

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

Regional Mitigation Plans
for the Department of Transportation

FINAL ORDER

On or prior to December 31, 1996, the Northwest Florida Water Management District, Southwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District and South Florida Water Management District submitted regional mitigation plans to the Florida Department of Environmental Protection (Department) for review and final approval in accordance with the provisions of Section 373.4137(4), Florida Statute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Section 373.4137, F.S., requires the Department and the Water Management Districts (WMD), in concert with U.S. Army Corps of Engineers (COE), to develop a plan for the mitigation needs for the Florida Department of Transportation (DOT) for the upcoming 3 years. The intent of Section 373.4137, F. S., is to provide more effective mitigation for transportation projects through regional long-range mitigation planning.

2. The DOT identified specific road projects, with a statewide total of 200 acres of anticipated wetland impacts

for fiscal years 1997-98, 1998-99, 1999-2000, that would require mitigation and would be subject to the provisions of this statute.

3. The regional mitigation plans were designed and evaluated by the core group to meet the mitigation requirements of Chapter 373, Florida Statutes, and 33 U.S.C.s.1344. See Exhibit 1.

4. The total statewide estimate for mitigation at this time is \$9,817,326. This amount accounts for 164.39 acres of wetlands to be impacted and 3,301.57 acres to be acquired/restored/enhanced. For the 1997-98 fiscal year, only a subset of the total plan is requested to be funded. This amount is necessary to mitigate for two road projects anticipated to begin during that time frame and to fund up-front mitigation for five additional road projects in future years. The mitigation cost during 1997-98 to offset 52.02 acres of road impact is \$3,595,546. See Exhibit 2.

ORDER

Having considered the foregoing findings of fact and conclusions of law, it is

ORDERED: This mitigation plan is deemed to satisfy the mitigation requirements for the specified Department of Transportation work projects and no other state, regional or local permit or approval shall be necessary to implement the mitigation plan. This approval does not eliminate the need

for DOT to meet the permitting requirement to reduce or eliminate impacts of the future transportation projects, nor does it change any other permitting criteria for those future transportation projects. This approval also does not convey nor imply that impacts of those future transportation projects have been pre-approved.

This order constitutes final agency action of the Department unless a timely petition for an administrative proceeding or a request for mediation is filed in conformance with the procedures set forth below

A person whose substantial interests are affected by this order may petition for an administrative hearing in accordance with sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Petitions must be filed within fourteen days of receipt of this order or within fourteen days of publication of the public notice of it, whichever occurs first. The failure of any person to file a petition (or a request for mediation, as discussed below) within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-5.207 of the Florida Administrative Code.

A petition must contain the following information:

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, and the Department file number, if any;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of the material facts disputed by the petitioner, if any;

(e) A statement of the facts that the petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement identifying the rules or statutes that the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner

wants the Department to take with respect to the action or proposed action addressed in this order.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this order. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In addition to having the right to file a petition for an administrative hearing, any person may elect to pursue mediation. The election may be accomplished by reaching a mediation agreement with all parties to the proceeding (which include the applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Department's action or proposed action. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, by the same deadline as set forth above for the filing of a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

(b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;

(c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this order or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57 for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final

order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within fourteen days of receipt of this notice of intent. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED on this 26th day of February, 1997 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Virginia B. Wetherell

Virginia Wetherell, Secretary

3900 Commonwealth Boulevard
Mail Station 10
Tallahassee, Florida 32399-3000
Telephone: (904) 488-1554

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to S.120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

[Signature]

CLERK

2/26/97

DATE

Copies provided to:

Clark Hull, Southwest Florida Water Management District
Rob Robbins, South Florida Water Management District
Ron Bartel, Northwest Florida Water Management District
David Still, Suwannee River Water Management District
Ken John, St. Johns River Water Management District
Chuck Allen, Department of Transportation
John Hall, U.S. Army Corps of Engineers
Tim Smith, Office of General Counsel
Jim Carr, Central District Office, DEP
Charlie Goddard, Northwest District Office, DEP
Kathy Liles, Southwest District Office, DEP
Jan Brewer, Northeast District Office, DEP
Melissa Meeker, Southeast District Office, DEP
Gordon Romeis, South District Office, DEP
Mike Scott, Florida Mitigation Trust Corporation
Bill Hoebeke, EcoBank
Daniel R. Winchester, Ecology and Environment, Inc.
Karen Peterson, Hopping Green Sams & Smith, PA
Rob Greene, Mitigation Inc.

