

SEMINOLE TRIBE OF FLORIDA

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Dr. Gretchen Ehlinger
U.S. Army Corps of Engineers
P.O. Box 4970

Jacksonville, Florida 32232-0019

Submitted electronically to: OkeechobeeWatershedRestoration@usace.army.mil

RE: Seminole Tribe Comments Regarding the Lake Okeechobee Watershed Restoration Project's Revised Draft Integrated Project Implementation Report and Environmental Impact Statement

Dear Dr. Ehlinger:

The Seminole Tribe of Florida ("Seminole Tribe") is in receipt of the United States Army Corps of Engineers' ("USACE") Revised Draft Integrated Project Implementation Report and Environmental Impact Statement ("Revised Draft PIR/EIS") for the Lake Okeechobee Watershed Restoration Project ("LOWRP"). While the USACE has addressed some of the Seminole Tribe's concerns from the initial Draft PIR/EIS, many of the Tribe's most important concerns remain unresolved. The Optimized Tentatively Selected Plan ("Optimized TSP") remains a threat to the Brighton Seminole Indian Reservation ("Brighton Reservation") and its natural resources, and therefore the Seminole Tribe will not support any plan that has the potential to put its community at risk of flooding, to impact its cultural resources, or to impact its ability to access Lake Okeechobee water during times of drought for both the Brighton and Big Cypress Reservations. Based on a detailed review of the supplied information and with a deep understanding of the region, the Tribe concludes that the Optimized TSP should not be authorized and efforts should be made to return to a more detailed planning stage that broadens the array of alternatives for review, supported by studies and science at levels of detail sufficient to properly evaluate alternative plans.

"BUT I HAVE PROMISES TO KEEP & MILES TO GO BEFORE I SLEEP"



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The Seminole Tribe values the government-to-government relationship as established by Executive Order and the USACE's own Tribal Consultation Policy. The Seminole Tribe understands that the USACE is required to fulfill the requirements of numerous legal authorities in addition to its trust obligation to the Seminole Tribe. However, we want to ensure that the Seminole Tribe's interests have been heard and fully considered. Accordingly, the Seminole Tribe provides the following comments and objections to the Revised Draft PIR/EIS and, in particular, describes the potential for negative impacts of the Optimized TSP to the Brighton Reservation.

I. National Environmental Policy Act Alternatives Concerns

The National Environmental Policy Act ("NEPA") was created to ensure that federal agencies assess the environmental impacts of, and alternatives to, major federal actions significantly affecting the environment prior to making their decisions. NEPA's purpose is to foster action that protects, restores and enhances our environment by providing public officials with relevant information that allows a "hard look" at the potential environmental consequences of a project. In doing so, federal agencies are required to systematically assess the environmental impacts of their proposed actions and consider alternative ways of accomplishing their missions, which are less damaging to and protective of the environment.

The USACE initially identified Alternative 1BW as the TSP and the least-cost plan that reasonably maximizes environmental benefits. As a result of comments received in response to the July 2018 draft PIR/EIS on LOWRP, the USACE issued a Revised Draft PIR/EIS that includes an Optimized TSP which purports to greatly reduce many of the concerns raised by the Seminole Tribe about the potential effects to Native Americans; however, after reviewing the Revised Draft PIR/EIS, the Seminole Tribe disagrees with the USACE's conclusions and objects to the Optimized TSP. While the Seminole Tribe has consistently urged the USACE to eliminate Alternative 1BW from plan consideration throughout the LOWRP planning process, the USACE has chosen instead to simply modify its preferred alternative.

In its attempts to justify the selection of Alternative 1BW, the USACE continues to imply that the Seminole Tribe was fully involved in the initial screening of the LOWRP planning alternatives; however, the Seminole Tribe maintains that it was not a part of the initial screening process, and the Tribe's concerns regarding the location of large water storage features in close proximity to the Brighton Reservation were not considered at the outset. The location and design of the Wetland Attenuation Feature ("WAF") in the Alternative 1BW, continues to cause great concern to the Seminole Tribe and its people living on the Brighton Reservation due to the potential for flooding, the potential impacts to cultural resources of importance to the Tribal Members, and the potential for dispersal of threatened and endangered species due to land use changes in correlation with the TSP, amongst other things.



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The Seminole Tribe learned that the USACE and the South Florida Water Management District (“SFWMD”) worked together for several months prior to the July 25, 2016 kick-off charrette in a “pre-screening” process in which a number of alternative plans and features that the Seminole Tribe would have favored were eliminated from further consideration. In fact, Figure 3-2 of the Revised Draft PIR/EIS shows a number of potential reservoir sites that were screened out *before* the Seminole Tribe was engaged by the USACE in this planning effort. As a result, the Seminole Tribe was left to select amongst a variety of alternatives which posed significant risks to the health and safety of our Tribal Members and to the land and water of the Brighton Reservation.

The NEPA process is intended to identify and evaluate alternatives in an impartial manner; however, the Seminole Tribe does not believe that the alternatives in the LOWRP were assessed equally. While the USACE “heard” the Seminole Tribe’s concerns in regards to the screening of water storage management measures, it is clear that the USACE did not fairly evaluate the Tribe’s acceptability considerations in regards to the selection of the Optimized TSP. For example, when the Seminole Tribe engaged the USACE and the SFWMD to make plan formulation improvements to another reservoir alternative, the poorly formulated Alternative 2C (K-42), the USACE and the SFWMD made great strides to improve Alternative 1BW to edge-out the Tribe’s preferred alternative by subsequently scaling it down. Additionally, Alternative 1BW included the added benefit of reservoir-assisted ASRs in order to reduce costs and improve performance. Ecosystem benefits are greatly increased or decreased by inclusion (or not) of ASR as well as overall operation. These refinements assured that Alternative 1BW would edge out Alternative 2C in performance. No similar modifications were made to Alternative 2C. This in turn set up an unfair comparison between the two alternatives, affecting the success criteria of each alternative and greatly rewarding the modified Alternative 1BW. In NEPA planning protocol, it is not appropriate to continue to optimize the preferred alternative and not propose similar refinements for the other alternatives.

