

**APPENDIX D  
REAL ESTATE**

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## **D.0 REAL ESTATE**

### **D.1 STATEMENT OF PURPOSE OF THE REAL ESTATE PLAN (REP)**

The purpose of this Real Estate Plan (REP) is to present the overall real estate requirements, costs, acquisition schedules, and other real estate requirements necessary and in support of the Final Project Implementation Report (FPIR) for the Central and Southern Florida, Comprehensive Everglades Restoration Plan, Caloosahatchee River (C-43) West Basin Storage Reservoir project. This Real Estate Plan is tentative in nature and both the final real property acquisition lines and estimates of value are subject to change after approval of the decision document to which this Plan is appended.

### **D.2 DESCRIPTION OF PRIOR REP PREPARED FOR THE PROJECT**

The Caloosahatchee River (C-43) West Basin Storage project was discussed in the Central and Southern Florida Project, Comprehensive Review Study (Restudy), Appendix "F," Real Estate Plan; dated April 1999, page F-32.

### **D.3 PROJECT AUTHORIZATION**

Along with the Central and Southern Florida Comprehensive Review Study, and the Water Resources Development Act of 2000, Section 601 the C-43 West Basin Storage Reservoir Project PIR is authorized by Section 309(l) of the Water Resources Development Act of 1992 (Public Law 102-580) which states:

*“(1) CENTRAL AND SOUTHERN FLORIDA. -- The Chief of Engineers shall review the report of the Chief of Engineers on central and southern Florida, published as House Document 643; 80th Congress, 2nd Session, and other pertinent reports, with a view to determining whether modifications to the existing project are advisable at the present time due to significantly changed physical, biological, demographic, or economic conditions, with particular reference to modifying the project or its operation for improving the quality of the environment, improving protection of the aquifer, and improving the integrity, capability, and conservation of urban water supplies affected by the project or its operation.”*

This study is also authorized by two resolutions of the Committee on Transportation and Infrastructure, United States House of Representatives, dated September 24, 1992. The first resolution states:

*“Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, That the Board of Engineers for Rivers and Harbors, is requested to review the report of the Chief of Engineers on Central and Southern Florida, published as House Document 643, Eightieth Congress, Second Session, and other pertinent reports, to determine whether modifications*

*of the recommendations contained therein are advisable at the present time, in the interest of environmental quality, water supply and other purposes."*

The second resolution states:

*"Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, That the Board of Engineers for Rivers and Harbors, is requested to review the report of the Chief of Engineers on Central and Southern Florida, published as House Document 643, Eightieth Congress, Second Session, and other pertinent reports, to determine whether modifications of the recommendations contained therein are advisable at the present time, in the interest of environmental quality, water supply and other purposes for Florida Bay, including a comprehensive, coordinated ecosystem study with hydrodynamic modeling of Florida Bay and its connections to the Everglades, the Gulf of Mexico, and the Florida Keys Coral Reef ecosystem."*

The Water Resources Development Act of 1996 was enacted on October 12, 1996. Section 528 of the Act (Public Law 104-303) entitled "Everglades and South Florida Ecosystem Restoration" authorizes a number of ecosystem restoration activities and also provides specific direction and guidance for the CERP.

*(b) RESTORATION ACTIVITIES-*

*(1) COMPREHENSIVE PLAN-*

*(A) DEVELOPMENT-*

*(i) PURPOSE- The Secretary shall develop, as expeditiously as practicable, a proposed Comprehensive Plan for the purpose of restoring, preserving, and protecting the South Florida ecosystem. The Comprehensive Plan shall provide for the protection of water quality in, and the reduction of the loss of fresh water from, the Everglades. The Comprehensive Plan shall include such features as are necessary to provide for the water-related needs of the region, including flood control, the enhancement of water supplies, and other objectives served by the Central and Southern Florida Project.*

*(ii) CONSIDERATIONS- The Comprehensive Plan shall—*

*(I) Be developed by the Secretary in cooperation with the non-Federal project sponsor and in consultation with the Task Force; and*

*(II) Consider the conceptual framework specified in the report titled "Conceptual Plan for the Central and Southern Florida Project Restudy," published by the Commission and approved by the Governor.*

*(B) SUBMISSION- Not later than July 1, 1999, the Secretary shall—*

*(i) Complete the feasibility phase of the Central and Southern Florida Project comprehensive review study as authorized by section 309(l) of the Water Resources Development Act of 1992 (106 Statute. 4844), and by two resolutions of the Committee on Public Works and Transportation of the House of Representatives, dated September 24, 1992; and*

*(ii) Submit to Congress the plan developed under subparagraph (A)(i) consisting of a feasibility report and a programmatic environmental impact statement covering the proposed Federal action set forth in the plan.*

*(C) ADDITIONAL STUDIES AND ANALYSES- Notwithstanding the completion of the feasibility report under subparagraph (B), the Secretary shall continue to conduct such studies and analyses as are necessary, consistent with subparagraph (A)(i).*

A design agreement to perform project engineering and design (PED) activities including adaptive assessment and monitoring in support of CERP was executed on May 12, 2000 between the U.S. Army Corps of Engineers (Corps) and South Florida Water Management District (SFWMD). This agreement provides for the SFWMD to receive in-kind credit for design work. A Master Program Management Plan (MPMP) for the CERP was executed on August 24, 2000, outlining the protocols and procedures by which project management plans for all projects included in the agreement would be completed. This document conforms to the guidance provided within the MPMP.

In Section 601 of the Water Resources Development Act of 2000 (PL 106-541), Congress approved the Central and Southern Florida (C&SF) Project Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement (known as the “Yellow Book”), which describes and outlines the Comprehensive Everglades Restoration Plan (CERP):

*(b) Comprehensive Everglades Restoration Plan –*

*(1) Approval -*

*(A) IN GENERAL. —Except as modified by this section, the Plan is approved as a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. The Plan shall be implemented to ensure the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida ecosystem and to achieve and maintain the benefits to the natural system and human environment described in the Plan, and required pursuant to this section, for as long as the project is authorized.*

A Project Implementation Report must be completed for C-43 Basin Storage Reservoir project, as set forth in Section 601(b)(2)(D) of WRDA 2000.

*(i) PROJECT IMPLEMENTATION REPORTS.—Before implementation of a project described in any of clauses (i) through (x) of subparagraph (C), the Secretary shall review and approve for the project a project implementation report prepared in accordance with subsections (f) and (h).*

*(ii) SUBMISSION OF REPORT. —The Secretary shall submit to the Committee on Transportation and Infra-structure of the House of Representatives and the*

*Committee on Environment and Public Works of the Senate the project implementation report required by sub-sections (f) and (h) for each project under this paragraph (including all relevant data and information on all costs).*

*(iii) FUNDING CONTINGENT ON APPROVAL. —No appropriation shall be made to construct any project under this paragraph if the project implementation report for the project has not been approved by resolutions adopted by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

Finally, Section 601(h)(4) of WRDA 2000 further requires that PIRs document:

*(4) PROJECT-SPECIFIC ASSURANCES-*

*(A) PROJECT IMPLEMENTATION REPORTS-*

*(i) IN GENERAL- The Secretary and the non-Federal sponsor shall develop project implementation reports in accordance with section 10.3.1 of the Plan.*

*(ii) COORDINATION- In developing a project implementation report, the Secretary and the non-Federal sponsor shall coordinate with appropriate Federal, State, tribal, and local governments.*

*(iii) REQUIREMENTS- A project implementation report shall--*

*(I) be consistent with the Plan and the programmatic regulations promulgated under paragraph (3);*

*(II) describe how each of the requirements stated in paragraph (3)(B) is satisfied;*

*(III) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);*

*(IV) identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system;*

*(V) identify the amount of water to be reserved or allocated for the natural system necessary to implement, under State law, subclauses (IV) and (VI);*

*(VI) comply with applicable water quality standards and applicable water quality permitting requirements under subsection (b)(2)(A)(ii);*

*(VII) be based on the best available science; and*

*(VIII) include an analysis concerning the cost-effectiveness and engineering feasibility of the project.*

#### **D.4 PROJECT PURPOSE**

The purpose of the Caloosahatchee River (C-43) West Basin Storage Reservoir project is to address the declining health of the Caloosahatchee River and estuarine ecosystem by improving water deliveries to the estuary. The project will increase availability of water for the estuarine system during the dry season, while reducing excessive high flows during the wet season. This will result in providing a downstream salinity range suitable for a healthy ecosystem that promotes estuarine habitat, increased fish and wildlife and biological diversity. Once the demands of the estuary are met, additional water resource benefits could be achieved by providing supplemental water resources for

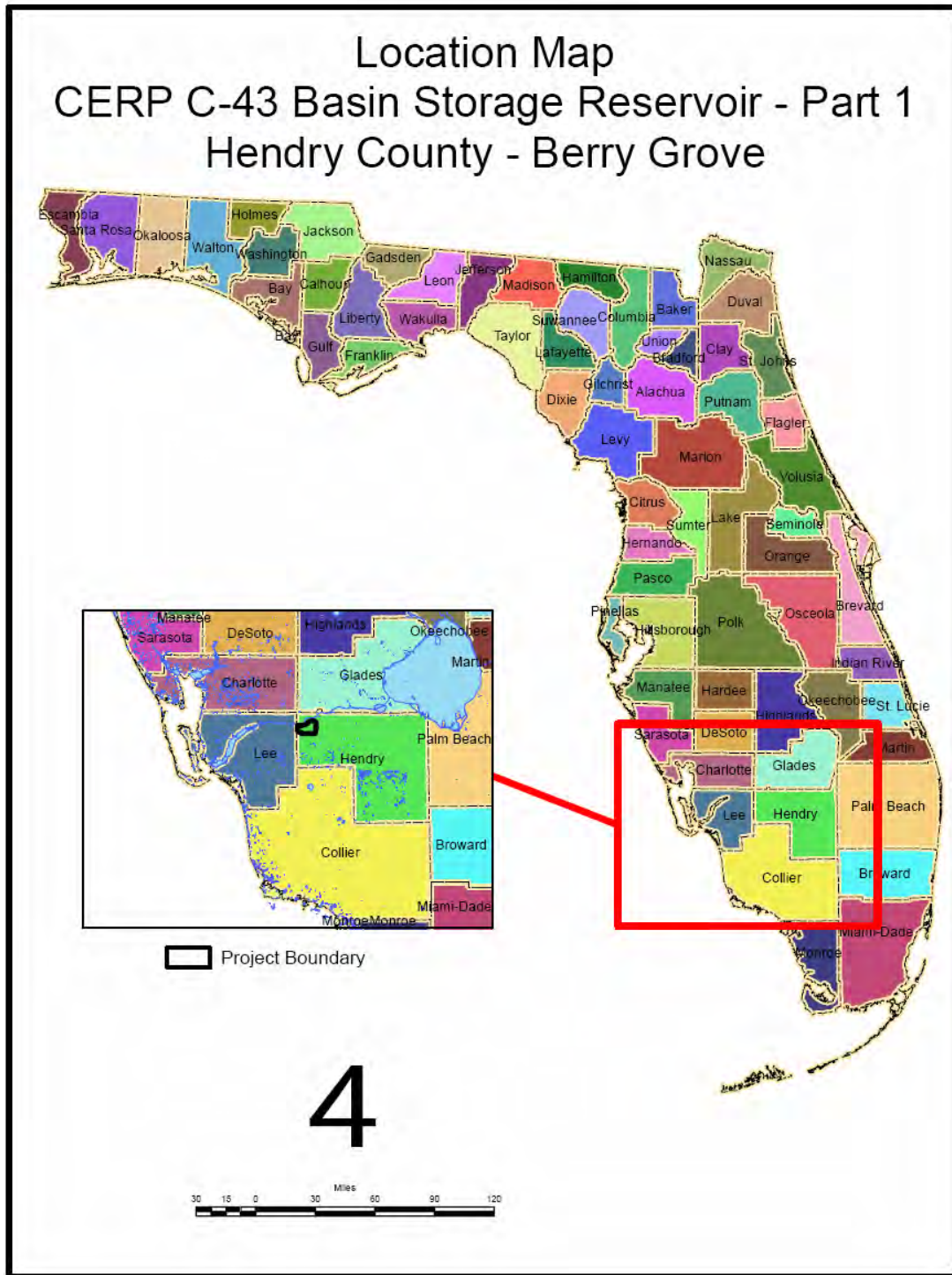
agriculture and urban users resulting in a reduction of demands placed on existing surface and ground water resources such as the Caloosahatchee River (C-43 Canal) and Lake Okeechobee.

