommended plan, including those related to minor adjustments of the structural features' alignment that will be made to maximize wetlands and minimize adverse effects to residents.

x) "First the Verdict, Then the Trial: Process Violates NEPA and will result in increased Everglades Destruction."

R: USACE does not concur. The USACE went to extraordinary lengths to conduct a complete and impartial analysis of all alternatives. Alternative 6D best provides hydrologic mitigation while minimizing impacts to environmental resources and residents.

5. **State of Florida, Department of Community Affairs, Florida State Clearinghouse.** The Clearinghouse informed USACE by letter dated September 18, 2000, that the GRR and FSEIS and the actions they propose are consistent with the Florida Coastal Management Program. Under Federal Coastal Zone regulations the State Clearinghouse may take 45 days to respond to a recommended action. The FSEIS comment period began on August 4, 2000, and comments were received at conclusion of the 45 day period. Comments received, and respective responses, are as follows:

South Florida Water Management District. (See above, Number 3. SFWMD is the project local sponsor).

OTTED (no comments)

Florida Department of State, Division of Historical Resources: No objections to the project.

Florida Department of Transportation (FDOT) : No comments on this part of MWD. FDOT will continue to coordinate on the Tamiami Trail Project.

Florida Fish and Wildlife Conservation Commission: Previous comments of the FWCC appear to have been addressed in the FSEIS. No further comments are provided. A copy of comments on the FWCAR were forwarded: in this letter, FWCC concurs that Alternative 6D, with the added assurances that constitute the Recommended Plan, would provide a reasonable balance between flood mitigation and protection of fish and wildlife habitat. They note that model results indicate that it would represent a significant improvement over the authorized plan.

Florida Department of Environmental Protection (FDEP):

a) *“The Corps has determined that compensatory mitigation will not be necessary. A determination of the extent of dredge and fill activities in waters of the state and the potential to further avoid and minimize impacts to wetland will be considered under s 373.414, Florida statutes. Corps has determined that compensatory mitigation will not be necessary. A determination of the extent of dredge and fill activities in waters of the state and the potential to further avoid and minimize impacts to wetland will be considered under s 373.414, Florida statutes.”*

R.: It is USACE policy that, in projects whose purpose is to restore an ecosystem, especially fish and wildlife habitat, the project should not be required to develop or implement specific and separate fish and wildlife mitigation. DOI concurred with this, and it is also consistent with the wetlands functional analysis conducted with an interagency team. Please refer to P. 17 of the FSEIS for an explanation of USACE policy. The final

FWCAR agreed and did not recommend compensatory mitigation. One of the features of the recommended plan is that, to the extent practicable, fish and wildlife enhancement features will be incorporated into the design of project canal structures. Refer to Recommendation (H), on GRR p. 107. We concur that the exact footprint of the project over waters of the state cannot be determined at this time. As noted in the GRR/FSEIS, a permit will be sought during the design phase of the recommended plan. At that time more exact information will be available.

b)" The Corps' assumption of wetlands increase is questionable. There will not be an increase of wetlands as a result of the project. Construction of the levee and canal system will result in the loss of 130 acres."

R: Please refer to the response to comment a) above. It has been our practice to compare functional gains and losses in restoration projects, not merely count acres. The wetlands functional analysis (WRAP) done by the DOI, as shown in the GRR, the FSEIS and the Final Fish and Wildlife Coordination Act Report (FCAR), indicated that the recommended plan will cause a net increase in wetlands function, both project-wide and in the 8.5 SMA itself. The purpose of the 8.5 SMA component of the MWD project is to mitigate for increased flooding of residential areas while providing maximum practicable re-hydration of the glades in Northeast Shark River Slough. This area is known to have suffered functional losses due to reduced hydroperiods. It appears somewhat redundant to require a project designed to re-hydrate and restore existing wetlands, to also create additional new wetlands. However, the 8.5 SMA lands east of Everglades National Park and west of the perimeter levee would be restored. These lands are now residential and agricultural in part. On p. 85-86 of the GRR, restoration actions are described.

c) DEP Requests to be added to the list of agencies to prepare and review the Operations and Maintenance manual for the project.

R: The operations and maintenance manual will be coordinated with your agency as requested.

d) It can be expected that construction of flood mitigation will induce development potential in the area and lead to an increase in density and intensity of use. Items in the additional project recommendations require the local sponsor to prevent encroachments on project lands, and cooperate to prevent unwise future development. Both requirements will have to be coordinated with Dade County.

