

Appendix H

REAL ESTATE

**CENTRAL AND SOUTHERN FLORIDA STUDY
DRAFT GENERAL REEVALUATION REPORT/
SUPPLEMENT to the 1992 final ENVIRONMENTAL IMPACT
STATEMENT (GRR/SEIS) ON MODIFIED WATER DELIVERIES TO
EVERGLADES NATIONAL PARK, FLORIDA**

REAL ESTATE PLAN

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1. STATEMENT OF PURPOSE

a. This Real Estate Plan is tentative in nature for planning purposes only and both the final real property acquisition lines and the real estate cost estimates provided are subject to change even after approval of the Modified Water Deliveries to Everglades National Park, Tamiami Trail General Re-evaluation Report.

b. A Real Estate Design Memorandum (REDM) was prepared and approved for the Modified Water Deliveries to Everglades National Park General Design Memorandum (GDM); however, both the REDM and GDM only addressed a portion of Tamiami Trail.

2. AUTHORIZATION

The Everglades National Park Protection and Expansion Act (PL101-229), Section 104, 16 U.S.C. Part 410r-5 *et seq.*, December 1989 (Annex A) authorized the Secretary of the Army to undertake certain actions to improve water deliveries to the Everglades National Park (ENP) and to take steps to restore natural hydrologic conditions. The act provides the underlying authority for this project. Section 104 of the Act stated:

" Upon completion of the final report by the chief of the Army Corps of Engineers, the Secretary, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park."

The Act also provided for the U.S. Army Corps of Engineers to initiate corrective actions to alleviate deterioration in natural resources for ENP attributed to changes in water conditions associated with construction of the Central and Southern Florida (C&SF) water management system.

The General Design Memorandum (GDM) called for in the Act was completed in June 1992. The Real Estate Design Memorandum was completed in March 1991 and approved in April 1995. This GDM and Environmental Impact Statement (EIS) for the Modified Water Deliveries (MWD) to the Everglades National Park is the authorizing document for structural modifications to the existing C&SF Project required for the modification of water deliveries for ecosystem restoration in the ENP. The 1992 GDM stated, "The future without project condition will lead to the further deterioration of unique and outstanding ecological resources of the Everglades that are recognized and valued throughout the world." Therefore, based on the direction provided in the Everglades National Park Protection and Expansion Act of 1989, the goal is to restore natural hydrologic conditions in the Park and to the extent practicable. Meeting this goal will lead to improvements in the abundance, diversity and ecological integrity of native

plants and animals in the Park.” Both the GDM and the REDM contemplated raising only a portion of Tamiami Trail, approximately 3,000 feet.

3. PROJECT DESCRIPTION

The Everglades National Park Protection and Expansion Act, December 1989, authorized the Secretary of the Army to undertake certain actions to improve water deliveries to the Everglades National Park (ENP) and to take steps to restore natural hydrologic conditions. The General Design Memorandum (GDM) called for in the Act was completed in June 1992. Under the provisions of this GDM and Environmental Impact Statement (EIS) for Modified Water Deliveries (MWD) to the ENP, water would be transferred from Water Conservation Area 3B (WCA-3B) to the L-29 Canal; (Tamiami Canal) and through the existing culvert system under U.S. Highway 41 (Tamiami Trail) into Northeast Shark River Slough (NSRS). When the GDM was completed in 1992 it was believed that existing culverts under the roadway would be adequate to convey the flow of water. Subsequent hydrological analyses, however, revealed that as presently constructed the Tamiami Trail is an impediment to the designed flow of MWD waters to the ENP. Additionally the head height in the L-29 Canal required for the culverts to convey the increased water could adversely affect the structure of Tamiami Trail and overtop low areas along the highway under certain conditions. The purpose of this project is to identify a technical solution to provide modifications to the Tamiami Trail to provide for the unimpeded conveyance of water from WCA-3B and the L-29 Canal to the NSRS and the ENP south of the Tamiami Trail. The project must provide compliance with the Reasonable and Prudent Alternatives (RPA) of the February 19, 1999 U.S. Fish and Wildlife Service Biological Opinion on the Cape Sable seaside sparrow. This calls for a least 30% of the regulatory water discharge from the WCA-3 to be re-routed into NSRS beginning on March 1, 2000. These waters would traverse WCA-3B and the Tamiami Trail, and enter the ENP instead of being discharged through the S-12 structures. This would rise to 45% and 60% in March 1, 2001 and March 1, 2002, respectively. It is also prudent that the project be compatible with hydrologic restorations provided by the Comprehensive Everglades Restoration Program.

