



REPLY TO
ATTENTION OF

Regulatory Division

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

JUL 28 1997



Dear Interested Party:

The purpose of this letter is to forward the enclosed paper which we recently shared with County Commissioners in both Lee and Collier Counties. Per our commitment to the County Commissioners last month, we agreed to first meet and further discuss the concept of broad based participation in the Corps' Environmental Impact Statement process directly with the Commissioners. Having fulfilled that commitment, and having received helpful feedback, it is now appropriate to distribute the first set of talking points.

At this time, we are hoping you will provide us with your input. It would be beneficial to this process if you would use specific references to line numbers when commenting. It would be very helpful if you could even provide suggested language for any changes, modifications, and/or revisions you would like to see.

We request that you forward your written comments to us, either by mail or e-mail; at the address noted below, at your earliest convenience but not later than August 15, 1997.

Once we have reviewed the comments and made appropriate modifications, we will seek commitment for participation. We are hopeful that we can have a signed document and can proceed to the next phase of work on this study by September 1, 1997.

We look forward to working closely with you.

Sincerely,


Bob Barron
Project Manager

Enclosure

U.S. Mail: Regulatory Division, Jacksonville District, U.S. Army
Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232
E-Mail: robert.b.barron@usace.army.mil

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Memorandum of Understanding
Environmental Impact Statement (EIS)
Southwest Florida

BACKGROUND.

WHEREAS, the Corps of Engineers, under the provisions of the Clean Water Act (CWA), is charged with protecting the physical, chemical, and biological integrity of the nation's waters to include ensuring that impacts to the aquatic environment be avoided, if practicable, and, if not, be minimized and compensated (mitigated); and

WHEREAS, the Corps of Engineers, under the provisions of the Endangered Species Act (ESA), is charged with ensuring that any activity permitted does not jeopardize the continued existence of a Threatened or Endangered Species or adversely modify the designated critical habitat; and

WHEREAS, the Corps of Engineers, under the provisions of the National Environmental Policy Act (NEPA), is charged with ensuring that federal activities do not cause significant harm to the environment through a procedure that includes developing and analyzing various alternatives, considering secondary and cumulative impacts, and weighing the public interest through full public disclosure and participation; and

WHEREAS, the current process of modifying land for new uses is very onerous to the owners due to a sequential and fragmented planning and regulatory system -- from zoning through a long sequence of permits, each of which brings new requirements and often conflicts with zoning and previous permitting, leads to great frustration and unproductive expenses for the applicant, and less than optimum results for the environment; and

WHEREAS, closer coordination of the Comprehensive Planning process conducted between the counties, cities and the Corps and other regulatory agencies would minimize conflicts between land use planning and Federal, State, and local conservation requirements; and

WHEREAS, the increasing number, size, and complexity of permit requests by the people of Southwest Florida has created a condition where the Corps

40 of Engineers and other regulatory agencies are experiencing extraordinary
41 difficulty in, on a case-by-case basis, addressing their responsibilities under
42 Federal and State Law, and are at the point where all permit processing is
43 taking longer, and where denials may become more frequent, and where the
44 environment may receive less protection than required by law.

45

46 THEREFORE, to better serve the people of Southwest Florida by
47 synchronizing land use and conservation planning, while simultaneously
48 fulfilling the Corps responsibilities under NEPA, and assisting other
49 regulatory agencies in their decision making process, by signature below, the
50 Commissions of Collier and Lee counties and the Corps of Engineers
51 (hereafter referred to as the Principals), agree to jointly prepare an
52 Environmental Impact Statement (EIS). The organizations/agencies signing
53 below, after the Principals, agree to serve as Cooperating Agencies (CA).

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55 TENETS. The preparation of the EIS will be guided by the following tenets.

- 56 • The EIS will be completed within 18 months from the date of the last
57 signature below.
- 58 • The issues and geographical area of the EIS must be defined
59 collaboratively during the first two months via an open public scoping
60 process.
- 61 • The EIS shall be restricted to specific issues relevant to the regulatory
62 authority of the Corps, including, but not limited to, protection of wetlands,
63 mitigation, endangered species, cumulative and secondary impacts, water
64 management, and water quality unless the Principals agree that it would be
65 prudent to expand the scope.
- 66 • The EIS will be funded by the Regulatory Division of the Jacksonville
67 District, Corps of Engineers, within the constraints of the availability of
68 funds to the district for this purpose as determined by the District Engineer
69 and by other CA's who agree to contribute within the constraints of
70 availability of funds to them for this purpose.
- 71 • Adopted Future Land Use Maps and related Elements of the Collier
72 County and Lee County Comprehensive Plans shall be used as the Counties'
73 preferred alternatives for purposes of the EIS.
- 74 • Analysis will be holistic and regional -- individual projects or properties
75 shall not be targeted for selective analysis or implementation of EIS
76 alternatives.