The USACE has also justified its selection of Alternative 1BW by stating that the Optimized TSP proposes a shallow WAF rather than a deep reservoir, which reduces overall dam safety concerns and seepage losses. The Optimized TSP, however, is a significantly different project than the alternative plan that competed with Alternative 2C. Alternative 1BW initially included a deep reservoir. As a result of dam safety concerns, the reservoir was later reduced in depth making it a much lower performing yet high cost reservoir. Alternative 2C, however, did not have the same dam safety concerns as it was proposed to be located farther away from populated areas.

Additionally, the USACE contends that the Optimized TSP co-locates ASR with the WAF and provides synergistic attributes improving flexibility and maximizing ecological performance for the northern estuaries while minimizing the need for additional infrastructure. The USACE further states that this saves capital construction costs and long-term operations and



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maintenance requirements. In regards to Alternative 2Cr1, however, the USACE argues that it would not allow for co-location of the K-42 reservoir site and ASR wells because this would cause adverse impacts to existing water users, there is a lack of geotechnical data in the area to the depth that would be required, and there is a greater potential for impacts to Florida wells north of Alternative 2Cr. In reaching this conclusion, however, the USACE failed to conduct any analysis of the impact. Instead, the USACE simply looked at the SFWMD's database and assumed above-ground reservoir-assisted wells would be a problem. Therefore, instead of considering engineering solutions to the alleged problem, the USACE has chosen to yield to the political pressures of the day.

Despite Alternative 2Cr being shown as the "best buy" plan and providing more overall benefits to Lake Okeechobee than the Optimized TSP, the USACE argues that the cost of Alternative 2Cr is nearly \$400M more, and provides less overall estuary benefits². Ecological differences between Alternative 2Cr and the other alternatives would be shown, however, if Alternative 2Cr had the benefit of the additional planning that went into refining Alternative 1BW, especially in terms of ASR features, size refinements, operations, and a willingness to fairly consider acceptability for both alternative plans. Notably, the USACE abandoned the cost in dollars per acre-foot of water storage metric when K-05 WAF in the Optimized TSP was significantly downsized. The cost per acre foot of storage in the Optimized TSP WAF is many times greater than the original K-05 or K-42. In fact, the cost per acre foot for the WAF exceeds \$20,000/acre-foot. The extremely poor cost-effectiveness of the WAF/K-05 should have disqualified Alternative 1BW or at least the WAF feature from further consideration. However, it is clear that the high cost per unit of storage of the TSP was offset by it having additional ASR wells while the low cost per unit of storage for K-42 was not considered.

The SMART Planning process currently utilized by the USACE works at odds with the ability of the USACE to address many of the Seminole Tribe's concerns. While intending to improve and streamline feasibility studies, reduce costs, and expedite completion, the SMART Planning process has resulted in no traditional analysis for feasibility level design for the TSP, no detailed flood routing and dam safety information, and little to no cultural resource and habitat surveys for LOWRP. As previously stated by the Independent External Peer Review ("IEPR") in the *Final Independent External Peer Review Report Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Lake Okeechobee Water Shed Restoration Project*, the "information used to date does not rise to the level of a conceptual design or feasibility assessment that would allow for a proper assessment of the adequacy and acceptability of the methods and analyses used."

¹ Alternative 2C was later changed to Alternative 2Cr to reflect later optimizations by the USACE.

² The interagency Restoration Coordination and Verification team ("RECOVER") evaluated the Lake Okeechobee Watershed Restoration Project and found that Alternative 2Cr performs the best from an ecological and hydrological standpoint.



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Given the scope of the Project, and the potential impacts to the Seminole Tribe, the Tribe believes more time is needed for the LOWRP study. The Tribe believes it is unacceptable to move ahead on a proposal for which limited information prevents meaningful analysis of alternatives, impacts or the means to mitigate impacts. This approach undermines the integrity of the entire LOWRP effort and fails to accurately account for any alleged benefits, harms or costs associated with the Project.

II. Flood and/or Seepage Impacts

As noted in prior comments, the TSP's proximity to the Brighton Reservation continues to cause great concern to the Seminole Tribe due to the potential for seepage impacts and flood risks associated with the WAF (K-05 Reservoir). Design Engineering Regulation ER 1110-2-1150 states that for feasibility-level designs "[e]ngineering data and analyses in the feasibility phase shall be sufficient to develop the complete project schedule and baseline cost estimate with reasonable contingency factors for each cost item or group of cost items." The Revised Draft PIR/EIS, however, acknowledges that limited geotechnical data is available and detailed flood routing studies have not been done and will not be done until after project authorization as part of the Planning, Engineering and Design ("PED") phase. Despite this acknowledgment, the USACE has concluded that the implementation of any of the alternatives will not degrade the existing level of flood protection, and that "the incremental life loss risk is within the tolerable limits." These findings are unacceptable to the Seminole Tribe.

The Seminole Tribe contends that the level of design of project features is insufficient for important analyses to be properly performed on LOWRP. The Seminole Tribe is disappointed that the USACE has resisted performing any dam safety or seepage analyses and has instead chosen to perform a qualitative, instead of a quantitative, risk assessment between the initial Draft PIR/EIS and the Revised Draft PIR/EIS. Qualitative risk assessments are subjective. They evaluate and document the probability and the impact of potential project risks against a pre-defined scale. They are carried out by individuals participating in a project based on their personal perceptions of the risk likelihood and consequences. While, on the other hand, a quantitative risk analysis numerically evaluates the effect of potential project targets. It is focused on creating realistic time and cost targets and calculating the probability of achieving project objectives. Given the Seminole Tribe's increasing concerns about the potential for adverse impacts to its water rights, Tribal lands, environmental resources resulting



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from the possible implementation of this Project, the Tribe requests that more thorough analyses be done.