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed to those listed on this 26 day of February, 1997.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

D. H. Parish

3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000
Telephone: (904) 488-1554

EXHIBIT 1

The bill required DEP/WMDs, in concert with USACOE and other environmental entities, to develop a plan for the mitigation needs for the Department of Transportation (DOT) for the upcoming 3 years. The DOT identified specific road projects, with a statewide total of 200 acres of anticipated wetland impacts for fiscal years 1997-98, 1998-99, 1999-2000, that would require mitigation and would be subject to the provisions of this bill. DEP/WMD/USACOE developed a process whereby a core group of state, regional and federal permitting staff sat down and discussed mitigation needs and proposals to address those needs. Other input was requested from other public entities, not for profit groups, and private mitigation bankers. The regional mitigation plans were designed and evaluated by the core group to meet the mitigation requirements of Chapter 373, Florida Statutes, and 33 U.S.C.s.1344. Additionally, the plans were developed to address the use of sound ecosystem management practices to address water resource needs and to consider the use of mitigation credits available from public or private mitigation banks.

The Southwest Florida Water Management District Plan addresses certain road projects in DOT districts 1 and 7, with an estimated total of 67.9 acres of wetland impact. This plan correlates all of the road projects in any of the defined drainage basins to a particular mitigation design or set of alternative designs within the same drainage basin. Only the first year (fiscal year 1997-98) of the plan includes the details of mitigation costs and acreage; the plans for the remaining years are conceptual in nature and are not included in the statewide statistical evaluation. The governing board granted preliminary approval of the plan on December 17, 1996. Contact Clark Hull for complete information and copy of the plan.

South Florida Water Management District Plan address road projects in DOT districts 1, 4, 5 and 8, with an estimated total of 22.31 acres of wetland impact. This plan groups the road impacts by both location and type of impacts, resulting in four mitigation designs. Freshwater restoration/enhancement and saltwater enhancement/restoration work will be conducted on district owned or managed lands to address most of the impacts. Aquatic plant control and the purchase of mitigation banks will address the remaining impacts. The governing board granted preliminary approval of the plan on December 12, 1996. Contact Rob Robbins for complete information and copies of the plan.

Northwest Florida Water Management District Plan addresses a road impact in DOT district 3 which is anticipated to impact approximately 42 acres of wetlands. In order to offset those impacts, two mitigation designs are proposed in concept: restoration and enhancement of coastal wetlands at Camp Helen State Park, and restoration of wetlands as part of the SWIM plan for the Choctawhatchee River and Bay. The governing board granted preliminary approval of the plan on December 5, 1996. Contact Ron Bartel for complete information and copies of the plan.

Suwannee River Water Management District Plan addresses four of the road impacts in DOT district 2, with an estimated total of 28.2 acres of wetland impact. The mitigation designs include restoration as part of the Alligator Lake SWIM plan, contribution to the Lake Miccosukee water control restoration plan, and combination of purchase, restoration and SWIM involvement in the Waccasassa River basin. The governing board granted preliminary approval of the plan on December 10, 1996. Contact David Still for complete information and copies of the plan.

St. Johns River Water Management District Plan addresses road projects in DOT districts 1, 2, 4 and 5, with an estimated total of 40 acres of wetland impacts. The road impacts were grouped in accordance with geographic location and type of wetlands; the mitigation proposals were developed to reflect that organization of eight groups. Mitigation proposals include restoration/enhancement at Paynes Prairie and district-owned lands and acquisition/enhancement of private lands. The governing board granted preliminary approval of the plan on December 11, 1996. Contact Ken John for complete information and copies of the plan.