- 77 • There are a myriad of existing and ongoing studies and plans that address
78 water quality, stormwater, wetland, and listed species impacts in the region.
79 The EIS will utilize this work to the maximum extent possible and will not
80 duplicate or supersede any prior or ongoing local or regional studies,
81 activities, or plans, including but not limited to Lee County's Environmental
82 Lands Acquisition and Restoration Program and mitigation banking projects.
83 Gaps must be identified as early as possible to allow sufficient time to acquire
84 necessary additional information.
- 85 • Private property rights shall be clearly acknowledged and respected in EIS
86 alternatives. It is recognized that neither the Corps permitting nor this EIS
87 convey a property right nor authorize any injury to property or invasion of
88 other rights.
- 89 • Cooperating agencies will include representation from State, local and
90 regional organizations including, but not limited to, business, economic
91 development, real-estate, service providers, environmentalists, government
92 agencies as well as other groups which have an interest in this process.
- 93 • The Corps, Florida Department of Environmental Protection, South
94 Florida Water Management District, and any other regulatory agency
95 participating in the EIS shall continue to accept and process permit
96 applications. If applications can be processed to completion, agencies shall
97 not withhold or delay a decision to issue, modify, or deny a permit due to the
98 EIS preparation.
- 99 • A major goal of the EIS will be to streamline the environmental review
100 and permitting process for all applicants; bring more speed, consistency,
101 certainty and economy to the process.
- 102 • EIS activities must be conducted in support of the public interest in
103 achieving a sustainable balanced economy in concert with a healthy
104 environment. Appropriate weight must be given to the economic impact of
105 the conclusions reached on property owners, public costs, and public benefits
106 and quality of life to develop meaningful, sustainable, and economically
107 viable solutions. Every consideration will be given to ensure that the EIS will
108 not result in detrimental impacts to the economic development and
109 diversification of the Southwest Florida economy.
- 110 • The EIS shall balance the public interest factors used in Corps permit
111 reviews. These include conservation, economics, aesthetics, general
112 environmental concerns, wetlands, historic properties, fish and wildlife
113 values, flood hazards, floodplain values, land use, navigation, shore erosion
114 and accretion, recreation, water supply and conservation, water quality,

115 energy needs, safety, food and fiber production, mineral needs,
116 considerations of property ownership, and, in general, the needs and welfare
117 of the people.

- 118 • County Comprehensive Plans will be amended to incorporate the
- 119 applicable portions of the Consensus Alternative within one year of the
- 120 completion of the EIS.
- 121 • Florida Sunshine law obligations of non-federal participants shall be
- 122 respected. The EIS shall be conducted in a manner that ensures full
- 123 opportunity for public participation.

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125 COOPERATING AGENCIES. Success demands that all partners bring
126 commitment to the process.

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128 GENERAL. CA's commit to the following.

- 129 • Commensurate with the unique authorities and capabilities of each
- 130 agency, allocating sufficient resources to ensure completion of the EIS
- 131 within 18 months.
- 132 • Ensuring appropriate representation and participation at each meeting
- 133 convened by the Principals.
- 134 • Making a sincere effort to develop a consensus alternative to an extent
- 135 which is consistent with their governing laws and regulations.

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137 SPECIFIC. To an extent consistent with their governing laws and
138 regulations, CA's make specific commitments as follows.