In the USACE's discussion of the qualitative risk assessment in the Revised Draft PIR/EIS, the USACE has asserted that there will be no flooding of the Seminole Tribe Brighton Reservation in the unlikely event of a breach, and no incremental life loss risk. This statement, however, is inconsistent with information presented by the USACE to the Seminole Tribe on April 30, 2019, in which the USACE stated that a breach could cause flooding on the Brighton Reservation of 0 to 2 feet of water depth for a "sunny day" breach and 0.1 to 3 feet for a probable maximum precipitation (PMP) event. Nor is the USACE's comment consistent with its response to the Seminole Tribe's NEPA scoping comments, in which the USACE characterizes flooding as a result of a breach on the Brighton Reservation as "little flooding." Flooding most severely threatens people who are elderly, disabled, immobile, or very young (i.e., people who lack the mobility to escape flooding). Sudden flooding of the Brighton Reservation, with 2 to 3 ft. of water from a breach, could very well pose a life loss risk to those most vulnerable. Additionally, future generations might live closer to the WAF, where life loss risk from a breach is the greatest. The USACE, however, failed to consider future land use patterns in its breach analysis.

Therefore, the USACE's characterization of breach-related risk on the Brighton as "no incremental life loss risk" is, at best, unsupported and questionable, and, at worst, is completely wrong. Despite the numerous consultations that the Seminole Tribe has had with the USACE regarding its dam safety concerns, it is clear that the USACE does not care about or respect the Tribe's sovereignty with regard to how the Tribe views the risks it would be subjected to by the Optimized TSP. Instead of addressing the Seminole Tribe's concerns in the Draft Revised PIR/EIS, the USACE simply directs the Seminole Tribe's attention to ER 1110-2-1156, wherein the USACE defines tolerable risk limits, and further directs the Seminole Tribe to the Engineering Appendix, which purports to describe in detail how dam safety risks were assessed and how tolerable risk limits were defined for this study. While Engineering Manual ER 1110-2-1156 provides general guidance in regards to tolerable risk limits, it does not tell the engineer exactly how to assess every detail in a risk assessment for a particular project. For example, ER 1110-2-1156 does not tell the engineer how much risk exists when up to 2 ft. of water suddenly floods the Brighton Reservation. Hence, the Seminole Tribe maintains that it has a right to be involved in defining acceptable risk, including details beyond the scope of the general guidance provided in ER110-2-1156. The Seminole Tribe is very concerned that



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the USACE has mischaracterized breach-related risks as “no incremental life loss risk” without accounting for the Seminole Tribe’s input.

There are similar reservoir projects surrounding Brighton Reservation, including Thistle Pen Pond, Brighton Valley, Nicodemus Slough and West Waterhole Marsh, and the incremental addition of the Optimized TSP will create a higher risk to the Tribe. Instead of effectively communicating about the risks that informed the decision-making process, the USACE has chosen to dictate the risk to the Tribe. The Tribe does not ascribe to the USACE’s standards for acceptable risk. The risk of dam failure associated with the TSP is an added risk to everyday life on the Brighton Reservation that increases the risk profile of Tribal Members to an unacceptable degree. Unlike other landowners in the area, the Seminole Tribe does not have the luxury of selling the property and moving if it determines the risk is too high. As a federally designated Indian Reservation, the Seminole Tribe is on these lands in perpetuity. This creates a unique set of risks not shared by the population in general.

The Revised Draft PIR/EIS fails to provide an explanation or information on the assumptions that went into determining that “the incremental life loss risk is within the tolerable limits,” as the qualitative risk assessment was not provided in the Revised Draft PIR/EIS. The failure to include the qualitative risk assessment makes it extremely difficult for the Seminole Tribe to judge the risk to the Brighton Reservation. The Seminole Tribe is therefore forced to rely upon a skeletal solution without any details and trust that harm will not come their way as a result of this Project. Without a detailed description of engineering risks, an explanation of how local residents were consulted in assessing the risks and how the conclusion was reached that the risks are within tolerable limits, along with an explanation of how risk informed the decision making process, the Seminole Tribe will continue to voice its objections to this Project.

Notwithstanding the Seminole Tribe’s previous comments objecting to the Optimized TSP, when considering the potential life loss risk posed by this Project, an ASR-only option is worth considering. Eliminating the WAF and replacing the lost water storage capacity with additional ASR wells would eliminate the incremental life loss risk entirely. The WAF stores 43,000 acre-feet of water. The 80 ASR wells have a storage capacity of 448,000 acre-feet per year, or 5,600 acre-feet per well. The installation of 8 additional ASR wells would provide 44,800 acre-feet of additional storage capacity, which is more capacity than the WAF. The cost of the WAF is approximately twice the cost of the 80 ASR wells. Thus, eliminating the WAF and constructing 8 additional ASR wells would not only maintain the desired water storage capacity and eliminate the life loss risk associated with the WAF, but it would also cut the total project cost by more than half, saving the taxpayers hundreds of millions of dollars.



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While the USACE maintains that it did consider an ASR-only option in the Engineering Appendix of the Revised Draft PIR/EIS, the USACE fails to provide any substantive detail of the analysis that was conducted by the USACE of this option, nor has this option ever been presented to the Seminole Tribe in any government-to-government consultation with the USACE. The ASR-only discussion, included in the Engineering Appendix of the Revised Draft PIR/EIS (one paragraph), only appears to compare the ASR-only option to “Existing Conditions Baseline” and “Future Without.” Additionally, the ASR-only discussion fails to state how many ASR wells were considered for the ASR-only configuration and fails to compare the ASR-only configuration to other alternative plans. The Seminole Tribe therefore urges the USACE to fully assess the ASR-only option in the spirit of exploring ways to truly minimize life loss risk to tribal members and members of the general public, as the design of the LOWRP should be focused on protecting public safety.