Under the Modified Waters Deliveries to Everglades National Park Project, authorized by the Everglades National Park Protection and Expansion Act of 1989, water deliveries to the ENP will be improved as a step to restore natural hydrologic conditions and increased flows to the ENP. Water from WCB-3B will enter the L-29 Canal, pass under Tamiami Trail and enter the ENP. Information found in this engineering appendix has been used to select preferred alternative and evaluate the plans' ability to provide for unimpeded flow of water from the L-29 Canal to ENP.

The centerline of the roadway may be adjusted southward to avoid encroachment into the L-29 Borrow Canal. Existing box culverts will be retained. The centerline of this alignment will fall very close to the centerline of the existing roadway. There are no significant alignment transitions required at either end of the segment, nor are there any significant impacts to parcels along the corridor.

The existing Tamiami Trail embankment will be removed adjacent to the 3000-foot long bridge. The bridge typical section would be standard the entire length, with two travel lanes of 12 feet, two shoulders of 8-feet, and outside barrier shapes. Exceptions would occur where surface connection for access or other reasons might be required. At these locations turning lanes might be needed.

The new bridge deck would be equipped with drain scuppers that would discharge directly to the area below. Piping would be convey runoff to dry retention facilities at either end of the bridge. These facilities would be approximately 600 feet long and spaced ½ mile intervals, such that there would be approximately 2 of them adjacent to the bridge.

Traffic is to be maintained, as it exists today. The overlay of the existing roadway will be accomplished using a moving operation. Staging areas for construction equipment and materials could be located on the business parcels along the corridor that are to be acquired or are not actively used now. Otherwise, staging and other functions may need to utilize sections of the existing shoulder for temporary periods. It may be necessary to have a staging area near the east end of the corridor, with materials moved in the remaining short distance on an “as needed, just-in-time” basis at the work site.

The proposed bridge structure may extend northerly 43-feet one-inch from the centerline of U.S. Highway 41. The existing maintenance right-of-way of Tamiami Trail extends northerly from the highway centerline from 40-feet to 42-feet. The Everglades National Park owns land on the northerly side of the existing highway. If required, necessary easements will be obtained from the National Park Service for Florida Department of Transportation.

There may also be some encroachment into the L-29 Lateral. If this is the case, the necessary easements from the South Florida Water Management District will have to be obtained for the South 5 feet of Section 3, Township 54 North, Range 37 East.

The construction and replacement of the portion of Tamiami Trail required for the Modified Water Deliveries to ENP Project will be a facility relocation and will therefore require a relocation contract to be executed between the Florida Department of Transportation and the Federal Government. In preliminary discussions with the Florida Department of Transportation, representatives have indicated the willingness to work toward this objective.

4. SPONSOR OWNED LANDS

A. FEDERAL

There are no lands in the project area owned by the Federal sponsor. However, the Department of Interior, National Park Service, Everglades National Park owns lands north and south of Tamiami Trail.

B. NON-FEDERAL

Lands immediately north of the project are owned in fee or controlled by South Florida Water Management District.

5. **ESTATES**-Neither the Government nor the South Florida Water Management District currently have any defined rights to flow water through the existing culverts under Tamiami Trail. These culverts were installed by the Florida Department of Transportation to discharge waters from the L-29 canal to the lands being acquired for the Everglades National Park Expansion area and to prevent erosion of the roadbed of Tamiami Trail. The culverts were in place at the time the L-29 canal was transferred to the SFWMD for the C&SF project. Construction of the proposed bridge will require acquisition of a channel easement. The proposed raising of the remainder of the road will require temporary easements. An alternative may be to acquire the below rights by irrevocable permits from Florida Department of Transportation, if more appropriate and to avoid condemnation. The terms of the permits would have to provide substantially the same rights as set forth below. Where National Park Service owns a portion of the lands required for the project, the estates may have to be adjusted (i.e., easement, license, or permit).

A. STANDARD ESTATES.

CHANNEL IMPROVEMENT EASEMENT

A perpetual and assignable right and easement to construct, operate and maintain channel improvement works on, over and across (*The land described in Schedule A*) (*Tracts Nos. _____, _____ and _____*) for the purposes as authorized by the Act of Congress approved _____, including the right to prohibit the construction of any structures below elevation 9.3 feet NGVD, and including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate, dredge, cut away, and remove any and all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easements hereby acquired.