R: Concur, that in absence of "special considerations" added to Alternative 6D to make the Recommended Plan, more pressure for development might occur. These development pressures are discussed in SEIS Section 4.11.6. However, 6D does not provide "flood protection" from current water levels,

only mitigation for expected increases in flood levels due to implementation of other parts of the MWD project. Furthermore the local sponsor has committed to work with Miami-Dade county to address this requirement and South Florida Water Management District will continue a willing seller program. As you are aware, Federal agency authority does not extend to local land-use ordinances.

e) Potential water quality impacts remain a concern. Water quality certification for the applicant will depend on the applicant providing reasonable assurances through water quality data and plans and specifications that state water quality standards for receiving waters will not be violated.

R: Coordination will continue with DEP through development of plans and specifications. It is planned to apply for water quality certification when data are available.

Florida Department of Agriculture:

a): The report analysis does not include a determination if the additional volumes of water (to be discharged to C-111) could be accommodated by the C-111 Project. The C-111 GRR consistency consultation submitted to the State concurrent with this project likewise did not discuss the additional volumes of water. The two projects are inconsistent.

R: USACE believes that the C-111 project can be adjusted to accommodate the anticipated water volume. Information detailing water volumes and operational adjustments to the systems are scheduled to be developed in conjunction with the Operations Manual. The Operations Manual development is scheduled to begin next month. At this stage of conceptual development it is not possible to provide more information, but it will be coordinated with all affected parties as it is developed.

b) Modeling results indicate...higher water tables to agricultural lands east of L-31N would potentially occur with the preferred alternative.. The USACE proposes addressing the potential impacts during development of operational protocols to be developed sometime in the future...It is important to address potential operating conflicts prior to construction additional project features that may not function...."

R: please refer to the first response, above. Due to the complexity of the MWD and C-111 projects it is first necessary to have an approved project before design details can be developed. Development of the Operations Manual is scheduled to begin in a month.

6. Florida Power and Light. This utility owns a significant right of way corridor that runs N-S through the 8.5 SMA. In comments to the DSEIS FPL requested that agencies monitor the impact of proposed project structures on this ROW, due to its importance in providing present and future electric distribution corridors (refer to Report Appendix H, public comments,)

a) Requests USACE work closely with FPL to avoid or minimize impacts to this important distribution corridor.

R: Coordination will continue with FPL through development of detailed plans and specs.

7. Audubon of Florida

a) *"The distinction between SFWMD's "Optimal Plan" and a Locally Preferred Alternative- LPA- needs to be clarified."*

R: The distinction is monetary and related to who will pay the difference between the 1992 authorized plan and the recommended plan. Potentially, the cost increase of a locally preferred alternative (over the federally recommended plan) could be expected to be incurred by a Local Sponsor. SFWMD's optimal plan is their recommendation about which plan the federal government should prefer- and finance.

b) *"The Financial Analysis section should Include discussion on how federal funding commitment will be secured."*

R: Federal funding is discussed in section 9.0, Plan Implementation. We do not expect additional Congressional authorization to be necessary.

c) *"What is process if further congressional authorization is needed?"*

R: It is not anticipated that additional Congressional authorization will be required.

d) *"GRR states that all alternatives can be implemented by 2003; does this take into account dealing with legal challenges to the final action?"*

R: The schedule does not assume delays caused by potential legal challenges.

e) *"Alternative 6D...includes substantial... direct filling of wetlands. Wetland Mitigation should be required for direct wetland losses."*

R: USACE does not concur. It is not USACE policy to design ecosystem restoration projects with separate "compensatory mitigation" for structural features that are necessary to achieve the desired restoration. The Final Coordination Act Report (CAR) did not recommend compensatory mitigation for alt. 6D. Also, refer to SEIS section 2.6: "Mitigation," second paragraph. *et seq.* (page 17). This section cites USACE policy on ecosystem restoration projects. Also refer to our response to the letter from DEP, above, same subject.

f) *"The Corps should explore... that no additional flood protection will be provided, not that "...it will not necessarily provide an increased level of flood protection."*

R: The project is not designed to provide additional flood protection. Since it is based on hydrologic model output, some insignificant additional

benefits may occur in certain cells at certain times. The Operational Manual will set the parameters for operating the system so as to provide only "mitigation", not higher levels of protection.

g) "Will flowage easements sufficiently address increased flooding impact (in the approximately 546 acres east of the levee)? Will fee purchase be available for those residents willing to sell?"