In reviewing the updated limited design aspects of the Project, the USACE has either failed to address, or did not adequately provide, a response to some of the Seminole Tribe’s concerns regarding near surface soils in the Optimized TSP WAF, soil cement armoring, and overtopping in the Revised Draft PIR/EIS. Namely, the USACE has stated that “[i]f, however, during PED, it is found that in addition to a vegetative cover some form of hard armoring (i.e. turf reinforcement mat) or soil amendment is needed, it will be added to the design of the embankment.” This response is inconsistent with the USACE response to the Seminole Tribe’s NEPA scoping comments (Comment 7), in which the USACE definitely states that a turf reinforcement mat will be used, without any contingencies. If there is a possibility that a turf reinforcement mat will not be used, then the USACE should explain the basis on which such a decision would be made (i.e., which tests would be performed and which methods of analysis or design would be used to support the decision). While a design with a turf reinforcement mat helps to protect turf from erosion in the short term, all geosynthetic materials, including turf reinforcement mats, are subject to deterioration over time. Therefore, the USACE should explain the design life of a turf reinforcement mat, the information that is available to demonstrate that the mat will be effective for many decades, the decision making process involved in using additional protective measures, and the methods of analysis and design, amongst other things.

The Seminole Tribe is also concerned that a sufficient vegetative cover will not be able to be maintained on the xeric soil conditions that are likely to prevail along the embankment of the WAF, and hard armoring could become problematic for maintenance. The prevention of erosion will depend on vigilant maintenance. The Tribe, however, is concerned that given recent shortfalls in funding of Operation & Maintenance of federal projects by the USACE, if these types of proposals will be funded.



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The USACE also failed to address the Seminole Tribe's concern that no proof has been provided to demonstrate that soil-cement will function effectively on this particular project. The Seminole Tribe is concerned that the USACE has not provided any information demonstrating successful, long-term performance of soil-cement armoring for projects similar in size, function, climate, environmental conditions, and function as the proposed WAF. Instead, the USACE has broadly stated that "[t]here has been much research and many successful projects using soil-cement for erosion protection going back decades. There are projects 60 years old in which the soil-cement is still functional for its intended use." While it is true that soil-cement has been used successfully for various projects for decades, the USACE has not demonstrated that it has been used successfully for this type of project in this type of environment. The environment in Florida is challenging because plants, burrowing animals, and insects all would tend to probe into the ground and weaken the soil-cement from the penetrations. Further armoring can sometimes be dry and submerged below water, creating cyclic wet-dry conditions. Due to the fact that the underlying fine sands are highly erodible, it is essential that the soil-cement function well for decades. Specific examples of long-term performance of soil-cement armoring under similar climatic and environmental conditions are necessary if the USACE is to argue credibly that demonstrated past performance is adequate to support the use of soil-cement for this particular project.

Lastly, the USACE has failed to adequately address the Seminole Tribe's overtopping concerns. The USACE states that "[a]n overtopping assessment was performed in general accordance with the Acceler8 Design Criteria Manual 2, Wind and Precipitation Design Criteria for Freeboard. Case 3; a 100-year wind combined with the Probable Maximum Precipitation for the location. This is an extreme rainfall event combined with an unlikely wind event." This broad-based response by the USACE has failed to ease the Seminole Tribe's concerns regarding risk of breaching caused by overtopping. While the embankment heights have been determined based on overtopping calculations, the embankments were not sized to resist overtopping for the most severe conceivable wind event, but instead were designed to resist overtopping for a storm with one-in-a-hundred probability of striking in any one year (i.e., the 100-year wind event). Characterization of the 100-year storm by the USACE as an "unlikely event" is not appropriate. The wind speed for the 100-year event is 102 mph. Such an event may be unlikely in any one year, but over a long period of time such an event is



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likely to occur at least once. Over a very long period of time, an even more intense storm is likely to occur at least once. This mischaracterization is especially significant given the fact that the embankment would be constructed of highly erodible fine sand and overtopping might wash away the sand and cause a breach. Thus, overtopping from an extreme event remains of great concern to the Seminole Tribe.

Given the USACE lack of consideration of failure modes and impact on safety, Alt 1Br should not have been allowed to move forward as the preferred alternative until flood risk studies could be done to show no risk to Seminole Tribe members, and other people living in the communities adjacent to the WAF.

III. Cultural Resource Impacts

While both the Seminole Tribe and Miccosukee Tribe of Indians of Florida object to the impacts to cultural sites, the USACE seems to largely ignore the positions of the two tribes. During the consultation process, the Seminole Tribe expressed concerns about the numerous unknowns regarding cultural resources within the area of potential effect, as the USACE cultural resource investigations for known archaeological sites have been limited to a literature search and records review. The Seminole Tribe's interests, however, are broader than just "historic properties," as defined under Section 106 of the National Historic Preservation Act. Although the boundaries of the Brighton Reservation are today noted as static lines on a map, for thousands of years these lines did not exist. According to the archaeological record, written documentation, and the Tribe's oral histories, ancestral populations continuously crossed through the various areas that are today delineated by private property boundaries surrounding our ancestral homeland. Many Seminole families intimately knew their landscape through generations of traditions that resulted in a cultural landscape made of camp locations, burial sites, resource clusters, trading sites and more. Therefore, the Seminole Tribe's interests include any culturally significant site, including burial sites. This is why the protection of the sacred ancestral landscape surrounding the Brighton Reservation is so important to the Tribe.