The three year plan is summarized on the spreadsheet that follows. The mitigation for these impacts will be conducted on both public lands and privately owned lands. For those mitigation works where the land ownership is known, about 71% of the impact acres will be offset on public lands and 29% of the impact acres will be offset on private lands. The private lands designation is used both for acquisition of private lands and the purchase of mitigation bank credits where the bank is on private lands. Under the current plan, the land ownership of the potential mitigation banks is not defined.

The types of mitigation can be roughly split into two categories: acquisition and restoration/enhancement. All of the mitigation bank credits and aquatic plant control work are considered restoration/enhancement. The acquisitions also include some level of restoration and/or enhancement, but the primary costs and benefits are associated with the acquisition and preservation of those lands. Approximately 79% of the wetland impacts will be offset through restoration/enhancement and 21% through acquisition.

3 year summary

DOT	Total Acres Impact	Total Mitigation Cost	Mitigation Acres
District 1	63.76	1,697,938.00	302.11
District 2	63.9	4,363,826.00	2698.01
District 3	42.5	2,700,000.00	172.1
District 4	4.5	248,000.00	28.5
District 5	4.6	178,000.00	14.8
District 6	0	0	0
District 7	18.15	616,260.00	85.67
Tumpike	2.65	13,300.00	0.38
Total	200.06 (164 with mit.\$,ac.)	\$9,817,324.00	3,301.57

The total statewide costs for those mitigation proposals with reliable estimates at this time is \$9,817,324. This amount accounts for 164.39 acres of wetlands to be impacted and 3,301.57 acres to be acquired/ restored/enhanced. For this analysis, the proposed purchase of 3.08 mitigation bank credits will be counted as 3.08 acres, as each credit is functionally equivalent to full restoration or creation of an acre of herbaceous wetland that is similar to the impact wetlands.

The cost per acre of land acquired/restored/enhanced (mitigation) =
 $\$9,817,324 / 3,301.57 \text{ acres} = \$2,973 \text{ per mitigation acre}$

The cost per acre of impact = $\$9,817,324 / 164.39 \text{ acres} = \$59,719 \text{ per impact acre}$

EXHIBIT 2
1997-98 SUMMARY

DOT wpi	Date	Fluccs	Acres	Total ac.	Mitigation #	Cost est.	Mit. Type	Land Owner	Mit. acres
1147946	Oct-97	617 641	9.67 6.25	15.92	SW01	\$1,121,184.00	ENH	PRIVATE	47.91
7116024	97-98	640	0.9	0.9	SW01	\$67,180.00	ENH	PRIVATE	2.87
2126819	12/1/98	630	3.7	3.7	SJ10	\$343,750.00	PUR/REST	PRIVATE	127.8
2118128	4/1/99	630 642	3.5	3.5	SJ01	\$313,432.00	PRES	PRIVATE	208.9
2118148	4/1/99	642	2	2	SJ08	\$100,000.00	REST	PUBLIC	40
2114723	12/1/99	642	3	3	SJ08	\$150,000.00	REST/ENH	PUBLIC	60
2117089	none yet	621,630	23	23	SR03	\$1,500,000.00	PUR/REST REST	PRIVATE PUBLIC	1500 40
TOTAL			52.02	52.02		\$3,595,546.00			2027.48

For the 1997-98 fiscal year, only a subset of the total plan is requested to be funded. This amount is necessary to mitigate for road projects anticipated to begin during that time frame and to fund up-front mitigation for projects in future years.

The cost per impact acre = $\$3,595,546 / 52.02$ acres of road impact = \$69,118 per impact acre

The cost per acre of land acquired/restored/enhanced (mitigation) = $\$3,595,546 / 2,027.48$ acres = \$1,773 per mitigation acre