## **D.5 PROJECT LOCATION AND DESCRIPTION**

### **D.5.1 Project Location**

The Caloosahatchee River (C-43) West Basin Storage Reservoir project area encompasses approximately 10,700 acres consisting of approximately 10,480 acres in fee, approximately 20 acres of perpetual channel easement, and 200 acres in temporary easement that lie within approximately 12,430 acres owned or being acquired by SFWMD. The lands are located in northwestern portion of Hendry County, Florida within Township 43 South, Range 28 East in Sections 30, 31, 32, 33, 34, 35 and 36; in Township 44 South, Range 28 East in Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; in a portion of Section 31, Township 43 South, Range 29 East; and in a portion of Section 6, Township 44 South, Range 29 East. Reservoir access from State Road 80 will be located in Section 27, Township 43 South, Range 28 East. Portions of Sections 25, 26, 27, 28, 29 and 30, Township 43 South, Range 28 East will be used as staging areas. The (C-43) West Basin Storage Reservoir project is situated approximately 36 miles west of the city of Clewiston and approximately 6 mile west from the Hendry County seat of LaBelle, Florida. It parallels State Road 80 (SR80) which lies to the North. To the Northeast and east the Project adjoins the Bob Paul (Bob Paul) property. To the south and southeast the Project adjoins the A. Duda and Sons, Inc. property (Duda). The East side adjoins State Road 29 (SR 29). On the west side of the Project is the Townsend Canal. See **Figure D-1** below.

FIGURE D-1: LOCATION MAP



The Reservoir currently under consideration will be constructed on property formerly owned by J&H Grove Holdings, L.C. (Berry Groves), the Griffin Family Limited Partnership, the MG Enterprises, L.L.C and the Bryan Paul Citrus.. All these lands are currently owned in fee by the SFWMD except the Bryan Paul

Citrus parcel that will be an exchange of 541.31 acres of SFMWD ownership in exchange for 600.17 acres of the Bryan Paul Citrus property.

Agricultural lands are prevalent in Hendry County; pastureland and crops (primarily citrus but also sugarcane and others) comprise the majority of the agricultural industry. Remaining natural areas include pine flatwoods (upland communities dominated by pine and saw palmetto) and a variety of wetland communities. Land use within the project boundary reflects the land use of the surrounding county.

The Duda pump station, located at the “bend” in the Townsend Canal west of the southwest corner of the Griffin property, lifts water from the Townsend Canal into the Townsend Canal south of the pump station and feeds a series of canals within the Duda property.

In addition to the Townsend canal, other water systems that exist within the vicinity of the project include the Northeast Rim Ditch, the Roberts Canal, the Crawford Canal, the Banana Branch, and the Fort Simmons Branch. Such water systems including canals, streams, and ponds are common and serve as watershed conveyance systems and tributaries to the Caloosahatchee River (C-43 Canal).

Prior to site preparation by SFWMD, Berry Groves’ citrus plant was situated north of the project footprint along SR 80. The Duda citrus plant is east of the project footprint along SR 29. A large FP&L transmission line is located parallel and borders the entire northern boundary of the project footprint. This FP&L transmission line will not be impacted by the project.

#### **D.5.2 Project Description – Selected Alternative Plan (Alt 3B)**

The Selected Alternative Plan (SAP) consists of a two-cell impoundment with a “normal pool” storage capacity of 170,000 acre-feet. This SAP comes closest to approximating the Restudy C-43 Reservoir recommended volume of approximately 160,000 acre-feet of storage and is the size evaluated and currently being designed by the SFWMD under their Acceler8 program. The project footprint for the SAP encompasses approximately 10,480-acres in fee, approximately 20 acres of perpetual channel easement, and 200 acres in temporary easement for total project footprint of 10,700 acres. It consists of major features and components to include a two-cell reservoir with armoring, cutoff walls, and embankments. Other features are Pump Stations, spillways with emergency overflow and vertical lifts, drawdown structures, culverts, canals, earthwork artificial habitat creation, and recreational features. The reservoir design includes a pump station with 1,500 cfs capacity to pump water from the Townsend Canal to fill the Reservoir.

Each cell is designed to discharge independently through separate discharge structures. Cell 1 will discharge via the S-1 structure into the Townsend Canal. Cell 2 will discharge via S-8 structure into the Perimeter Canal. These structures will be designed for incremental operation allowing required flows to be released to the Caloosahatchee River (C-43 Canal) during periods of low flow. These structures could also serve as design storm control structures for releases prior to and during a storm event. The storm releases must be balanced with the targeted maximum flow allowed over S-79, which is 4,500 cfs. An emergency spillway with a crest elevation based on retaining the 25-year, 72-hour storm event is to be provided within each cell's discharge structure. The 25-year, 72-hour storm captured in the reservoir would be a "control release" after the storm event in order to restore the water surface to the normal pool elevation while not exceeding the maximum flow of 4,500 cfs at S-79.

### **D.5.3 Project Features**

A discussion of the project features and major components along with the acreage, and estate follows. See Table D-1 "Main Project Features and **Figure D-2**: "Caloosahatchee River (C-43) West Basin Storage Reservoir Site Plan." below.

#### **D.5.3.1 Reservoir Impoundment**

The Reservoir is an earthen impoundment consisting of approximately 9,220 acres of interior storage that is to be constructed above the existing ground. It will consist of an approximate 170,000 acre-foot two-cell reservoir. Water will be pumped from the Caloosahatchee River (C-43 Canal) and into the Reservoir by utilizing the existing Townsend Canal and a new pump station (C43PS-1) located in the northwest corner of the project. See **Figure D-2** below.

Water will be discharged from the Reservoir through gravity discharge structures in each cell that discharge into a Perimeter Canal. Both flows into and out of the Reservoir will be controlled by monitoring flows at S-79.

**TABLE D-1: MAIN PROJECT FEATURES**

<b>Project Features/Components</b>	<b>Approximate Acreage Rounded</b>	<b>Proposed Estate (SAP)</b>	<b>Total Acres for SAP</b>
Reservoir (interior)	9220	Fee	
Seepage Canals	244	Fee	
Reservoir Embankment	774	Fee	
Pump Structures PS-1 and PS-4	17	Fee	
Townsend Canal	106	Fee	
Access Road from State Road 80	4	Fee	
Perimeter Access and Buffer Area	115	Fee	10,480®
Townsend Canal (Northern and Middle Canal)	20	Perpetual Channel Easement	
Temporary Work Area/Stockpile and Staging	200	Temporary Easement	
Relocation	0		
Recreation	0		
Borrow/Disposal	0		
Total Project LERRD Proposed			10,700®

### **D.5.3.2 Canals**

The existing Townsend Canal, located along the west perimeter of the Reservoir, would serve as the west Perimeter Canal. The existing spoil piles along the east side of the Townsend Canal would be removed as part of the project. Drainage improvements are proposed outside of the project boundary and would include new or replacement culverts in the header canal east of the project. Improvements to or the relocation of the existing weir structure located at the mouth of the Townsend canal are included.

The Perimeter Canal is a man-made canal that collects seepage from Cells 1 and 2 of the Reservoir, re-routes and conveys flow from the Roberts Canal to the Banana Branch Canal and conveys irrigation flows, cell discharge flows, and flood routing. The Perimeter Canal is vital in assisting with the regulation and stabilization of stormwater runoff, regulatory releases from Lake Okeechobee and improving the salinity balance for the Caloosahatchee estuary. The Perimeter Canal also provides flow releases to the downstream portions of the Roberts Canal (Banana Branch), Fort Simmons Branch and the Townsend Canal. The Perimeter Canal has three discharge structures that help facilitate with the flow control measures described above identified as C43S-3, C43S-10, and C43S-11. The Perimeter Canal design includes littoral shelves along the exterior slope that are intended to promote wetland vegetation, fisheries and recreation activities.

### **D.5.3.3 Embankments**

The perimeter embankment would have an external geometry that includes a 12-foot wide crest (14 foot Crest Width including the soil cement protection) and 3 horizontal to 1 vertical side slopes. Crest elevations have been established at +55 and +54 feet NAVD for Cell 1 and Cell 2, respectively. The embankment would be constructed largely of random fill, but would also include a low permeability soil-bentonite (SB) wall, an internal drain, and upstream slope protection. The SB wall would extend from an elevation 5 feet above the normal pool elevation to 5 feet below the top of a clay layer which underlies the project site at depths generally in the range of 10 to 25 feet below existing surface grades.

A few structures pass through the perimeter embankment. At these locations, the above ground portion of the SB wall would be replaced with select fill. In addition, a roughly 100-foot wide bench with a 24-foot access road would be constructed above the existing ground surface immediately downstream of the perimeter embankment. A Perimeter Canal would be located on the outside of the bench.

The Interior Dam between Cells 1 and 2 would be a homogenous embankment with a crest elevation of +50 feet NAVD. It would not include any SB wall or internal drain. The side slopes of the separator dam would be covered on both sides with soil-cement. Typical Sections of the proposed embankments are provided on Plates C-2 through C-4.

### **D.5.3.4 C43CS-1 and C43CS-2 Crest Spillway Structures**

C43CS-1 is located on the west side of Cell 1 and discharges to the Townsend Canal. C43CS-2 is located just east of C43S-8 in the northwest corner of Cell 2 and discharges to the Perimeter Canal. The design objective of the crest spillway structures is to minimize the surcharge storage of the reservoir without exceeding the allowable discharge. Each cell of the reservoir has an uncontrolled crest spillway structure to manage flood flows.

### **D.5.3.5 Pumping Station C43PS-1**

Pump Station C43PS-1 will consist of a 1500 cfs pump station 252' long and 84' wide with intake located on the Townsend Canal and an over-the embankment arrangement for discharge to the Reservoir. The facility will house four main pumps. Two pumps will be 500 cfs capacity each, and two will be 250 cfs capacity each. The pump station building will consist of an operating floor at El 25.0 for the placement of most pump station machinery and a two-story steel structure above El 25.0 housing the control room, break room and workshop.