While the Revised Draft PIR/EIS continues to recognize that there is a high potential for burial resources within the TSP footprint, the Revised Draft PIR/EIS acknowledges that few of the cultural resource surveys have focused on the area of the proposed alternatives. The Seminole Tribe suspects that there are likely other unrecorded sites within the overall footprint that have not yet been identified. Of particular concern is the Mulberry Mound Site (8GL77), which has a high potential for containing burial resources, and is located within the TSP footprint. *See Exhibit A*, a map identifying the Mulberry Mound Site that the Seminole Tribe requests be avoided by USACE planning. The USACE has also



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identified two other cultural sites (8GL494 and 8GL495) within the Alternative 1BW footprint which may be impacted by the Optimized TSP. The Seminole Tribe opposes any impacts to sites that contain burial resources. The Seminole Tribe continues to maintain that the Optimized TSP should be modified to avoid the Mulberry Mound site, along with 8GL493 and 8GL495. The Seminole Tribe's Tribal Historic Preservation Office ("THPO") has presented to the USACE two possible alternatives to the Alternative 1BW TSP footprint that would avoid the Mulberry Mound site. These sites, especially the burial sites, hold significant cultural/religious importance to the Seminole Tribe. The tree island landscape, which usually host these sites, form the fabric of the Seminole Tribe's cultural identity. The Seminole Tribe respectfully requests that the Mulberry Mound site, as well as other sites with potential burials, be avoided.

Despite Alternative 1BW being identified as having a higher probability to contain additional historic properties/cultural resources within the WAF than any of the other alternatives, Alternative 1BW has been selected as the LOWRP TSP. The USACE has acknowledged that the impacts to cultural resources appear higher in Alternative 1BW compared to the other alternatives due to the presence of tree islands on nearby Brighton Reservation. Particularly alarming is the fact that there is a potential for flooding to the eastern portion of the reservation as a result of overtopping or a dyke breach. Such an event would place a great many burial sites underwater. The THPO has worked with many community members who have loved ones that were laid to rest in the tree islands and other features along the eastern boundary of the reservation. The Seminole Tribe has also recorded a number of pre-contact burials in this area. Any impact to these sites would cause great distress to the community. Therefore, although some of the sites on the Reservation, which might be subjected to flooding, may not be in the area of potential effect, the Seminole Tribe requests that the USACE address these impacts through the Burial Resources Agreement.

The Seminole Tribe is concerned that the USACE has selected Alternative 1BW as its TSP without the benefit of an archaeological survey to determine the significance of additional cultural resource sites. The cost estimate for surveying and avoiding unknown sites is significant and has not been included in the cost benefit analysis for the Project alternative. The Seminole Tribe believes that had there been sufficient time and funding to perform the required analysis that these issues would have affected the feasibility of Alternative 1BW and its selection as the TSP.



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In order to prevent impacts to cultural resources, it is critical that the USACE also complete a comprehensive ethnographic survey as part of the USACE overall planning efforts in order to identify those areas that need protection from human disturbance before moving forward with the LOWRP. It is equally important that all the necessary surveys are conducted before the final design and implementation of the LOWRP in order to assess and avoid any potential impacts to cultural resources. THPO should be consulted and allowed to comment on any Phase II proposal, methodologies that might be developed, and on any corresponding scope of work/work performance standards. It should be noted, however, that THPO has not agreed to the necessity of Phase II investigations on any specific site.

IV. Water Rights Impacts

The Seminole Tribe's water rights have been formalized in The Water Rights Compact of 1987, and ratified by both the United States Congress and the Florida Legislature. The Compact sets forth specific surface water entitlements to the Seminole Tribe for both the Brighton and Big Cypress Reservations. As noted in prior comments to the USACE, the Seminole Tribe remains concerned about impacts to the delivery of the water rights entitlement during drought to both the Brighton and Big Cypress Reservations.

The Revised Draft PIR/EIS concludes that there will be no elimination or transfer of existing legal sources of water for the Seminole Tribe as a result of LOWRP and that there will be an improvement of overall water supply conditions to the Seminole Tribe and other Lake Okeechobee water users; however, the Seminole Tribe believes that the analysis is flawed. Lake Okeechobee is the back-up water supply for both the Brighton and Big Cypress Reservations, especially in drought conditions. The LOWRP diverts water to wetland attenuation features, wetland restoration features and ASR wells prior to entering Lake Okeechobee with the primary goal to reduce discharges to the estuaries from the Lake, with an additional goal to supplement the Lake with water when conditions are dry in order to benefit the Lake. STOF believes the total inflow to Lake Okeechobee that would result from this project would result in a long-term decrease in overall Lake Okeechobee inflows thereby negatively impacting the Tribe's water rights. Whether the timing is improved is dependent on how effectively ASR may work and how this Project and Lake Okeechobee may be operated in the future.

Additionally, the analysis for the amount of storage needed north of the Lake is based on the assumption that the current Interim 2008 Lake Okeechobee Regulation Schedule will still be in place at time of project operation. However,



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the LORS is an interim schedule which significantly reduced the storage capacity of the Lake, and in turn reduced the Seminole Tribe's access to Lake Okeechobee water during times of drought for both the Brighton and Big Cypress Reservations. LOWRP, as modeled, shows an improvement to the Tribe, but not as compared to the quantity of water it had available in 2000 when the Savings Clause was made law. In addition, due to a reliance on the interim LORS as the assumed Schedule for project operations many of the proposed benefits of the Project may not have been as great, or even needed, if and when LORS is updated to take advantage of the benefit of the improvements to the Herbert Hoover Dike.