R: For those residential structures that are below 9.5 feet NGVD current Corps policy would require fee purchase. The Corps plans to proceed with acquisition of flowage easements for those structures where the first floor elevations, access and septic systems are above 9.5 feet NGVD. If these residents desire to be purchased, the Corps would purchase the required flowage easement and the landowner would be referred to the SFWMD for potential fee acquisition through their willing seller program. SFWMD would not be reimbursed for any land acquisitions costs if they were to acquire fee ownership within the flowage easement area. However if the appraisal reveals there is a diminution of value to the remainder and a subsequent determination that there is an "uneconomic remnant" it may be necessary to purchase a tract in fee. For structures that are above 9.5 feet but septic systems are below, if the land owner desires to remain, and will pay for improvements they would be compensated for no more than fair market value for a fee acquisition. Any additional cost to raising in place would be borne by them. We should note that more detail regarding ground and structure elevations on particular parcels is needed, and will be acquired during the design phase of the project, before these distinctions can be made.

h) " Flooding is likely to occur near FAA Property. How will mitigation issues be resolved?"

R: Concur. There is an area where increased flood stages are not fully mitigated by project structures. Flowage easements over the affected areas may be required.

i) "(Specific comments to modeling). It should be noted the alt 6c provides water stages in ENP that are generally lower than those provided by alternative 1, for this reason this alternative does not meet the requirement for avoiding negative impacts to higher stages in ENP."

R: Alternative 6C is not the recommended plan. Your table is correct for the individual cells and conditions you analyzed, but the differences may not be significant. Alt 6C does provide the same average stage increases as alternative 1.

j) “ Seasonal elevated ground water levels can be anticipated for areas between the western levee and drainage canal associated with Alt 6D.”

R: In this area, depending on elevation, flowage easements or fee purchase may be required, depending on land elevation and the elevation of the affected structures. Please refer to the answer to g above.

k) “In the lands east of Levee L-31N, each alternative exhibits similar periods of inundation and water depths for each of the indicator cells. These impacts appear to be the result of modeled regional influences and not necessarily the direct result of the 8.5 SMA component.”

R: The Corps agrees: this effect appeared to be a consequence of operational considerations. Because it appeared under each alternative, this performance measure could not be used in final alternatives elimination process. It is expected to be addressed in operational adjustments.

l) “6D may provide a dangerous policy precedent (weight given to consideration of adverse impacts on residents) that may impact Everglades restoration as a whole.”

R: USACE regularly recommends plans that provide a balance of ecosystem benefits while minimizing adverse human and socio-economic impacts. The Recommended Plan is relatively one of the more cost-effective alternatives, providing nearly as many ecosystem restoration benefits as the more costly total buy-out alternative. It is consistent with national environmental policy and environmental justice policy to minimize adverse human impacts in project planning.

m) “Explain the relationship between ACOE, Park, and SFWMD on developing the operational schedule and how conflicts will be resolved. Give timeline of when it will be completed.”

R: All these agencies and others will form a technical team that will develop the operational schedule. A Combined Operational Plan EIS for MWD and C-111 is scheduled to start in Fall 2000.

8. Mr Herbert Zebuth (as a citizen).

A) “Choosing 6D over 5 suggests that all human activity is more valuable than natural system function and should be given priority.”

R: It is the position of the Corps that alternative 6D achieves the best balance between minimizing adverse effects on residents and restoring natural system function. Both were objectives and performance measures for the Recommended Plan. It was the judgment of the plan formulators that Alternative 6D, with additional recommendations, best met both objectives.

b) *“Impacts from development will lead to intrusion of a more intense bubble into the remnant Everglades Ecosystem.”*

R: See response to (a), above. The Corps does not concur. In fact, some residences will be removed and some lands, now under residential or agricultural use, will be restored. If anything, the line between Everglades and human-use lands will move back to the east.

c) “There is no information in the GRR on how to ensure no increase in flood protection or development (in ‘protected’) areas.”

R: The required operational changes to provide mitigation will be addressed in the operational manuals for 8.5 SMA, scheduled to be developed, beginning immediately after this plan is selected. Federal agencies have no direct authority to regulate local land-use, however. Since no additional flood protection is provided, above the required mitigation, the status quo should not change.

d) *“No Evidence is shown that strong local enforcement of zoning regulations will begin.”*

R: The federal government must assume that the county will enforce its own zoning ordinances. The local sponsor has made a commitment to encourage this outcome, as well. The Federal government does not have the authority to intervene in local zoning regulations.

e) *“Alternative 5 will provide 479 more wetlands acres, 344 more acres of short hydroperiod wetlands, and 1079 more WRAP units than Alt 6D (quotation from the FFWCAR).”*

R: The GRR/SEIS acknowledges that Alt 5 optimizes everglades ecosystem restoration. However, it produces the most adverse outcome possible for residents and agriculture within 8.5 SMA--total elimination. Alternative 5 was not supported by the Governing Board of the SFWMD, and its

additional cost was not considered to be justified in terms of the greater marginal ecosystem benefits it produced by USACE.

f) There are no assurances about treatment of pollutants potentially present in 8.5 SMA drainage into ENP. Will there be an interior levee east of the seepage canal?"