#### **D.5.3.6 Pumping Station C43PS-4**

The purpose of the C43PS-4 pump station is for water supply to the neighboring landowners and maintenance of stage in the Perimeter Canal for seepage control. The station site is situated at the Southwest corner of the Reservoir at the southern limit of the District's property. The pump station will be designed to pump water from the Townsend Canal into the Perimeter Canal at a maximum 150 cfs rated capacity. The station discharge will be conveyed to the Perimeter Canal a distance of 1500 to 2000 feet via a conveyance canal paralleling the toe of slope of the Reservoir embankment.

The Townsend Canal provides flood conveyance for the citrus operations south of the Reservoir and irrigation water during the dry season. The normal canal stage upstream of the existing pump station is maintained for the farm operations at 23.5 feet NAVD. The Townsend Canal stage varies with the Caloosahatchee River.

#### **D.5.3.7 Gated Culvert Structure C43S-3**

C43S-3 consists of a Double Barrel 10'x10' Box Culvert. Each barrel will have an independent intake structure, consisting of a 10'x10' sluice gate and a 10'x10' weir gate with allowance for a 5 foot high weir opening. Should there be a demand for irrigation by the Bob Paul Grove, C43PS-4 will introduce 150 cfs into the Perimeter Canal. This flow will ultimately be conveyed through the Perimeter Canal to C43S-3 at which time it will be pumped into the LPDD Canal and used for irrigation for the Bob Paul Grove.

#### **D.5.3.8 Culvert Structure C43S-7**

Structure C43S-7 is located at the intersection of the upstream end of the Banana Branch Canal and the Perimeter Canal. The structure will provide a hydraulic connection between the perimeter canal and the Banana Branch Canal. It consists of a double 10'W x 10' H box culvert with one (1) sluice gate and one (1) weir gate. The reservoir bisects the Roberts/Banana Branch Canal thus flow from the Roberts Canal is re-routed through the Perimeter Canal and discharged to the Banana Branch Canal via Structure C43S-7.

#### **D.5.3.9 Culvert Structure C43S-9**

Structure C43S-9 is a double 6'W x 6'H box culvert that conveys flow from the Perimeter Canal through to the Fort Simmons Branch Canal which discharges into the Caloosahatchee River.

**D.5.3.10 Gated Spillway Structure C43S-10**

Structure C43S-10 consists of one 14'x10' Vertical Roller Gate and two (2) 10'x10' weir gates. The structure will consist of a reinforced concrete spillway with one (1) Vertical Roller Gate and two (2) Weir Gates to control flow through the Perimeter Canal. Design flow received by the Perimeter Canal from the Roberts Canal would be conveyed and discharged into the Banana Branch Canal prior to C43S-10. The flow from the Roberts Canal will be bypassed through the project site using the Perimeter Canal and outlet to the Banana Branch Canal

**D.5.3.11 Gated Spillway Structure C43S-11**

C43S-11 is the largest of the Perimeter Canal structures which consists of a reinforced concrete spillway with two (2) 14'W x 8' H Vertical Roller Gates and two (2) 10'W x 8'H weir gates to control flow through the Perimeter Canal ultimately to the Townsend Canal.

**D.5.3.12 C43S-1 and C43S-8 - Gated Outlet Structures**

C43S-1 and C43S-8 are the main outlets for Cell 1 and Cell 2 respectively. Both outlets discharge into the north Perimeter Canal with C43S-1 discharging four feet lower than C43S-8.

**D.5.3.13 Balancing Outlet Structure C43S-12**

C43S-12 is located on the interior dam between Cells 1 and 2 of the reservoir. The primary function of the structure is to convey water between the cells and allow the cells to operate independently if needed. If one of the cells needs to be dewatered for maintenance C43S-12 may be closed to isolate the cells.

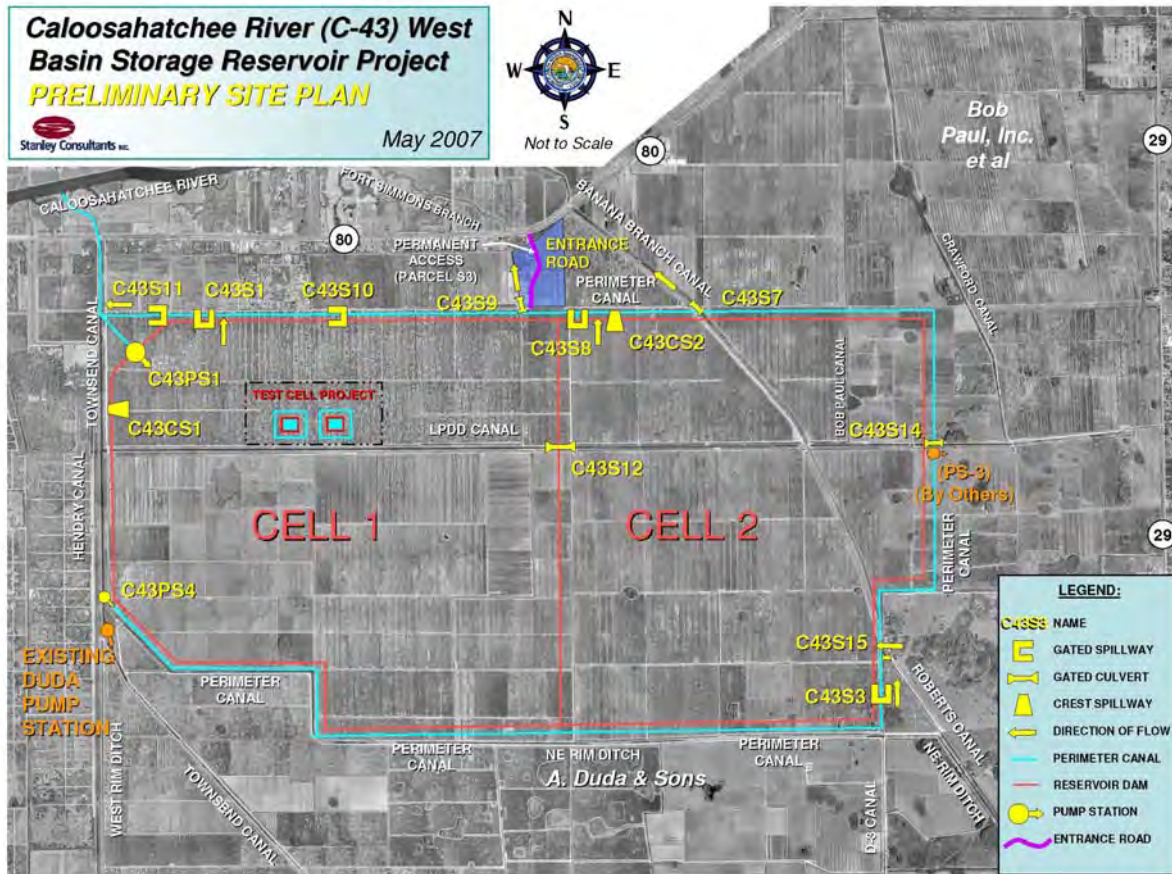
**D.5.3.14 Culvert Structure C43S-14**

Structure C43S-14 is a 10'Wx6'H box culvert that connects the Header Canal to the Perimeter Canal. This structure will convey water from the Perimeter Canal, into the Header Canal. This culvert structure will provide a hydraulic connection between the perimeter canal and the Header Canal.

**D.5.3.15 Culvert Structure C43S-15**

This culvert structure will provide a hydraulic connection between the perimeter canal and the Roberts Canal. The Roberts Canal discharges into the Perimeter Canal located downstream of Structure C43S-3. Flow from the Roberts Canal is conveyed through Structure C43S-15. The structure, which consists of a double 10'x8' box culvert with an independently operated sluice gate and weir gate.

**FIGURE D-2: CALOOSAHAATCHEE RIVER (C-43) WEST BASIN STORAGE RESERVOIR SITE PLAN**



## D.6 ANALYSIS OF ESTATES REQUIRED FOR PROJECT

The Programmatic Regulations for the CERP, 33 CFR 385, Part 385.5, require the development of Six Program-Wide Guidance Memorandum. The April 2005 draft in Section 1.9.3 and the November 2006 draft in Section 1.10.3 of the Six Program-Wide Guidance Memoranda provide that an analysis to determine the estates required for implementation of a project should be determined using the following guidelines.

### D.6.1 Estates Required for CERP Projects

*For all lands determined to be required for CERP Projects, the interests required for implementation generally will be fee simple, based on assumptions that all or a significant portion of the rights in the land will be required for project purposes. Although fee acquisition should be the standard estate for CERP projects, lesser estates such as flowage or conservation easements should be considered, as appropriate, if the benefits of the project can still be achieved with the lesser estate. The PIR should provide the rationale for such lesser estates.*

*To verify the appropriateness of fee simple acquisition or less than fee acquisition, the PIR must include the following analysis and the conclusions must be reflected in the appropriate report sections. The level of detail required for the analysis will vary depending on the project feature involved.*

**D.6.1.1 Determine the Rights that Are Required to Construct and Perform Operation, Maintenance, Repair, Rehabilitation, And Replacement (OMRR&R) for the Project:**

- *Identify the affirmative rights on the land that are required to implement the project.*
- *In addition to affirmative rights that may be required, identify restrictions on use (restrictive covenants) by the fee owner that are required so as not to interfere with project purposes and outputs.*
- *Identify the length of time that the affirmative rights or restrictive covenants are needed for the project.*
- *Determine whether constructed project features may need to be modified over time due to uncertainties in science, formulation, or design (adaptive management).*
- *Determine whether project land, or portions thereof, will be open for public use (either active or passive uses).*

**D.6.1.2 Other Factors to be Considered:**

- *Compare the cost/value of specific types of easements to fee value.*
- *Assess potential for severance damages from fee acquisition.*
- *Determine whether public owners have legal capability to convey fee.*
- *Assess stewardship/OMRR&R considerations regarding the risk and consequences of encroachment on project land by adjacent owners; the risk and consequences of violation of easement terms by fee owners; and monitoring and enforcement capabilities of Sponsor.*
- *Assess negative perception by public of private benefits or gain due to landowner reservations where easements are selected.*
- *Assess whether State Marketable Title Act requires re-recording of easement instruments.*

**D.6.2 Estates for Components**

For the analysis, the estates for each of the three project components were determined independently utilizing not only the factors set forth above but Engineering Regulation 405-1-12, Chapter 12, paragraph 12-9 because of the nature of the components. The Caloosahatchee River (C-43) West Basin Storage Reservoir project includes approximately 10,700 acres, with approximately 9,220 acres of interior storage area, approximately 244 acres required for the north, south and east seepage canals,

approximately 774 acres of embankment, approximately 106 acres required for the Townsend Canal approximately 17 acres required for the two pump stations, approximately 4 acres required for the access road from State Road 80 to the project site, approximately 115 acres required for the perimeter road and berm area on the north, south and east sides of the project, and approximately 200 acres for temporary construction area staging and stock pile area. All of the lands are owned in fee or will be acquired in fee by the SFWMD, except for approximately 20 acres within the Townsend Canal over which SFWMD has an easement sufficient for project purposes.