V. Displaced Endangered and Threatened Species Impacts

The Seminole Tribe remains concerned that the proposed land use changes in the LOWRP, particularly the WAF footprint, will result in habitat loss of threatened and endangered species, such as the northern crested caracara, surrounding the Brighton Reservation and ultimately displacement of these species onto Tribal lands. The U.S. Fish and Wildlife Service ("the Service") Draft Fish and Wildlife Coordination Act Report, included in the Draft Revised PIR/EIS, reiterated this concern, indicating that within the WAF conversion to wetland-type habitat is likely to force upland species to move off the site (e.g. sandhill cranes, crested caracaras, eastern indigo snakes). However, the assessment of displacement of these species remains lacking from the analysis completed thus far. The USACE fails to explain how the displacement of listed species will be mitigated for, and the type of evaluation that will be completed by the Service to properly identify the impacts to the Tribe.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act clarifies the responsibilities of agencies, bureaus and offices of the Department of the Interior and the Department of Commerce when actions taken under authority of the Endangered Species Act and associated implementing regulations affect, or may affect Indian Lands, tribal trust resources, or the exercise of American Indian Tribal rights. Secretarial Order 3206 is intended to ensure Indian Tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation. In reviewing the Revised Draft PIR/EIS, the USACE acknowledges that known caracara gathering areas and foraging habitats exist within the WAF, and that approximately 13,913 acres of



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potential habitat for the northern caracara will be removed by the Project. However, the Revised Draft PIR/EIS concludes that it is unlikely that any displaced caracaras will successfully nest on the Brighton Reservation unless it displaces a current pair or new caracara habitat is created. The USACE further states that unless the existing Northern crested caracara allow their territories to be reduced in size, the tribal lands are currently at carrying capacity for this species. The Seminole Tribe believes the analysis by the USACE is flawed. Instead of completing an appropriate assessment on the behavioral responses to caracaras within the Brighton Reservation, the USACE has simply provided a seemingly blanket statement from the Service that all territories are full.

The Revised Draft PIR/EIS also identifies the potential for impacts to the Eastern Indigo Snake, Florida Bonneted Bat and the Florida Panther. While the USACE has stated that a Programmatic Biological Opinion with the Seminole Tribe addresses how threatened and endangered species are treated on Tribal lands, as well as Biological Opinions for specific action on the Brighton Reservation, these Biological Opinions do not take into consideration future external projects (such as LOWRP). Take associated with external future projects should not be used for the Tribe's mitigation. Therefore, the Seminole Tribe is concerned that these species impacts could have the potential to disproportionately impact Tribal lands due to the loss of habitat.

Due to the expedited timing of the Project, costs and access issues, the planning process has not allowed for sufficient surveys to fully understand the scope of impacts to threatened and endangered species within the LOWRP footprint. Hence, the LOWRP could potentially result in a disproportionate burden on the Seminole Tribe for additional conservation measures associated with these displaced, endangered and threatened species, and possible restrictions on the use of Tribal lands. As the Service's Biological Opinion is not yet complete, and will not be until after comments are due on the Revised Draft PIR/EIS, the Seminole Tribe is requesting a copy of any updated Biological Opinion prior to finalization of the Final PIR/EIS.

VI. Aquifer Storage and Recovery Wells

In reviewing the Revised Draft PIR/EIS, the Seminole Tribe remains concerned with the extensive use of ASR wells that are being proposed for implementation under the TSP (total of



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80 wells). The ASR Regional Study team, the ASR Pilot Studies and the National Academy of Sciences, U.S. Geological Services (USGS), and the Florida Fish and Wildlife Conservation Commission have identified a number of issues with ASR wells, including potential impacts from clustering of wells, the impacts to ecology, water quality in the underlying aquifer and in the water when it comes back up for use in the Everglades surface water system. While the Seminole Tribe recognizes that ASR technology could be very beneficial to Everglades restoration, ASR wells, at the scale proposed, are a new technology with limited information regarding their use, effectiveness, and impacts. Due to concerns about the impact of ASR well clusters on the quality of the underlying aquifer, and the quality of the water when it is returned to surface water systems for the Everglades, the Seminole Tribe prefers that the ASR wells and well clusters are located as far away from reservation lands as possible so as not to affect their groundwater resources.

The Seminole Tribe was disappointed to see in the Revised Draft PIR/EIS that the USACE continues to remain silent on committing to the National Academy's recommendations for testing of ASR wells. Instead, the USACE states that "[p]ilot testing along the Kissimmee River and the Hillsboro Canal, along with current projects, show proof of concept. ASR wells could be moved based on testing of individual well locations." The Seminole Tribe, however, stands behind its original comment. Short-term pilot testing or relocation of a well to a different location does not address risk of long-term clogging or reduction of storage capacity over time. Further, the intentions to treat (for water quality concerns) water injected or recovered from ASR wells have not been made clear. The National Academy of Science ("NAS") has recommended testing of ASR wells with respect to chemical and biological water quality with a scaled, quarantined test of multiple years before proceeding with large scale implementation of ASR. The Seminole Tribe agrees with NAS, and is concerned that treatment of such large quantities of water (not per well, but for 80+ wells) will be fraught with practical and cost issues that will make this not possible. These National Academy recommendations are critical, especially that the water recovered will be discharged/released into natural surface water bodies where environmental concerns of contamination are paramount.

The pumping of surface water into ASRs also has the potential to severely impact aquatic resources within the Lake Okeechobee Watershed. The overall impacts to the aquatic resources, due to fishery impingement and entrainment, are currently unknown and have the potential to adversely affect aquatic resource population dynamics including Tribal trust resources. Additionally, temperature and dissolved oxygen changes during ASR well discharge events could cause detrimental effects to fisheries. Adverse impacts to wildlife and human health may be further compromised by the potential production of methylmercury from increased sulfate loads, thereby decreasing the overall water quality. The relationship between sulfate loading and methylmercury production was analyzed in the USGS Scientific Investigation Report 2007-5240 *An Assessment of Potential Effects of Aquifer Storage and Recovery on Mercury Cycling in South Florida*. The results of the study concluded that sulfate added from the release of recovered ASR water can contribute to additional methylmercury formation within the receiving waters. The Seminole Tribe is concerned that the USACE finds it acceptable



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to cause a buildup of methylmercury, as the WAF is touted for its wetland benefits. It is expected that many animal species will use the WAF, which could not only lead to bioaccumulation within the aquatic food chain, leading to adverse effects on the Tribe and its members who continue to exercise their customary and traditional hunting, fishing, trapping and frogging rights on millions of acres of lands and waters across South and Central Florida.