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140 *{Below are 2 example possibilities – details will be filled in after*
141 *discussions with each agency – all CA's should consider making*
142 *appropriate commitments to ensure success}*

- 143 • Secretary, Department of Community Affairs agrees to facilitate and
- 144 expedite changes to the Collier County and Lee County Comprehensive
- 145 Plans which implement the preferred alternative of the EIS.
- 146 • Executive Director of the SFWMD agrees to provide conceptual water
- 147 quality certification in support of a Programmatic General Permit.
- 148 • FDEP:
- 149 • FGFWFC:
- 150 • FDOT:
- 151 • FWS:
- 152 • EPA:

- 153 • Estero Bay Agency for Bay Management (ABM) agrees to provide the
154 technical support to assist in the development and execution of the EIS
155 process.
156 • Southwest Florida Regional Planning Council (SWFRPC) agrees to
157 provide the technical support to assist in the development and execution of
158 the EIS process.
159 • Governor's Commission for a Sustainable South Florida, Southwest
160 Florida Issues Group (SWIG) agrees to provide a variety of opportunities
161 for public discussion of the process and for development of study
162 products:
163 • etc.

164

165 ADMINISTRATION. Must follow a logical, time bound plan to develop the
166 EIS anchored by clear administrative procedures and responsibilities. A
167 proposed conceptual plan designed to implement this memorandum is found
168 at Appendix A. It is intended to be flexible and may be adjusted or modified
169 as needed to provide the EIS in the agreed timeframe.

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171 FINAL PRODUCT. The goals of the process will be as follows.

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- 173 • Completed EIS consistent with Federal laws and regulations which is also
174 supported by the elected representatives and public they serve in Southwest
175 Florida which established a consensus preferred alternative for Corps permit
176 review under section 404 of the Clean Water Act within 18 months from the
177 ratification of this agreement.
178 • Conceptual Water Quality Certification for the entire region studied.
179 • Biological opinion for the entire region studied.
180 • Conceptual basis for a Programmatic General Permit for the study area
181 region developed for administration by an appropriate agency.
182 • A happy public in Southwest Florida with confidence in their government
183 and a clear understanding that economic development and environmental
184 stewardship can be accomplished simultaneously with minimal conflict.

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PRINCIPALS. Signature and date.

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Chair, Collier County Commission

Chair, Lee County Commission

District Engineer, USACE Jacksonville

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COOPERATING AGENCIES. Signature and date. *{The organizations listed below have expressed interest in being CA's; if they would like to be signatories to this agreement, they will be added. Also, there may be others who will be signatories who are not listed}*

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Secretary, Department of
Environmental ProtectionSecretary, Department of
Community AffairsExecutive Director, South Florida
Water Management District

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Secretary, Department of
Transportation

Commissioner of Agriculture

Executive Director, Florida Game
and Fresh Water Fish Commission

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Chair, Governor's Commission
for a Sustainable South FloridaExecutive Director, Southwest
Florida Regional Planning CouncilNatural Resource Conservation
Service

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Regional Director, U.S. Fish and
Wildlife ServiceRegional Director, National Marine
Fisheries ServiceRegional Administrator, Region IV,
U.S. Environmental Protection Agency

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City of Fort Myers

City of Bonita Springs

City of Naples

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Council of Civic Associations

Sierra Club, Calusa Group

Environmental Coalition of
Southwest Florida

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Town of Fort Myers Beach

Chamber of Southwest Florida

Conservancy of Southwest Florida

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Economic Development Coalition
of Lee CountyEconomic Development Council
of Collier County

Naples Area Chamber of Commerce

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Corkscrew Regional Ecosystem
Watershed TrustEstero Bay Aquatic and State
Buffer PreserveFlorida Wildlife Federation,
Southwest Florida Chapter

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League of Women Voters of
Lee CountyLeague of Women Voters of
Collier CountyCitizens Association of
Bonita Beach

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Fort Myers Beach Civic
AssociationFort Myers Beach Chamber
of CommerceWest Coast Inland Navigation
District

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Lee County Port Authority

Florida Gulf Coast University

Taxpayer's Action Group of
Collier County

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Appendix A

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Conceptual Implementation Plan

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(Appendix A continues on next page)

280 Appendix A (continued)

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284 • Months 12, 13, and 14. PA's discuss "what is next" and reconvenes the
285 ADG to prepare a preliminary revision to its report. ABM directs TG to
286 prepare a preliminary revision of the Technical Appendix. SWIG holds
287 public workshop to prepare their comments on the preliminary revisions.

288

289 • Months 15, 16, and 17. ADG and TG complete revisions. SWFRPC
290 edits/synthesizes the Final EIS document. The Corps, in consultation with
291 other PA's and CA's, reviews/proofs the Final EIS and issues notice in
292 federal register and solicits written comments from the public.

293

294 Month 18. Counties initiate process for modification of their Plans.

295 Corps prepares Record of Decision.