#### **D.6.2.1 Reservoir and Embankments**

The Reservoir embankments comprising approximately 774 acres have been determined to be a dam with the embankments on all four sides having to meet dam safety criteria. Chapter 12, paragraph 12-9 of ER 405-1-12 requires fee title for dam sites. While a standard estate such as a flowage easement (permanent flooding) for the interior areas of the Reservoir might be sufficient, the estimated value of the easement over this approximately 9,220 acres would exceed 95 percent of the fee value of the property. Access to the interior of the Reservoir must also be restricted. The following activities will have to be prohibited:

- a) commercial or industrial activities;
- b) construction of any kind within the reservoir;
- c) dumping of refuse, wastes, sewage, or other debris;
- d) harvesting wood products;
- e) commercial recreational activities;
- f) activities detrimental to flood damage reduction, water management, conservation, environmental restoration, water storage, erosion control, soil conservation, reclamation, fish and wildlife habitat preservation, and allied purposes,
- g) any mining or alteration of the surface of the land, including any substance that must be quarried or removed by methods that will consume or deplete the surface, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat; any use or activity that causes or is likely to cause significant pollution of any surface, and
- h) prohibition of all agricultural activity.

Leaving rights outstanding in third parties would also inhibit future operational changes in the Reservoir and the other facilities associated with the Reservoir. All these lands for construction of the Reservoir are required in fee.

#### **D.6.2.2 Pump Stations**

The lands required for the pump stations (permanent structures) approximately 17 acres would be required in fee.

### **D.6.2.3 Perimeter Canals**

For the land required for the perimeter canals and structures in and around perimeter canals (south, north and east side) comprised approximately 244 acres and the Townsend Canal (west side) comprised of approximately 126 acres, a permanent canal easement could be the estate required for these lands. However, the estimated value of this easement would exceed 90 percent of the fee value of the property. Therefore fee title is the recommended estate for the lands required for the Townsend Canal, except for approximately 20 acres located adjacent to and running just south of the Caloosahatchee River (C-43 Canal) over which SFWMD has acquired a perpetual canal easement, which contains language identical to the standard perpetual channel easement, which is sufficient for project purposes.

### **D.6.2.4 Main Access Road**

An access road will run from SR80 to the Project site to provide ingress and egress for both project operation and maintenance and the general public for recreation purposes at the site. The standard road easement could be the estate required for these lands, comprised of approximately 4 acres. However, the estimated value of this easement would exceed 80 percent of the fee value of the property. Therefore fee title is the recommended estate.

### **D.6.2.5 Perimeter Access and Buffer Area**

There are approximately 115 acres located between the exterior edge of the perimeter canals on which permanent maintenance access roads will be constructed and maintained. These roads will provide access not only for project operation and maintenance but for public access for recreation purposes. While a modified standard estate such as a modified road easement might be sufficient, the estimated value of the easement over this land would exceed 80 percent of the fee value of the property. In addition, the following activities will have to be prohibited:

- a) commercial or industrial activities;
- b) construction of any kind within this area;
- c) dumping of refuse, wastes, sewage, or other debris;
- d) harvesting wood products;
- e) commercial recreational activities;
- f) activities detrimental to flood damage reduction, water management, conservation, environmental restoration, water storage, erosion control, soil conservation, reclamation, fish and wildlife habitat preservation, and allied purposes,
- g) any mining or alteration of the surface of the land, including any substance that must be quarried or removed by methods that will

- consume or deplete the surface, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat; any use or activity that causes or is likely to cause significant pollution of any surface, and
- h) prohibition of all agricultural activity.

All these lands are required in fee.

#### **D.6.2.6 Temporary Work/Stockpile/Staging Areas**

During the construction of the Reservoir Project, the contractor may need approximately 200 acres for temporary work areas, temporary stockpile areas and temporary staging areas. A temporary easement for the period of construction will be required over this approximately 200 acres. SFWMD owns fee title to lands directly to the north of the Reservoir project which will be used for these temporary work/stockpile/staging areas.

#### **D.6.3 Facility, Utility Relocations**

Preliminary Attorney's Opinions of Compensability have been completed and used for the purpose of completing the study. Final Attorney's Opinions of Compensability and final relocation determinations will be completed as required by Engineering Regulation (ER) 405-1-12, chapter 12, paragraph 12-22 prior to completion of the PCA or 100% design of the reservoir by SFWMD.

##### **D.6.3.1 Florida Power and Light Company (FP&L)**

FP&L owns a limited right of way easement 140 feet in width that runs through the East ½ of Section 31 and into Sections 32, 33, 34, 35 and 36, Township 43 South, Range 28 East for construction of electric transmission and distribution power lines and towers recorded in ORB 4 page 14 of the records of Hendry County. These power lines will not be impacted by the project. Therefore no relocation of this line will be necessary for the project.

FP&L owns an easement 15 foot wide in Sections 7 and 8, Township 44 South, Range 28 East for construction of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) recorded in Official Record Book 428 page 870 of the records of Hendry County. As modified and superseded by an easement 15 foot wide in Sections 5, 7 and 8, Township 44 South, Range 28 East for construction of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) recorded in Official Record Book 460 page 37 of the records of Hendry County. This powerline easement runs along side the LPDD drainage canal and will be relocated to the north of the project area. It was determined that FP&L has a compensable interest in this area.

FP&L owns an easement 10 foot wide in Sections 30, 31, 32, 33, 34, 35 and 36, Township 43 South, Range 28 East and Sections 31, 32 and 33, Township 43 South, Range 29 East for construction of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) recorded in Official Record Book 79 Page 231 of the records of Hendry County. Some of this easement is within the right of way of the Townsend Canal. It is anticipated that only one power pole will have to be relocated. Other minor utility lines run throughout the project area and will be abandoned or removed by the utility company. It was determined that FP&L has a compensable interest in this area.

“ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REPORT THAT AN ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NON-FEDERAL SPONSOR AS PART OF ITS LEASER RESPONSIBILITIES IS PRELIMINARY ONLY. THE GOVERNMENT WILL MAKE A FINAL DETERMINATION OF THE RELOCATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE PROJECT AFTER FURTHER ANALYSIS AND COMPLETION AND APPROVAL OF FINAL ATTORNEY’S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES.”

Final Attorney’s Opinions of Compensability and final relocation determinations will later occur as required by Engineering Regulation (ER) 405-1-12, chapter 12, paragraph 12-22.

#### **D.6.4 TEMPORARY WORK AREAS**

Preliminary analysis indicates that all required temporary staging and stockpile areas will occur within the lands and right of way owned or controlled by SFWMD. Therefore, no additional LER is anticipated to be required for such purposes.

#### **D.6.5 BORROW AND DISPOSAL SITES**

##### **D.6.5.1 Borrow**

Based on the Geotechnical analysis, it was determined that sufficient quantities of suitable borrow material, within the project footprint, will be made available for construction of the embankment and for other purposes. (See Engineering Appendix). Therefore, no off-site borrow or disposal sites will be required.

##### **D.6.5.2 Disposal**

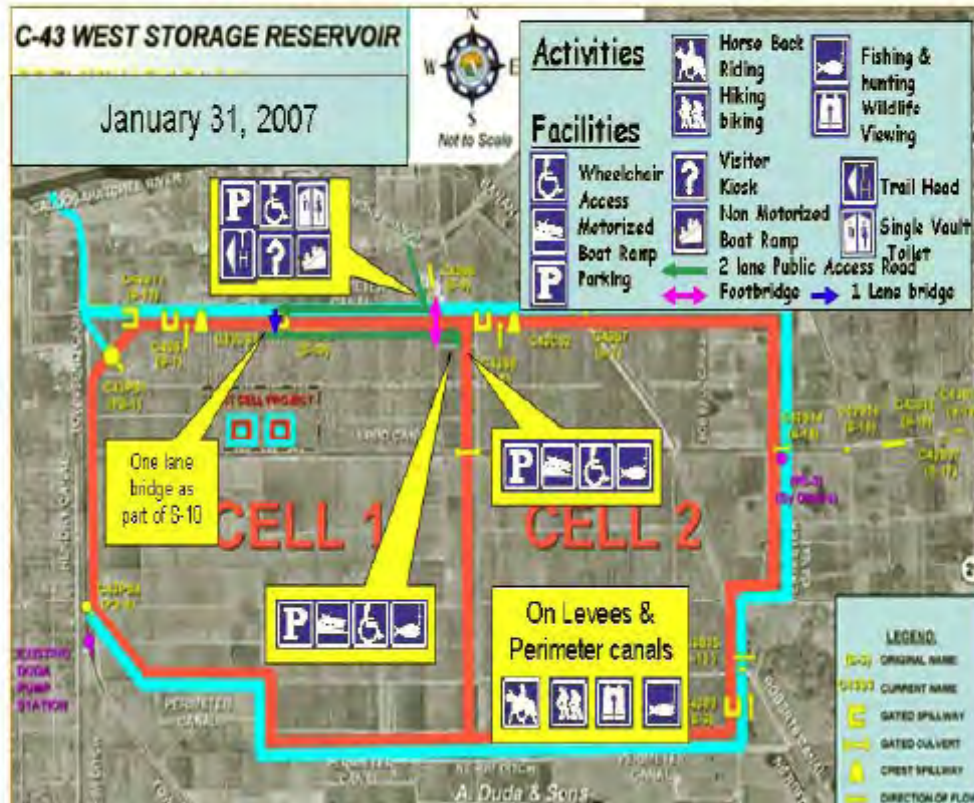
It is proposed that excavated material from the construction site will be utilized for borrow material; therefore, no additional disposal material or borrow site will be required.

## D.6.6 RECREATION FEATURES

Recreational features being considered for construction lie within the approximately 10,480 acres to be provided in fee and will be constructed within the footprint of the project. Therefore, no additional LER is required for recreational purposes. The recreational features being proposed may include a nature study, multi-use trail atop the embankment, equestrian use, boat and bank fishing, canoeing/kayaking, motor boating and hunting which will fit with the project purposes as managed by the SFWMD. A major recreation attraction of the Caloosahatchee River (C-43) West Basin Storage Reservoir will be an approximately 12-mile multi-purpose trail loop atop the embankment constructed as part of the project. Recreation facilities proposed include parking and toilet facilities (clivus multrum waterless vault toilets), information kiosk, canoe/kayak launch facility, a shade structure, traffic-control fencing and a pedestrian footbridge bridge over the perimeter canal to provide public access to the reservoir. Two handicapped accessible, double-lane public boat ramps would be provided. Vehicle access will be over the single-lane bridge over C43S-10. The ramps are proposed within the reservoirs on the north embankment. A paved two-lane public road will provide vehicular access to a one-lane bridge across the perimeter canal. A two-lane crushed shell road up the embankment and to the ramps is proposed. Boat traffic control buoys would keep boaters clear of the reservoir structures. Signage would post warnings. The canoe/kayak launch facility would be on the perimeter canal. Littoral areas are proposed at the corners of the seepage canal as part of the project and would provide ideal bank fishing locations outside the levee perimeter. The Florida Fish & Wildlife Conservation Commission (FWC) has endorsed the littoral shelf concept for habitat benefit and potential water quality benefits. Shade trees are proposed on the outside area of the north rim canal adjacent to parking areas. Ample public parking will be developed outside of the north levee and perimeter canal in the general area of the construction staging location. See **Figure D-3** and the Appendix H - Recreation of this report for further discussion.