Of paramount concern to the Seminole Tribe is the effect of ASR wells on the Tribe's water supply. The 2014 Regional Ecological Risk Assessment of CERP Aquifer Storage and Recovery Implementation in South Florida has looked at the intermittent chronic toxicity within ASR discharge waters. Based on current ASR standards, in order to reduce the level of chronic toxicity sufficient dilution, water must be available within a mixing zone. The Seminole Tribe has concerns that the quantity of dilution water required for discharge may not be available when operation of ASR wells for water supply is most critical during drought and the dry season. Furthermore, ASR is a relatively new water resource technology that has not been previously installed on such a scale that is proposed under LOWRP. Further analysis of the proposed impacts associated with the use of ASR, for both restoration and water supply purposes, is required to ensure detrimental effects to aquatic resources do not result as a component of this Project.

While the USACE contends that an Underground Injection Control permit for an ASR system requires no impacts to adjacent users, permit requirements, especially in their early incarnations are not imperfect and are not always sufficient to guarantee no harm occurs. Permit requirements typically evolve as a result of experience and "lessons learned" from harm that occurs. Since ASR has never been used in this way (stormwater returned to surface waters) and at this scale (multiple clusters of wells) the Seminole Tribe does not want to be victim of a regulatory learning process that is in its infancy and may result in unintended consequences. This is why NAS's recommendations, which are part of the work of the Task Force which is overseeing CERP, must be followed to avoid harm that could result from an immature regulatory process.

As previously stated, notwithstanding the Seminole Tribe's objections to the Optimized TSP, and the Tribe's concerns regarding the use of ASR wells in the Project areas on this large scale, the Seminole Tribe is concerned that the USACE did not give more serious consideration to an alternative that eliminates the WAF and the life loss risks associated with the WAF, while making up for the lost storage capacity with the addition of a few more ASR wells. If the K-05 WAF was eliminated from the Optimized TSP, the cost of the nearly \$2B project could be reduced by at least half, and the plans' performance would be only slightly reduced. In the Revised Draft PIR/EIS, the USACE argues that the ASR-only configuration provides slightly lower habitat unit benefits to Lake Okeechobee than existing conditions, and for this reason, was not



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considered further. This very brief explanation of the ASR-only option leaves the Seminole Tribe with more questions than answers such as the significance of the subtle habitat units benefits, the margin of error in estimates of habitat units, the value assigned to the habitat units relative to the large cost of the WAF, and of most importance, why the ASR-only option was not discussed with the Seminole Tribe in government-to-government consultations or Project Delivery Team meetings.

An ASR-only Alternative is not only attractive in terms of minimizing life-loss risk and other negative impacts to the Seminole Tribe, but it also reduces the cost of the Project by more than half. While the USACE has concluded that an ASR-only option is not feasible, a SFWMD Project Manager for this Project has confirmed that the ASR component of this Project can be independent of WAF. Therefore, the Seminole Tribe requests that a thorough analysis of the ASR-only Alternative be undertaken by the USACE, considered in this planning effort, and discussed with the Seminole Tribe.

Lastly, based on the Seminole Tribe's review, including what was presented at the July 11, 2019, SFWMD Governing Board Meeting, the ASR studies conducted to date are incomplete. The Seminole Tribe recommends that NAS review the ASR studies to determine if there are gaps and identify further studies needed. Additionally, in keeping with one of the SFWMD Governing Board Members, the Seminole Tribe requests that the USACE and the SFWMD complete the recommended studies on the existing ASR well on the Kissimmee River, and establish an ASR Task Team or Working Group to analyze potential ASR impacts.

VII. Environmental Justice Concerns

The Seminole Tribe remains concerned about the USACE's compliance with Executive Order 12898 ("EO") and the CERP Guidance Memorandum 24 ("GM") regarding Environmental Justice in Everglades Restoration Planning for LOWRP. The Seminole Tribe disagrees with the USACE Environmental Justice analysis which concludes that no disproportionately high and adverse impacts or benefits are impaired upon the STOF and/or lower income communities. Not only does the Tribe not derive any benefits from this Project, but it bears most of the risk, creating adverse environmental justice concerns.

The Council on Environmental Quality, as the lead federal agency for ensuring government compliance with Executive Order 12898, adopted *Environmental Justice Guidance Under the National Environmental Protection Act* ("EJ Guidance") to provide advice to agencies about how they should implement the Executive Order. The EJ Guidance lists six (6) principles to assist agencies in identifying whether an agency action raises environmental justice issues, namely, consideration of the composition of the affected area, public health and industry data, including the historical patterns of exposure to environmental hazards, and



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interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action. Likewise, the CERP Guidance lays out screening measures to be used to avoid siting project features such as reservoirs or stormwater treatment areas in such a way to divide or otherwise create high and adverse effects. Pursuant to the CERP Guidance, alternatives with unacceptably adverse environmental consequences (including adverse environmental justice consequences) should be eliminated or modified.