TEMPORARY WORK AREA EASEMENT

A temporary easement and right-of-way in, on, over and across (*The land described in Schedule A*) (*Tracts Nos. _____, _____ and _____*), for a period not to exceed _____, beginning with date possession of the land is granted to the United States, its representatives, agents and contractors as a (borrow area) (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and remove equipment and supplies and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of

_____ Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired.

B. NON-STANDARD ESTATES

A perpetual right to flow water through the existing culverts will also have to be acquired. Florida law may not provide the Florida Department of Transportation with the rights to convey these interests therefore they may have to be acquired by condemnation or non-revocable permits from the State.

FLOWAGE EASEMENT

The perpetual right, power, privilege and easement permanently to flow water in, under and through Tamiami Trail located and described *in Schedule A (Tracts Nos. _____, _____ and _____)*, to elevation 9.3 feet NGVD, in connection with the operation and maintenance of the Modified Deliveries to Everglades National Park project as authorized by the Act of Congress approved _____, provided that the existing culverts shall not be removed or altered without the express written permission of the representative in charge of the project; together with the right, but not the obligation, to clear and remove brush, debris and natural obstructions from the culverts which interfere with the flow of water; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

The relocation agreement between the Florida Department of Transportation and the Government shall include a provision that the FDOT will have the responsibility for maintaining conveyance, i.e., clearing. SFWMD would have the responsibility for cleaning out of the culverts to insure the flow of water is not impeded.

6. NAVIGATION SERVITUDE

No land in the area is subject to the navigation servitude.

7. PROJECT MAP

Tamiami Trail Alternative 7, INV. NO. DACW17-99-D-005 Drawing No. PLATE A7-3 depicts the area of this project.

8. INDUCED FLOODING

It has been determined that project implementation will cause an increase in duration in the water elevations on lands south of Tamiami Trail, located in the Everglades National Park Expansion Area, being acquired in fee by the National Park Service and on lands owned by the Airboat Association. As set forth in the Real Estate Design Memorandum dated March 1991, a perpetual flowage easement will be acquired by the Government over the lands owned by the Airboat Association.

9. REAL ESTATE BASELINE COST ESTIMATE

Real Estate costs are administrative costs for the relocation of the portion of Tamiami Trail. Costs are included to cover the costs associated with negotiation of agreement with Florida Department of Transportation.

Lands and Damages:	\$ 0
Lands	
Perpetual Flowage Easement	
Easement:	
Temp Work Area	
Temp Road	
Perp Road	
Improvements	
Severance Damages	
Minerals	
Total Lands and Damages (Rounded):	\$ 0
Acquisition/Administrative Costs	
Federal	\$60,000
Public Law 91-646 Payments	0
Contingencies (25%) Rounded	\$15,000
Total Estimates Real Estate Costs (RD)	\$75,000

The project staging and construction areas are entirely within Florida Department of Transportation (FDOT) highway maintenance Right-of-Ways. Lands required for staging and construction are to be provided by FDOT at no cost.

10. RELOCATION ASSISTANCE BENEFITS

The Osceola Camp (Camp), which is located on the south side of the Tamiami Trail some 0.6 miles east of S-333 is located on land which the Department of Interior (DOI), National Park Service has acquired full fee title, as provided by the Everglades

National Park Expansion Act. The site will be subject to increased water levels under the Modified Waters Deliveries Project.

Structures in the Osceola Camp will have to be raised above the Modified Waters Project higher water levels. Interagency Agreement IA-5000-1-9501 makes such provisions. Relocation of the Osceola Camp is outside the scope of the authorized Corps project. The Everglades National Park (NPS) has accepted such a responsibility, and will make all necessary arrangements for relocation or elevation of the Camp.

No relocation costs are included in total project costs, as this is the responsibility of the NPS. There are no other known persons or businesses affected by this project.

11. MINERALS

No known minerals exist in the project area.

12. NON-FEDERAL SPONSOR'S AUTHORITY TO PARTICIPATE.

The South Florida Water Management District is the non-Federal Sponsor for this project. The South Florida Water Management District was created by virtue of Florida Statutes, Chapter 373, Section .069. The South Florida Water Management District was created to further the State policy of flood damage prevention, preserve natural resources of the State including fish and wildlife and to assist in maintaining the navigability of rivers and harbors. (There are other enumerated purposes but they are not directly applicable to this project.) The South Florida Water Management District is specifically empowered to

Cooperate with the United States in the manner provided by Congress for flood control, reclamation, conservation, and allied purposes in protecting the inhabitants, the land, and other property within the district from the effects of a surplus or a deficiency of water when the same may be beneficial to the public health, welfare, safety, and utility. (Section 373.103)

To carry out the above purposes, the South Florida Water Management District is empowered to

...hold, control, and acquire by donation, lease, or purchase, or to condemn any land, public or private, needed for rights-of-way or other purposes, and may remove any building or other obstruction necessary for the construction, maintenance, and operation of the works; and to hold and have full control over the works and rights-of-way of the district.