R: Yes. There will be low berm-like levees on both sides of the seepage canal. Refer to GRR p. 82.

g) Respondent is concerned that not choosing Alt 5 will set a precedent for CERP (Comprehensive Everglades Restoration Project - Ed.) that it is no longer acceptable to take private land for public interest.

R: Alternative 6D does take private land for the project. Lands west of the perimeter levee will be acquired for the project and restored, preferentially using willing sellers, but by condemnation, if necessary . If it is determined to be needed for the project, the government would continue to exercise its eminent domain authorization when necessary. The recommended plan provides nearly as many restoration benefits as total buyout, at a significantly lower cost and with much less adverse effect on residents.

9. United Property Owners and Friends of the 8.5 SMA, Inc. (UPO), letter of September 1, 2000.

a) UPO objects to the conclusions of the GRR/SEIS, incorporating by reference all its previous comments and those of the Miccosukee Tribe, submitted to the SFWMD and USACE.

R: Your comments have been incorporated into this document and the Draft and Final GRR/SEIS.

b) The GRR/SEIS conclusion, calling for condemnation of property, violates the laws of the US, including PL-101-229, NEPA, and laws regarding property rights, human rights, civil rights, and environmental justice, as well as directives promulgated by officials of Miami-Dade County.

R: First, the GRR/SEIS is a Federal document, and it would not necessarily track County directives. The Corps assumes that the County will enforce its ordinances. The Corps does not concur that the recommended plan violates laws of the U.S., for the reasons already given in our responses to the Miccosukee Tribe and others. The GRR/SEIS process for the 8.5 SMA area has been extraordinarily exhaustive and careful. Rather than select a recommended plan, the Draft GRR/SEIS explored in detail the hydrologic and environmental consequences of the full array of alternatives considered. The alternatives themselves were developed in coordination with all affected parties. Meetings, workshops and other formulation activities have been public. Modeling outputs have been made available on our public website since they were first incorporated into draft documents, as have your previous comments and our responses. We have explained the laws that we believe provide USACE with the authority to condemn property if necessary to build a public project. We also note that Alternative 6D minimizes the need for land acquisition compared to the previously selected LPA by SFWMD which called for total land acquisition.

Please refer to our previous response to this point, reproduced in Appendix H of the GRR/FSEIS in response to comments in your June 28 letter as “a”, “c” and “d” on Page H-99. “...allowing a residential structure to remain in place after inundation occurs is not considered to be in the best interest of the government or the landowner...Response (d) same page, states that “Condemnation authority is inherent in approval of the Corps acquisition project. Even though condemnation authority is always present, it is always used only as a last resort to clear title or as an impartial means to resolve honest differences of opinion regarding value.”

The inherent authority for taking of land through condemnation, if necessary, is in accordance with the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S. C. 257), as amended, the Act of Congress

approved February 26, 1931 (46 Stat 1421, 40 U.S.C. 258a) and acts supplementary thereto, and under the further authority of the Acts of Congress approved April 24, 1888 (25 Stat. 94, 323 U.S.C. 591), March 1, 1917 (39 Stat. 950, 33 U.S.C. 701), July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) and August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) which authorizes the acquisition of land for flood control projects, and Act of Congress approved in 1989, P.L. 101-229, which authorizes this project to improve water deliveries to Everglades National Park and to take the necessary steps to restore the Park's natural hydrologic conditions.

c) The Corps fails to disclose that it does not have condemnation authority.