**FIGURE D-3: CALOOSAHAATCHEE RIVER (C-43) WEST BASIN STORAGE RESERVOIR RECREATION FEATURES**

## C-43 West Storage Reservoir Recreation



### D.6.7 ACCESS TO THE PROJECT AREA

Access to the site would be from State Road 80 along the existing access road to the Field Office. Other access roads would be added as required for both construction and operation and maintenance activities. Therefore, ingress and egress will be via Federal, State, municipal, county roads, and roads and rights of way available to the non-Federal sponsor for project purposes. No additional LER are required.

### D.7 EXISTING FEDERAL PROJECTS

There are no known Federal projects that lie fully or partially within the LER required for the project.

### D.8 FEDERALLY OWNED LANDS

There are no known federally owned lands within the project area.

## D.9 NON-FEDERAL SPONSOR OWNED LANDS AND CREDITING

The SFWMD records indicate that they currently own approximately 12,352 acres in fee and approximately 20 acres in easement for a total of 12,372 acres (**Figure D-4** entitled “SFWMD Parcel Acquisition Map, and, **Table D-2** entitled “Acreage and Interest Owned by SFWMD). The approximately 20 acres of easement is situated at the northwest corner of SFWMD’s fee ownership, and it connects the Townsend Canal to the Caloosahatchee River. A review of the SFWMD easements indicated that they currently have sufficient interest for the construction, maintenance, repair, replacement and operation for the Caloosahatchee River (C-43) West Basin Storage Reservoir Project. The estate proposed for this approximately 20 acres of Townsend Canal is the standard channel improvement easement for the project. SFWMD is currently in negotiation to exchange 541.31 acres within its ownership for 600.17 acres owned by Bryan Paul Citrus and identified on the map and table as GX100-008 and GX100-009 respectively. Such an exchange would add an additional approximately 58 acres for a estimated total of 12,430 acres for SFWMD ownership in fee and easement that would be available and sufficient interest for project purposes. Within the approximately 12,372 acres presently owned by SFWMD, approximately 9,003 acres were acquired from J&H Grove Holdings, Inc. (area referred to as the Berry Groves) with both Federal (DOI) and State funds. Only approximately 7,080 acres of this approximately 9,003 acres acquired with both Federal and State funds will be used for the Project. The remainder of the approximately 3,620 acres required for the project was acquired with State funds.

A breakdown of the acreages and costs are as follows:

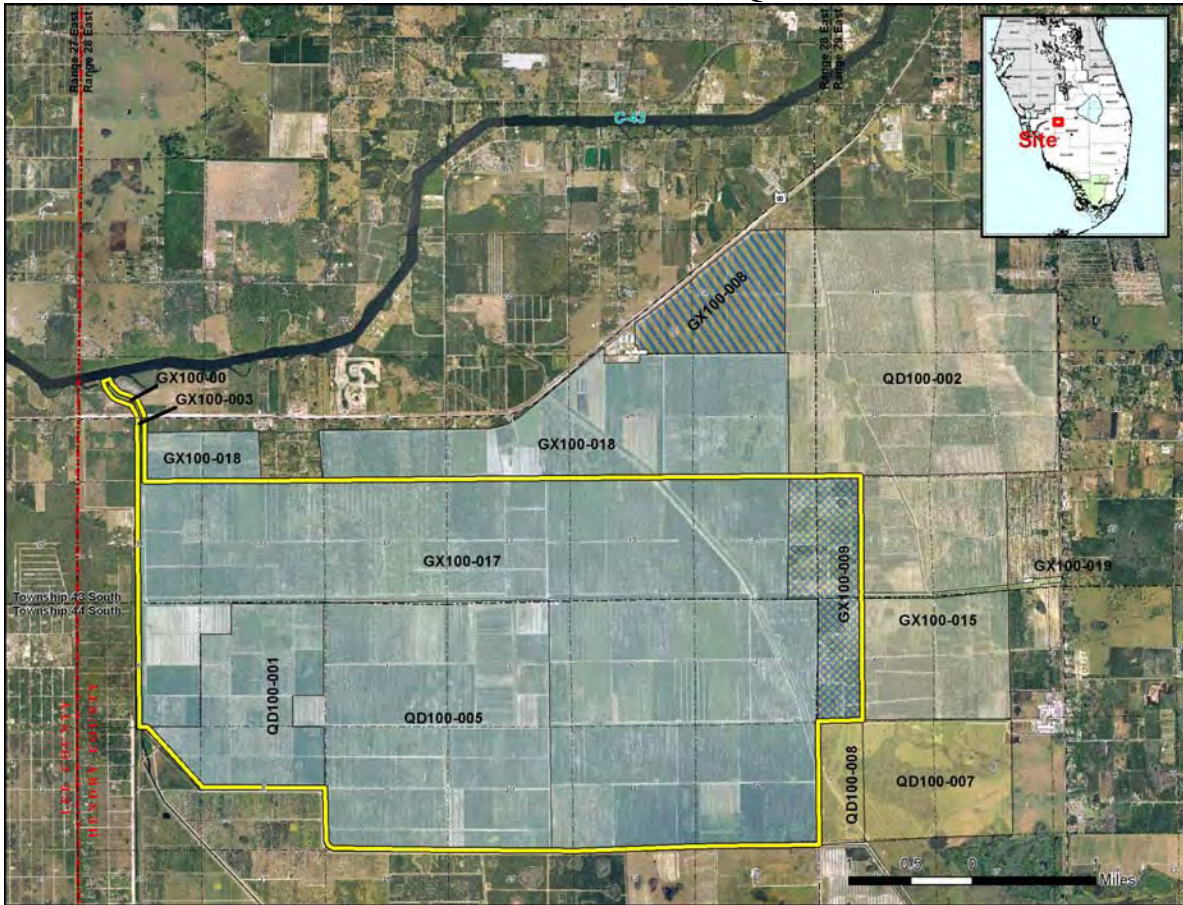
- SFWMD’s total land acquisition consists of approximately 12,372 acres including approximately 20 acres of easement.
- SFWMD will exchange approximately 541 of these acres for approximately 600 acres owned by Bryan Paul Citrus for a new total of approximately 12,340 acres.
- Total project footprint for LER requirements is estimated at approximately 10,700 acres that consists of approximately 10,480 acres in fee, approximately 20 acres in perpetual easement, and approximately 200 acres in temporary easements.
- Federal (DOI) and State funds contribution for acquiring 9,003 acres of J&H Grove Holdings L.C.(Berry Grove) property consist of \*\$32,800,000 of Federal funds and \$38,668,403 of State funds for a total of \*\$71,500,000®. Such figures are based on information provided by SFWMD.
- Land acquired with Federal and State funds to be used for project purposes is approximately 7,080 acres.

- Federal Fund contribution for approximately 7,080 acres is estimated at \$27,502,294 for land cost and \$64,375 for acquisition cost for an estimated total of \$27,566,669.
- Federal administrative costs for 10,700 acres is an estimated amount of \$424,219® with 25% contingency.
- Total estimated Federal cost share \*\$27,930,000.
- State funds contribution for both the 7,080 acres as well as the remaining 3,620 acres is an estimated amount of \$50,990,270 for land cost and an estimated amount of \$1,504,585® for acquisition cost with 7% contingency included.
- Total estimated real estate costs for the 10,700 acres required for the project are the sum of \$27,502,294 Federal + \$424,219 Federal + \$50,990,270 non-Federal + \$1,504,585 non-Federal which amounts to \*\$80,420,000.00 (Rounded Down).

\*Note costs in \$x1000

The amount of the Federal share may be increased or decreased based on a more detailed analysis which will occur during the crediting review process after approval of the Project, execution of a Project Cooperation Agreement, and certification of the land by SFWMD. See **Figure D-4** entitled “SFWMD Parcel Acquisition”, **Table D-2** entitled “Acreage and Interest Owned by SFWMD”, and **Table D-3** entitled “Summary of Baseline Cost Estimate”.

**FIGURE D-4: SFWMD PARCEL ACQUISITION MAP**



**TABLE D-2: ACREAGE AND INTEREST OWNED BY SFWMD**

Landowner Name	Acres Acquired	Land Purchase Price	Land Associated Costs	Total Acquisition Costs	District/ State Funded	Locally Funded	Federally Funded
Berry, Paul & Duda (GX 100-002) easement	10.28	\$0.00	\$4,940.04	\$4,940.04	\$4,940.04	\$0.00	\$0.00
Berry Groves (GX100-003) easement	5.99	\$0.00	\$5,946.87	\$5,946.87	\$5,946.87	\$0.00	\$0.00
SFWMD (GX100-008*) fee	541.31	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
J&H Grove Holdings, L.C. (GX100-001) fee	8,121.52	\$63,010,622	\$854,434.62	\$63,865,056.62	\$32,359,745.62	\$0.00	\$31,505,311
J&H Grove Holdings, L.C. (GX100-004) fee	338.98	\$7,510,988	\$80,358.67	\$7,591,346.67	\$6,296,657.67	\$0.00	\$1,294,689
Griffin Family LMTD Partnership (QD 100-001) fee	954.89	\$4,620,000	\$105,588.50	\$4,725,588.50	\$4,725,588.50	\$0.00	\$0.00
MG Enterprises LLC (QD 100-005) fee	2,399.11	\$13,875,000	\$58,995.28	\$13,933,995.28	\$13,933,995.28	\$0.00	\$0.00
Sub-Total Acres currently acquired	12,372.08	\$89,016,610	\$1,099,377.07	\$90,115,987.07	\$57,315,987.07	\$0.00	**\$32,800,000
SFWMD (GX100-008*) fee to be conveyed to Bryan Paul Citrus	541.31	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sub total after conveyance to Bryan Paul	11,830.77						
Bryan Paul Citrus (GX100-009) fee to be acquired by SFWMD in exchange for GX100-008	600.17			\$0.00	\$0.00	\$0.00	\$0.00
<b>FINAL TOTAL ACRES OWNED BY SFWMD</b>	<b>12,430.94</b>						

\* Note GX-100-008 (Cerp Id=04) was exchanged for GX-100-009 (Cerp Id=04A); no dollar impact

\*\* Note these figures had not yet been verified but will be verified during crediting and certification of lands.

### **D.9.1 Crediting Considerations**

This report takes into consideration for crediting purposes the Congressional Authority, the Programmatic Regulations, Six Program-Wide Guidance Memoranda, dated February 2006, and the DOI and SFWMD Grant Agreement entitled Everglades Watershed Restoration-Grant Number LWCF-1.

The CERP Congressional Authority - the CERP Congressional Authority which reads, in part, as follows: “Regardless of the date of acquisition, the value of lands or interests in land acquired by non-Federal interests for any activity described in subsection (b) shall be included in the total cost of the activity and credited against the non-Federal share of the cost of the activity. Such value shall be determined by the Secretary.”