The term *works of the district* is defined by Section 373.019 to be

...those projects and works, including, but not limited to, structures, impoundments, wells, and other water courses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the governing board of the district as works of the district.

Section 373.139 specifically empowers the South Florida Water Management District

...to acquire fee title to real property and easements therein by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water storage, water management, and preservation of wetlands, streams and lakes, except that eminent domain powers which may be used only for acquiring real property for flood control and water storage.

13. REAL ESTATE MILESTONES

No Real Estate Milestones have been established for this project.

14. RELOCATIONS OF ROADS, BRIDGES, UTILITIES, TOWNS AND CEMETERIES

A. ROADS

U.S. Highway 41 (Tamiami Trail) will be raised for approximately 9.4 miles and a 3000 foot bridge constructed between Structures S-334 on the east and S-333 on the west. The purpose is to provide unimpeded conveyance of water from WCA 3B and the L-29 Canal to Northeast Shark River Slough. Based on evidence submitted by the Florida Department of Transportation and independent investigation, the Florida Department of Transportation owns fee title to portions of this area, road easements to portions of the area and prescriptive rights to other portions of the area. The National Park Service is acquiring or owns the underlying fee to those portions not owned in fee by the Florida Department of Transportation. As the Modified Water Deliveries to Everglades National Park Project is a federal acquisition and construction program, the responsibility for securing the Relocation Contract will be on the Federal government.

B. BRIDGES

None to be relocated.

C. UTILITIES

There are a number of utility companies that have their facilities located in the State owned right of way for U.S. Highway 41 (SR90, Tamiami Trail). These consist of electric, telephone and fiber optic cables.

The work on the Tamiami Trail will involve raising the roadbed and the construction of one or more bridges. The work will impact all the utilities facilities in the highway right of way necessitating their relocation.

The State Department of Transportation has issued permits to the various utilities to allow placement of their facilities within the right-of-way. The issue becomes whether under local law this gives the utilities a property right.

Copies of the permits have been requested from the Department of Transportation. However, they have not been received as yet. Other permits issued by the Department contain the following language: "It is expressly stipulated that this permit is a license for permissive use only and that the placing of facilities upon public property pursuant to this permit shall not operate to create a property right." The permit also provides:

Whenever it is necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration or relocation of all, or any portion of said highway as determined by the Director, Division of Maintenance, any or all of said poles, wires, pipes, cables or other facilities and appurtenances authorized hereunder, shall be immediately removed from said highway or reset or relocated thereon as required by the Director, Division of Maintenance, and at the expense of the permittee unless reimbursement is authorized.

Since the work to be performed is essentially a road construction project, the Department of Transportation will be asked to invoke the provision of the permit requiring the utilities to relocate their facilities at the utilities cost. Language will be inserted into the Relocation Agreement providing for this action. Assuming that the State Department of Transportation invokes this permit condition, the utility companies will have neither a real estate interest in the highway right of way, nor a compensable interest.

D. TOWNS OR CEMETERIES

No towns or cemeteries will be relocated as a result of this project.

15. PRESENCE OF CONTAMINANTS (HAZARDOUS, TOXIC AND RADIOACTIVE WASTES)

A site survey for hazardous materials, toxic and radioactive waste material was performed by the Jacksonville District, Environmental Branch with negative results. The site audit includes a site visit and research of historical data.

16. ATTITUDE OF LANDOWNERS

The lands impacted by this project are owned by the South Florida Water Management District, Florida Department of Transportation and Everglades National Park who strongly support the project.

17. M-CACES

Real Estate costs are administrative costs for the relocation of the portion of Tamiami Trail. Costs are included to cover the costs associated with negotiation of agreement with Florida Department of Transportation.

REAL ESTATE CHART OF ACCOUNTS

01	Lands & Damages	\$ 0
001AA	Project Planning	\$50,000
	Total Real Estate Costs Excluding Contingency	\$50,000
	Real Estate Contingency (25%) Cost	\$15,000
	Total Project Real Estate Cost	\$75,000