R: USACE does have condemnation authority. Refer to our answer to b) above.

d) *"The Plan cannot meet the 2003 deadline*

R.: USACE does not concur. Under reasonable assumptions the deadline can be met.

e) *Unwilling sellers "Could prevent the entire project from moving forward "GRR/SEIS, and there are unwilling sellers!*

R: Your unwillingness to sell is noted. However, the Corps has authority to condemn land.

f) *The cost of delays have not been accurately quantified.*

R: USACE does not concur. We went to great lengths to provide reasonable and accurate data, with regard to cost-delays, in the final GRR/SEIS.

g) *The GRR/SEIS contains discriminatory and offensive intent and language.*

R: USACE does not concur. The intent or purpose of the GRR and EIS are stated clearly in the introduction to each document. We had no "intent" other than to provide the most objective possible analysis of the performance of all the alternatives. The performance measures included avoidance of adverse effects on residents and agriculture. These performance measures led to development of alternatives that would allow the majority of the community to remain, with structural flood mitigation, while providing better ecosystem restoration benefits than the "authorized plan." In essence it was necessary to evaluate the wants and needs of residents, along with the need and National will to restore the unique Everglades ecosystem. The alternative preferred by the property owners (a structural alternative with the levee and canal located at the west side of the residential area) did not perform as well, in restoring water levels in

NESRS, as any non-structural or mixed alternative. The alternative preferred by the natural resources agencies would have eliminated the existing community. The final GRR/SEIS does not make pejorative determinations regarding any minority. We changed some language contained in the draft report because you found it offensive. Please refer to our responses to your previous comments, contained in Appendix H of the final GRR/SEIS.

h) Executive Order 12989 requires that Everglades Restoration should not have a disproportionate adverse effect on minority and low income communities.

R: USACE does not dispute that there will be an adverse impact of the recommended plan on the residents whose properties lie west of the proposed peripheral levee or in areas where complete “mitigation” cannot be provided. However, the recommendation of Alternative 6D, as modified, is believed to be the only plan that achieves an acceptable level of minimization of effects on residents while not adversely affecting restoration of the Everglades. The 8.5 SMA Project is only a small portion of the overall Everglades restoration. The total residential/agricultural community of the 8.5 SMA is small, in comparison to the population of all of Miami-Dade. A large percentage of this greater population is Hispanic, too, as are the residents of 8.5 SMA. There are many other neighborhoods in nearby areas that are likewise characterized by the predominance of minorities, and some may be of lower average income. The USACE does not believe that, in the context of south Florida, the overall Everglades, or even south Miami-Dade, this action will result in an overall disproportionate impact on minority and low-income communities. We attempted through the plan formulation process to minimize the adverse effects on the community.

United Friends and Property Owners of the 8.5 SMA, Inc. (Madeline Fortin, e-mail to Elmar G. Kurzbach, September 8, 2000).

a) *“The Corps does not have condemnation authority”*

R: Please refer to our response to your Sept. 1 letter, above (Response B).

b) *“ There is no source of funding for condemnation.”*

R: Funds are expected to be available. According to NEPA no commitment of appropriated federal funds may be made until after signing of the Record of Decision (ROD). To the extent that further funds must be appropriated by Congress, they will not be committed until Congress makes them available.

c) *“The Corps based its decision on incorrect data from Miami-Dade County.”*

R: We responded to this comment, received previously from you, in Appendix H of the GRR//SEIS. Please refer to responses b-h (pages H-31-H-33), where we replied in great detail about USACE data gathering and verification. We used all available data.

d) *“Unwilling sellers could prevent the entire project from moving forward...I am an unwilling seller.”*

Your unwillingness to sell is noted. However, the USACE has authority to condemn land.

e) *The three compromises listed on page 97 (Miccosukee Tribe recommendations listed on P. 97 of the GRR under “Views of the Miccosukee Tribe--Ed.) are not acceptable to property owners.*

R: Comment noted. As explained above, the compromises listed by the Tribe are not practical. All residences west of the perimeter levee will be removed under the Recommended Plan. Refer to GRR page 86.

f) *6D will destroy 25% of the homes in the community and leave over half of the community unprotected.*

R: According to GRR Table 8, the Recommended plan would remove 17% of the residences and 17% of the structures in the community. An additional 540 acres, more or less, would be provided incomplete structural mitigation for increased flood stages due to MWD. In these areas some kind of easement, or even acquisition, may be required. The exact number of properties that must be acquired, as opposed to “flowage easements,” cannot be known with certainty until elevations of ground, residential structures and associated facilities on each parcel are determined. The

Corps has received many calls from individual parcel owners in the lands located between the recommended perimeter levee and seepage canal alignments. It appears that some residential properties may need to be acquired in fee. However, currently all of the community is flood prone under longer recurrence-interval, less frequent floods. This point was discussed in both the GRR and FSEIS. Its vulnerability to flooding is due to its low elevation. There is no “flood protection” for these more severe, less frequent floods offered by the 8.5 SMA recommended plan. The status quo will remain. All of the 8.5 SMA is flood-prone.