*“IN GENERAL- Notwithstanding section 528(e)(4) of the Water Resources Development Act of 1996 (110 Stat. 3770) and regardless of the date of acquisition, the value of lands or interests in lands and incidental costs for land acquired by a non-Federal sponsor in accordance with a project implementation report for any project included in the Plan and authorized by Congress shall be-- (i) included in the total cost of the project; and (ii) credited toward the non-Federal share of the cost of the project.*

Draft Programmatic Regulations, Six Program-Wide Guidance Memoranda, dated February 2006 - States that credit will be afforded to the Sponsor based on the actual cost of the land needed for a project instead of what the land is worth at the time of a Project Cooperation Agreement signing. Consequently, the Project Delivery Team (PDT) should use actual acquisition costs in plan formulation, cost estimating, and crediting, subject to those costs being reasonable, allocable, and allowable.” Therefore, credit for LERRD provided by SFWMD will be based on actual cost of the land, the administrative cost to purchase the lands, and the incidental cost for acquiring the LERRD for the project.

### **D.9.2 Department of Interior Grant Number LWCF-1, Addendum 3, Land and Water Conservation Act Funds**

In June 1999, the DOI and SFWMD executed a Grant Agreement entitled Everglades Watershed Restoration-Grant Number LWCF-1, in which DOI provided \$38,900,000 in Federal funds to the SFWMD for the acquisition of land in the East Coast Buffer/WPA and Southern Corkscrew Regional Ecosystem Watershed Project. SFWMD matched the Federal share with a State share of \$38,900,000, making the total expenditures on land acquisition at \$77,800,000. This Grant contained language to allow SFWMD to manage these acquired lands during an Interim Period defined as “...the period of time: 1) commencing a) with respect to Grant Lands, the date of purchase or date of possession under

condemnation, as appropriate, and b) with respect to Match Lands, the effective date of the Grant Agreement as defined below, and 2) ending a) sixty (60) days prior to the issuance of a notice to proceed with construction of the respective phase of the District/Corps Project, at which time the Grant Land or Match Land is deemed to be ‘Incorporated into a District/Corps Project’, or b) on the date of receipt by Interior of written notice from the Corps or the District that the particular Grant Land or Match Land is not to be included within a District/Corps Project, or c) such other date agreed to by Interior and the District.” .... “Upon incorporation of each Grant Land or Match Land into a District/Corps Project, such Grant Land or Match Land shall be managed in accordance with Corps approved water management and control plans and operation and maintenance manuals for the project so long as the project remains authorized.”

This Grant was amended December 1999 to add an additional \$13,900,000 from each of the parties bringing the total to \$105,600,000. The Grant was amended again in April 2000 to add an additional \$18,900,000 from each of the parties bringing the total to \$143,000,000. This additional \$37,800,000 was to be used to purchase the Berry Groves property (Caloosahatchee River (C-43) West Basin Storage Reservoir project). The DOI’s additional \$18,900,000 in funding came from Land and Water Conservation Funds provided to the DOI by Congress. The last amendment to this Grant was executed in June 2001 with each party contributing an additional \$5,974,000 bringing the total State and Federal funding under the Grant to \$155,348,000. Not all the lands covered in this Grant Agreement are within the footprint of the Caloosahatchee River (C-43) West Basin Storage Reservoir project.

#### **D.9.2.1 Certification and Crediting for Actual and Incidental Costs Acquired under the Department of Interior Grants**

Pursuant to the terms and conditions of the Department of Interior Grant Agreement, SFWMD submitted and Department of Interior reviewed and approved the actual acquisition costs and SFWMD’s administrative/incidental costs, (excluding SFWMD’s staff costs) for the acquisition of J&H Grove Holdings, L.C. (Berry Grove) properties consisting of approximately 9,003 acres in the amount of \$71,500,000®, of which \$32,800,000 were Federal funds. Of the approximately 7,080 acres of the approximately 9,003 acres required for the project, the Federal share would be approximately \$27,566,670® as shown in **Table D-2**, **Table D-3**, and **Table D-4**. These figures may be increased or decreased based on a more detailed analysis during the crediting review process after approval of the Project, execution of a Project Cooperation Agreement and certification of the land.

The sum of \$27,566,670 will be credited towards the Federal share of total project cost. This would avoid the review of the same information by two

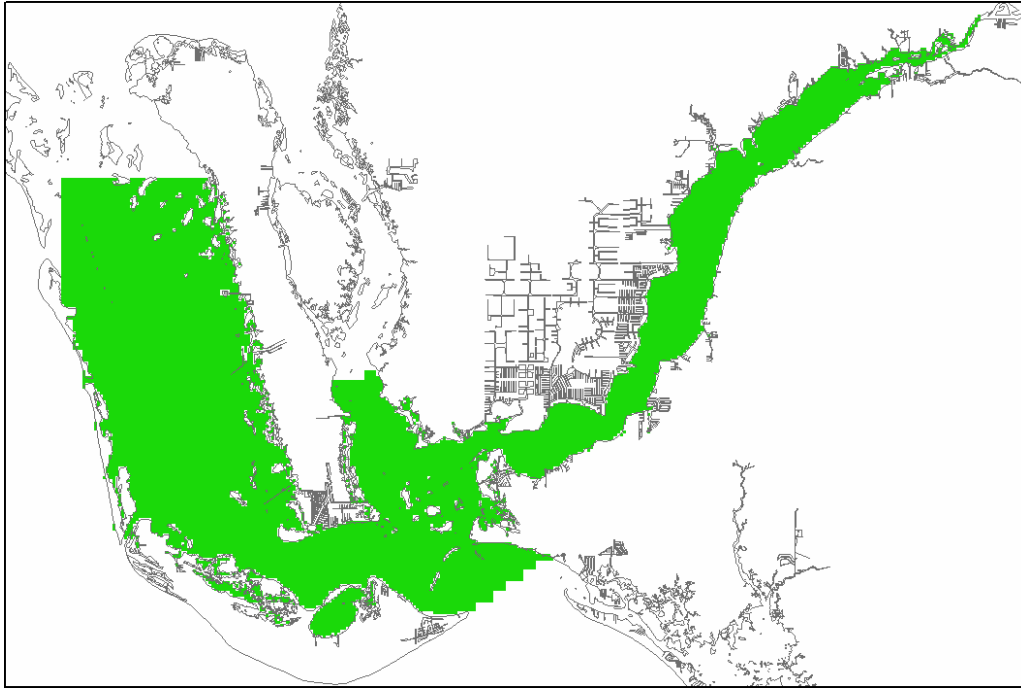
Federal Agencies and would be consistent with the terms of the Framework Agreement as stated above. The value of real estate acquired pursuant to this Article will be the actual acquisition cost of such real property for credit purposes under applicable cost-sharing principles.” This proposal would also reduce future administrative costs.

#### **D.10 UNIFORM RELOCATION ASSISTANCE ACT, PL 91-646**

Information provided by SFWMD indicates that there were no persons displaced from acquisition of the project lands by SFWMD. SFWMD’s purchase contracts indicated that PL 91-646 was considered, but as part of the acquisition, the landowners waived their rights to relocation claims in the negotiated contracts. SFWMD will be required to provide proof of such waiver prior too or provide such proof as part of the crediting package for LERRD crediting.

#### **D.11 NAVIGATIONAL SERVITUDE AND OTHER LANDS**

Approximately 71,000 acres of the Caloosahatchee River and Caloosahatchee estuary from the tidal Caloosahatchee River (i.e., downstream of S-79 to Shell Point) to San Carlos Bay (Shell Point to Pine Island Sound), and areas within Pine Island Sound and Matlacha Pass will be available for use for the environmental benefits for the project. These acres are within the navigable waters of the United States and within the navigation servitude of the United States. See *Figure D-5* below. See Environmental Appendix for further discussion on the subject matter.

**FIGURE D-5: ENVIRONMENTAL LANDS MAP**

## D.12 INDUCED FLOODING

An analysis will be completed to address the Savings Clause Provisions established by the Water Resources Development Act of 2000 (WRDA 2000) that was signed into law by the President of the United States (Public Law No. 106-541, of the 106th Congress). Section 601(h)(5) contains a Savings Clause that provides protection for existing legal sources of water that will be eliminated or transferred due to project implementation and for no significant and adverse reduction in the level of service for flood protection that was in existence on the date of enactment and in accordance with applicable law. The Programmatic Regulations for the Everglades (33 CFR §§ 385.5 and 385.35-37) require a programmatic guidance memorandum on existing legal sources of water, and a determination of the pre-CERP baseline conditions and direction about what constitutes “levels of service for flood protection ... in accordance with applicable law” existing on date of enactment of WRDA 2000.

To ensure the levels of service of flood protection will not be diminished by this project, hydrologic and hydraulic analyses are being performed using surface water and groundwater modeling. The results of the analyses indicate that the project is not expected to result in stage increase in canal systems adjacent to the project site. The modeling analysis indicates that no flooding will occur outside the project due to the construction or the operation and maintenance of the project. The analysis also indicates that any seepage from the reservoir will be captured in the seepage canals; however, additional analyses will be

undertaken after project construction to ensure that the level of service of flood protection in areas adjacent to the project site is maintained.

### **D.13 MINERAL AND TIMBER ACTIVITIES**

Preliminary investigations indicate that there are no known present or anticipated mineral activities in the vicinity of the proposed project that may affect construction, operation, or maintenance of the project.

### **D.14 NON-FEDERAL AUTHORITY TO PARTICIPATE IN THE PROJECT**

The SFWMD was created by virtue of Florida Statutes, Chapter 373, Section .069 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). See Exhibit "C".

### **D.15 PROPOSED ESTATES**

Based on the analysis set forth in paragraph D.1.7.1 above, the following estates will be required:

#### **D.15.1 Standard Estates**

##### **D.15.1.1 Standard Estate – Fee**

The fee simple title to (the land described in Schedule A), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

##### **D.15.1.2 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) for the purposes as authorized by the Act of Congress approved (ADD APPROPRIATE WRDA AUTHORIZATION), including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions there from; to excavate, dredge, cut away, and remove any or 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 easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

### **D.15.1.3 Temporary Work Area and/or Disposal Area Easement**

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A), for a period not to exceed ADD APPROPRIATE TERM OF YEARS AREA IS REQUIRED FOR CONSTRUCTION PURPOSES \_\_\_\_\_, beginning with date possession of the land is granted to the United States, for use by 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 the Caloosahatchee River (C-43) West Basin Storage Reservoir 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; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

## **D.16 ZONING ORDINANCES**

Preliminary investigation indicates that no enactments of zoning ordinances are proposed in lieu of, or to facilitate, acquisition in connection with the project.

## **D.17 ACQUISITION SCHEDULES**

It is anticipated that SFWMD currently owns, or will own or control the lands required for construction, operations, and maintenance of the project. Following execution of the Project Cooperation Agreement (PCA), the Federal Government will provide SFWMD with general written descriptions, including maps as appropriate, of the LER and the facility/utility relocations that the Government has determined the non-Federal sponsor must provide and perform for the construction, operation, and maintenance of the project. The LER descriptions will include the required estate, acreage, location, and schedule requirements in detail sufficient to enable the SFWMD to fulfill its obligations to provide the LER in a timely fashion. If relocation is required then the descriptions will include sufficient detail so as to enable the non-Federal sponsor to perform its relocation responsibilities in a timely fashion. In addition, a written notice to proceed with acquisition of such additional LER will be provided to SFWMD.

## **D.18 HAZARDOUS, TOXIC OR RADIOLOGICAL WASTE (HTRW)**

The existing conditions portion of the HTRW document includes a summary of the Phase I/II Environmental Site Assessment (ESA) studies done on the four

properties acquired for the reservoir project. In the course of these studies, over 50 point source sites with potential HTRW contamination were identified. At this time, most if not all of these potential contamination sites have been either remediated or further investigated to characterize the sites and prepare remediation plans. The project sponsor, the SFWMD has made a commitment to the Corps and FWS that after it takes control of the properties from the present lessees and begins construction of the reservoir, all of the outstanding point source remediation efforts will be completed. In addition to the point source contamination sites, the SFWMD also identified distributed soil contamination in portions of the cultivated areas on all of the acquired properties. The remediation of the cultivated soil sites involves the placement of these soils into the core of the reservoir dam. This will isolate the contaminated soils from benthic organisms that serve as food for higher level organisms and thus reduce the potential for bioaccumulation of contaminants by fish and wildlife.

The FWS service has reviewed all of the SFWMD's remediation plans and indicated that they believe that the efforts will sufficiently reduce the risk of harm to fish and wildlife in those areas where the remediation will be performed. The FWS has also stated that moderate levels of copper and other contamination of the cultivated areas are believe to not pose a direct threat to species of concern; however, they believe that an indirect effect may occur since widespread low-level soil contamination may reduce the population of benthic organisms upon which the species of concern normally feed.

Despite the diligent work performed by the SFWMD and FWS to reduce the risk to environmental resources, it is possible that once the reservoir is built, bioaccumulation of soil contaminants does result in harm to one or more species of interest. If this does happen, additional remediation efforts, such as more extensive removal of the reservoir bottom sediments could be done to further reduce the exposure of benthic organisms to nearsurface soil contamination. The cost of additional remediation, if necessary, would be the responsibility of the non-federal sponsor. If such remediation is necessary, the reservoir would be at least partially out of service for several months while the work is conducted.

Most of the contamination at the point source sites has been delineated and much of it remediated. The remaining sites are expected to be remediated prior to certification of the lands and are not likely to cause a project delay. See main body of report for a full discussion of the HTRW.

The non-Federal sponsor shall be responsible for ensuring that the development and execution of Federal, State, and/or locally required HTRW response actions area accomplished at 100 percent non-project cost. No cost sharing credit will be given for the cost of response actions.

### **D.19 PROJECT SUPPORT**

No real estate issues relevant to planning, designing or implementing are anticipated. No real estate issues that may impact the project schedules, budgets, PCA, or quality of the deliveries are anticipated since these lands are currently owned by SFWMD.

There is no known or anticipated opposition to the project by landowners in the project area or any known or anticipated ownership concerns that could impact the project since SFWMD already owns, controls, or will control the lands that are required for project purposes.

### **D.20 BASELINE COST ESTIMATES AND MCACES COST ESTIMATES**

The actual acquisition costs and administrative costs provided by SFWMD were considered in the final computation. SFWMD cost towards the land and incidental cost is estimated at \$52,400,056.39 without contingency and \$52,494,855.94 with contingency. A seven percent contingency was added to the Sponsor's estimated administrative/incidental costs due to risk and uncertainty. The federal cost amounted to \$27,926,512.75, which includes the Federal share of the land costs as well as future federal administrative costs. The total real estate cost with contingency is estimated at \$80,421,000. These figures are subject to modification and verification during the crediting review process.

### **D.21 BASELINE COST ESTIMATES AND MCACES COST ESTIMATES**

The actual acquisition costs and administrative costs provided by SFWMD were considered in the final computation. SFWMD cost towards the land and incidental cost is estimated at \$52,494,855.94. A seven percent contingency was added to the Sponsor's estimated costs due to risk and uncertainty. The Federal cost amounted to \$27,930,000®. The total real estate cost with contingency is estimated at \$80,420,000 (Rounded Down). (*Table D-3*)

**TABLE D-3: BASELINE COST ESTIMATE****TABLE D-3: SUMMARY OF BASELINE COST ESTIMATE**

PROJECT: Caloosahatchee River (C-43) West Basin Storage Reservoir

DATE: 13 Jun 2007

ESTATE	Approximate Acres	PRORATED	Non-Federal Amounts - Actual Cost	Federal Amounts	Federal & Non_Federal Amounts
FEE	10,480.00				
Non-Federal Funds			\$50,240,270.00		
Land Payments by LS - Direct Acquisition with Federal LWCF1 Funds				\$27,502,294.00	\$77,742,564.00
EASEMENT - PERMANENT CHANNEL Work Area - Temporary Easement	20 200.00	\$3,750.00	\$0.00 \$750,000.00		
SUBTOTAL	10,700		\$50,990,270.00		
Improvements	0.00		\$0.00		
Severance			\$0.00		
Minerals	\$0.00		\$0.00		
SUBTOTAL TOTAL LANDS AND DAMAGES (RD)	10,700		\$50,990,270.00	\$27,502,294.00	\$78,492,564.00
ACQ/ADMIN Fed Federal - LWCF1 Funds Non-Fed				\$275,000.00 \$64,375.00	
PL 91-646 Contingency (RD) -Federal 25%			\$0.00	\$84,843.75	
Contiengency (RD) - Non- Federal 7%			\$98,430.86		
SUBTOTAL (W/O Contingency)			\$1,406,155.08	\$339,375.00	
SUBTOTAL (With Contingency)			\$1,504,585.94	\$424,218.75	
TOTAL Estimated RE COSTS (RD)	10,700.00				*\$80,421,000

\*The Total Estimated RE Cost of \$80,421,000 was rounded down to \$80,420,000.

**TABLE D-4: MCACES PROJECT REAL ESTATE COSTS****TABLE D-4 : MCACES PROJECT REAL ESTATE COSTS****PROJECT: Caloosahatchee River (C-43) West Basin Storage Reservoir****DATE: 6/13/2007**

01	LANDS AND DAMAGES	Federal Cost	Non-Federal Cost
01AA	PROJECT PLANNING	\$100,000.00	
01B--	ACQUISITIONS		
01B20	By LS (State funds)		\$1,250,763.83
01B20	BY FED -LWCF1 (Funds)	\$64,375.00	
01B40	Review of LS	\$50,000.00	
01C--	CONDEMNATIONS		
01C20	By LS	\$0.00	\$0.00
01C40	Review of LS	\$5,000.00	
01E--	APPRAISALS		
01E30	By LS		\$145,391.25
01E50	Review of LS	\$90,000.00	
01F--	PL 91-646 ASSISTANCE		
01F20	BY LS	\$0.00	\$0.00
01F40	Review of LS	\$5,000.00	
01G--	TEMPORARY PERMITS		
01G20	LICENSES RIGHTS-OF-ENTRY By LS - Future		\$10,000.00
01G40	Review of LS	\$20,000.00	
01G60	Damage Claims	\$0.00	
01M00	PROJECT RELATED ADMINISTRATION		
	Real Estate Review of PCA	\$5,000.00	
01R--	REAL ESTATE PAYMENTS		
01R1	Land Payments by LS		\$50,990,270.00
	Land Payments By LS - Direct Acquisition with Federal-LWCF1 Funds	\$27,502,294.00	
01R2	PL 91-646 Assistance Payment		
01R2B	By LS	\$0.00	\$0.00
Total Real Estate Cost Excluding Contingency (RD)		\$27,841,669.00	\$52,396,422.08
Contingency Federal	25%	\$84,843.75	
Contingency -Non-Federal	7%		\$98,430.86
<b>TOTAL PROJECT REAL ESTATE COST (RD)</b>			<b>**\$80,420,000</b>

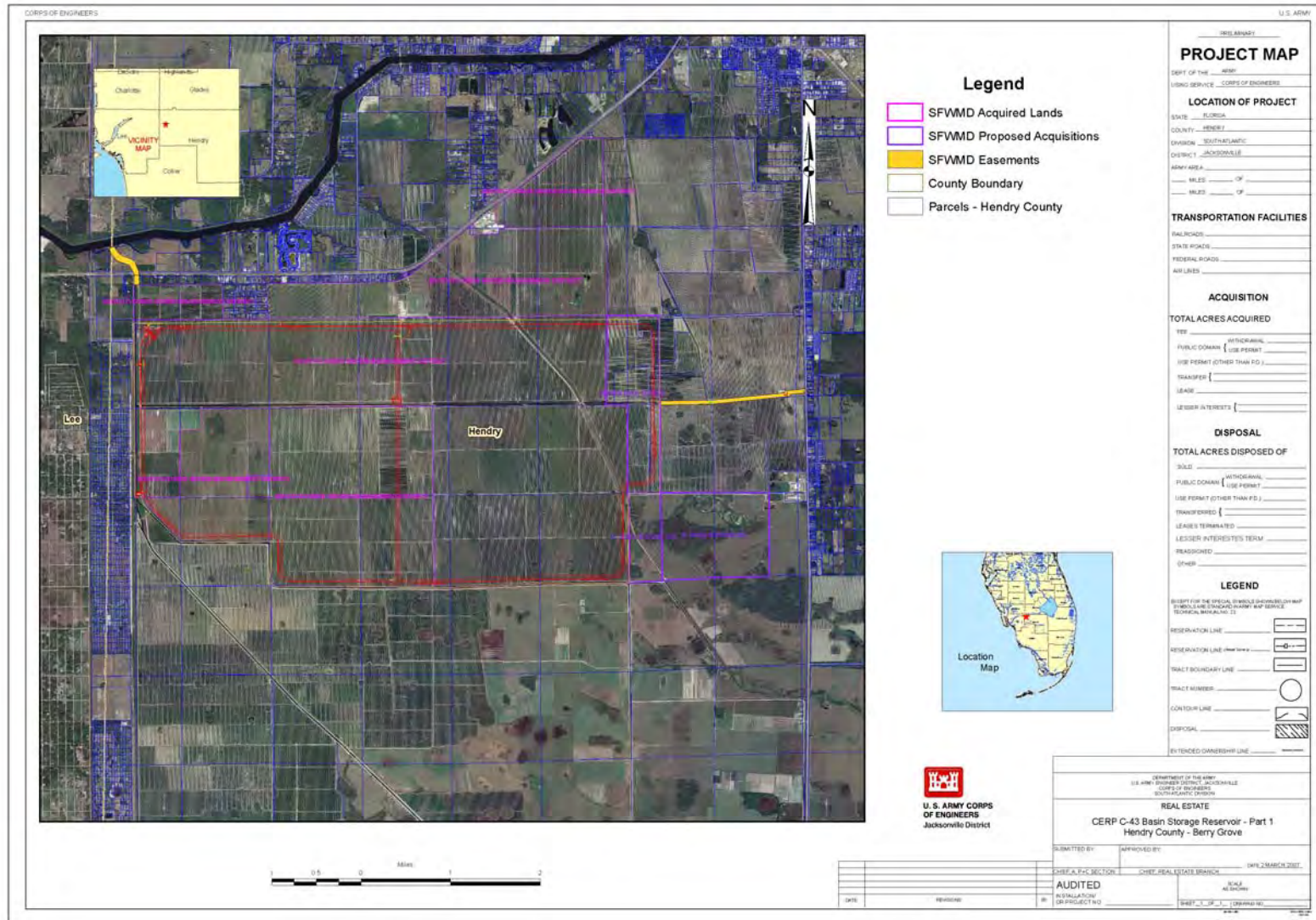
\*The percentages are based on incidental and administrative cost ( Land cost not considered in the Contingency Cost)

\*\*The Total Estimated real estate cost of \$80, 421,000 was rounded down to \$80,420,000.

**D.22 REAL ESTATE MAPS**

The Real Estate Planning Map (*Figure D-6*) depicts the project area and location, project footprint, project features, and ownerships.

FIGURE D-6: REAL ESTATE PLANNING MAP



**D.23 EXHIBITS****EXHIBIT "A"****SEC. 390. EVERGLADES ECOSYSTEM RESTORATION**

(a) *IN GENERAL.--On July 1, 1996, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide \$200,000,000 to the Secretary of the Interior to carry out this section.*

(b) *ENTITLEMENT.--The Secretary of the Interior (referred to in this section as the "Secretary")--*

*(1) shall be entitled to receive the funds made available under subsection (a);*

*(2) shall accept the funds; and*

*(3) shall use the funds to--*

*(A) conduct restoration activities in the Everglades ecosystem in South Florida, which shall include the acquisition of real property and interests in real property located within the Everglades ecosystem; and*

*(B) fund resource protection and resource maintenance activities in the Everglades ecosystem.*

(c) *SAVINGS PROVISION.--Nothing in this subsection precludes the Secretary from transferring funds to the Army Corps of Engineers, the State of Florida, or the South Florida Water Management District to carry out subsection (b)(3).*

(d) *DEADLINE.--The Secretary shall use the funds made available under subsection (a) for restoration activities referred to in subsection (b)(3) not later than December 31, 1999.*

(e) *REPORT TO CONGRESS.--For each of calendar years 1996 through 1999, the Secretary shall submit an annual report to Congress describing all activities carried out under subsection (b)(3).*

(f) **SEPARATE AND ADDITIONAL EVERGLADES RESTORATION ACCOUNT.--**

(1) *ESTABLISHMENT.--There is established in the Treasury a special account (to be known as the "Everglades Restoration Account"), which shall consist of such funds as may be deposited in the account under paragraph (2). The account shall be separate, and in addition to, funds deposited in the Treasury under subsection (a).*

(2) **SOURCE OF FUNDS FOR ACCOUNT.--**

(A) **PROCEEDS FROM SURPLUS PROPERTY.--**

(i) *IN GENERAL.--Subject to subparagraph (B), the Administrator shall deposit in the special account all funds received by the Administrator, on or after the date of enactment of this Act, from the disposal pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) of surplus real property located in the State of Florida.*

ii) **AVAILABILITY AND DISPOSITION OF FEDERAL LAND.--**

(I) *IDENTIFICATION.--Any Federal real property located in the State of Florida (excluding lands under the administrative jurisdiction of the Secretary that are set aside for conservation purposes) shall be identified for disposal or exchange under this subsection and shall be presumed available for purposes of this*

*subsection unless the head of the agency controlling the property determines that there is a compelling program need for any property identified by the Secretary.*

*(II) AVAILABILITY.--Property identified by the Secretary for which there is no demonstrated compelling program need shall, not later than 90 days after a request by the Secretary, be reported to the Administrator and shall be made available to the Administrator who shall consider the property to be surplus property for purposes of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).*

*(III) PRIORITIZATION OF DISPOSITION.—The Administrator may prioritize the disposition of property made available under this subparagraph to permit the property to be sold as quickly as practicable in a manner that is consistent with the best interests of the Federal Government.*

*(B) LIMIT ON TOTAL AMOUNT OF DEPOSITS.--The total amount of funds deposited in the special account under subparagraph (A) shall not exceed \$100,000,000.*

*(C) EFFECT ON CLOSURE OF MILITARY INSTALLATIONS.--Nothing in this section alters the disposition of any proceeds arising from the disposal of real property pursuant to a base closure law.*

*(3) USE OF SPECIAL ACCOUNT.--Funds in the special account shall be available to the Secretary until expended under this paragraph. The Secretary shall use funds in the special account to assist in the restoration of the Everglades ecosystem in South Florida through--*

*(A) subject to paragraph (4), the acquisition of real property and interests in real property located within the Everglades ecosystem; and*

*(B) the funding of resource protection and resource maintenance activities in the Everglades ecosystem.*

*(4) STATE CONTRIBUTION.--The Secretary may not expend any funds from the special account to acquire a parcel of real property, or an interest in a parcel of real property, under paragraph (3)(A) unless the Secretary obtains, or has previously obtained, a contribution from the State of Florida in an amount equal to not less than 50 percent of the appraised value of the parcel or interest to be acquired, as determined by the Secretary.*

*(5) DEFINITIONS.--In this subsection:*

*(A) ADMINISTRATOR.--The term "Administrator" means the Administrator of General Services.*

*(B) BASE CLOSURE LAW.--The term "base closure law" means each of the following:*

*(i) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).*

*(ii) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).*

*(iii) Section 2687 of title 10, United States Code.*

*(iv) Any other similar law enacted after the date of enactment of this Act.*

(C) *EVERGLADES ECOSYSTEM.*--The term "Everglades ecosystem" means the Florida Everglades Restoration area that extends from the Kissimmee River basin to Florida Bay.

(D) *EXCESS PROPERTY.*--The term "excess property" has the meaning provided in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(E) *EXECUTIVE AGENCY.*--The term "executive agency" has the meaning provided in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(F) *SPECIAL ACCOUNT.*--The term "special account" means the Everglades Restoration Account established under paragraph (1).

(G) *SURPLUS PROPERTY.*--The term "surplus property" has the meaning provided in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(g) *REPORT TO DETERMINE THE FEASIBILITY OF ADDITIONAL LAND ACQUISITION AND RESTORATION ACTIVITIES.*--

(1) *IN GENERAL.*--The Secretary shall conduct an investigation to determine what, if any, unreserved and unappropriated Federal lands (or mineral interests in any such lands) under the administrative jurisdiction of the Secretary are suitable \*1025 for disposal or exchange for the purpose of conducting restoration activities in the Everglades region.

(2) *CONSERVATION LANDS.*--No lands under the administrative jurisdiction of the Secretary that are set aside for conservation purposes shall be identified for disposal or exchange under this subsection.

(3) *FLORIDA.*--In carrying out this subsection, the Secretary shall, to the maximum extent practicable, determine which lands and mineral interests located within the State of Florida are suitable for disposal or exchange before making the determination for eligible lands or interests in other States.

(4) *PUBLIC ACCESS.*--In carrying out this subsection, the Secretary shall consider that in disposing of lands, the Secretary shall retain such interest in the lands as may be necessary to ensure that the general public is not precluded from reasonable access to the lands for purposes of fishing, hunting, or other recreational uses.

(5) *REPORT.*--Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate describing the results of the investigation conducted under this subsection. The report shall describe the specific parcels identified under this subsection, establish the priorities for disposal or exchange among the parcels, and estimate the values of the parcels.

**Exhibit "B"****SECTION 601 (E)(3) OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000, (PL 106-541)**

*(e) COST SHARING.*

*(3) FEDERAL ASSISTANCE.*

*(A) IN GENERAL.--The non-Federal sponsor with respect to a project authorized by subsection (b), (c), or (d) may use Federal funds for the purchase of any land, easement, rights-of-way, or relocation that is necessary to carry out the project if any funds so used are credited toward the Federal share of the cost of the project.*

*(B) AGRICULTURE FUNDS.--Funds provided to the non-Federal sponsor under the Conservation Restoration and Enhancement Program (CREP) and the Wetlands Reserve Program (WRP) for projects in the Plan shall be credited toward the non-Federal share of the cost of the Plan if the Secretary of Agriculture certifies that the funds provided may be used for that purpose. Funds to be credited do not include funds provided under section 390 of the Federal Agriculture Improvement and Reform Act of 1996 (110 Stat.1022).*

**Exhibit "C"****FLORIDA STATUTES****TITLE XXVIII. NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE CHAPTER 373. WATER RESOURCES****PART I. STATE WATER RESOURCE PLAN**

*373.1501. South Florida Water Management District as local sponsor*

*(1) As used in this section and s. 373.026(8), the term:*

*(b) "Department" means the Department of Environmental Protection.*

*(c) "District" means the South Florida Water Management District.*

*(f) "Project" means the Central and Southern Florida Project.*

*(g) "Project Component" means any structural or operational change, resulting from the restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.*

*(h) "Restudy" means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by this section. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.*

*(2) The Legislature finds that the restudy is important for restoring the Everglades ecosystem and sustaining the environment, economy, and social wellbeing of South Florida. It is the intent of the Legislature to facilitate and support the restudy through a process concurrent with Federal Government review and Congressional authorization. Nothing in this section is intended in any way to limit federal agencies or Congress in the exercise of their duties and*

responsibilities. It is further the intent of the Legislature that all project components be implemented through the appropriate processes of this chapter and be consistent with the balanced policies and purposes of this chapter, specifically s. 373.016.

(4) The district is authorized to act as local sponsor of the project for those project features within the district as provided in this subsection and subject to the oversight of the department as further provided in s. 373.026. The district may:

- (a) Act as local sponsor for all project features previously authorized by Congress;
- (b) Continue data gathering, analysis, research, and design of project components, participate in preconstruction engineering and design documents for project components, and further refine the Comprehensive Plan of the restudy as a guide and framework for identifying other project components;
- (c) Construct pilot projects that will assist in determining the feasibility of technology included in the Comprehensive Plan of the restudy; and
- (d) Act as local sponsor for project components.

(5) In its role as local sponsor for the project, the district shall comply with its responsibilities under this chapter and implement project components through appropriate provisions of this chapter. In the development of project components, the district shall:

- (a) Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs;
- (b) Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project;
- (c) Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination:

1. The district shall convene a pre-application conference with all state and federal agencies with applicable regulatory jurisdiction;
2. State agencies with applicable regulatory jurisdiction shall participate in the pre-application conference and provide information necessary for the district's determination; and
3. The district shall request that federal agencies with applicable regulatory jurisdiction participate in the pre-application conference and provide information necessary for the district's determination;

(d) Consistent with this chapter, the purposes for the restudy provided in the Water Resources Development Act of 1996, and other applicable federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project

*component, and that water management practices will continue to adapt to meet the needs of the restored natural environment.*

*(e) Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are minimized.*

*(6) The department and the district shall expeditiously pursue implementation of project modifications previously authorized by Congress or the Legislature, including the Everglades Construction Project. Project components should complement and should not delay project modifications previously authorized.*

*(7) Notwithstanding any provision of this section, nothing herein shall be construed to modify or supplant the authority of the district or the department to prevent harm to the water resources as provided in this chapter.*

*(8) Final agency action with regard to any project component subject to s. 373.026(8)(b) shall be taken by the department. Actions taken by the district pursuant to subsection (5) shall not be considered final agency action. Any petition for formal proceedings filed pursuant to ss. 120.569 and 120.57 shall require a hearing under the summary hearing provisions of s. 120.574, which shall be mandatory. The final hearing under this section shall be held within 30 days after receipt of the petition by the Division of Administrative Hearings.*