The location of the Brighton Reservation is not optional, it is a part of the ancestral homeland of the Tribe, narrowed and constricted into a reservation by the federal government. This Reservation is already impacted by its location to other federal projects and/or federally operated systems such as the Central and Southern Florida Flood Control Project, the Herbert Hoover Dike project, the Kissimmee River and Lake Istokpoga. The USACE was unwilling to consider the Tribe's environmental justice concerns at a level equivalent to the State's preference to site the Project without buying additional lands, so as not to take lands out of tax rolls in the area. While this is an important goal for the State, the Tribe believes that the health, safety and environment of the Tribal members that live on the Brighton Reservation should have been given as much importance in the screening of alternatives.

The USACE has instead offered a bare-bones conclusion that the Seminole Tribe would not be disproportionately harmed by the LOWRP, and the Alternative 1BW in particular. This conclusion stems from the fact that the USACE failed to take a hard look at the environmental justice considerations. In part, this is due to the lack of information that the USACE has in its possession. The Draft PIR/EIS recognizes that additional investigations will be needed to identify archaeological sites within areas that have not been surveyed. Additionally, formal dam safety risk assessments have not been performed to determine what type of effect the LOWRP would have on the Seminole Tribe. Further, the USACE has not conducted the necessary surveys to determine the effect of listed species displacement to the Seminole Tribe's Brighton Reservation as a result of the LOWRP project. Without this critical information, the USACE is unable to make a convincing case that no disproportionately high and adverse impacts will be imparted upon the Seminole Tribe.



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The Seminole Tribe maintains that as a sovereign entity, it defines and assesses risks according to its views and perspectives and does not subscribe to the national standards set by the USACE or other agencies. The Seminole Tribe sees risks as additive and this reservoir adds to the risk profile of its members that reside on the Brighton Reservation, increasing their overall risks above that of other Tribal Members. Accordingly, the national scale of risk should be modified (and/or a coefficient applied) based on the total Seminole Tribe members that may be impacted from the proposed project (given the impact to the total population of the Seminole Tribal Members is significant when compared to the number of Seminole members...much higher than when compared to the national population).

The Seminole Tribe is committed to its lands inextricably and legally and cannot choose to move the Reservation or its people due to the risk of flooding from the Project. If this Project moves forward the Seminole Tribe, its lands, people and resources will be at greater risk culturally, socially and economically due to the location of the preferred alternative adjacent to the Brighton Reservation. This alternative should have been screened out due to the unacceptable adverse environmental justice consequences to the Seminole Tribe and others in this region.

VIII. Conclusion

In accordance with the USACE Tribal Consultation Policy, Executive Order 13175, and other related guidance documents, the USACE has certain trust responsibilities to the Seminole Tribe. This trust obligation requires that the USACE act in a fiduciary manner with regard to the Seminole Tribe's interests, which includes the consideration and protection of the Seminole Tribe's water rights, environmental, wildlife and cultural resources in your agency's decisions to the fullest extent possible. Despite the optimizations that have been made to Alternative 1BW, the Seminole Tribe believes that the Jacksonville USACE has not complied with these obligations and their own planning process policies. The Jacksonville USACE did not involve the Tribe in the development of this Project until after selection of the first set of alternatives. The Seminole Tribe was not asked to be involved in the screening of the original 20 sites under consideration, and notably, the USACE did not engage the Seminole Tribe in the vetting of the ASR-only option as discussed in the Revised Draft Engineering Appendix.

The Revised Draft PIR/EIS does not adequately or fully develop and evaluate several important configurations of Alternatives, measures, and



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features. For the Alternatives that the USACE did fully develop and evaluate, it applied evaluation criteria that placed a high value on publicly owned lands, which is not standard for civil works planning, and which biased the plan selection process. In turn, this greatly favored any plan that contained a reservoir within the K-05 footprint, the only site with a significant amount of public land. Notably, the only plan that contained a reservoir in the K-05 footprint is the TSP. The qualitative risks analysis has revealed, as the Tribe had maintained throughout consultation, that the Brighton Reservation will face serious risks if the WAF/K-05 reservoir is implemented and would be seriously impacted if its dam is ever breached. Additionally, building a reservoir on this site will violate the integrity of numerous cultural sites beyond what can be mitigated or is acceptable to the Tribe. This has validated the Tribe's insistence that the WAF/K-05 reservoir component be removed from the TSP.

As a CERP project, LOWRP will be guided by principles of adaptive management. The Tribe urges the USACE to take the time needed to complete research and apply peer-reviewed science to future planning and design, as well as to do the site surveys required to protect cultural resources and construct safe features. Given the lack of long-term experience with ASRs at this scale, the possibility of disappointing or gradually diminishing performance of ASR wells seems real. If the PED phase efforts do not yield robust solution to integrated WAF and ASR system operations, the Seminole Tribe fears that ASR will be installed anyway with an insufficient solution or the Project may be halted due to the lack of a solution. Federal funding could also be reduced, causing changes to critical safety design features. The Tribe is very much aware that repurposing is a possibility due to the proposed changes to the Central Everglades Planning Project to include the Everglades Agricultural Area Storage Reservoir. The Seminole Tribe is concerned that, since no back-up plan has been presented, expansion of the WAF might become the default back-up plan. Therefore, the Seminole Tribe seeks assurances that should the quantitative analysis of flood and seepage risk and environmental impact, as well as the findings of the cultural resource impacts does not support this Optimized TSP, then the USACE would be required to complete a new design. If, however, the recommended TSP is permitted to move forward, the Seminole Tribe recommends that binding language be included in the Chief's Report and Congressional authorization for LOWRP that prohibits the use of a Reservoir feature in the footprint of the WAF.



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The Tribe asserts that additional work to modify the TSP is imperative and can resolve the issues that the reservoir poses. The Tribe implores the USACE to use all means to overcome the limitations and constraints of the 3x3x3 SMART planning process so that it does not stand in the way of modifying the TSP. Without this additional effort, the planning process mandates a simple binary choice of “take it or leave it” or an “all or nothing” approach to accepting or declining this flawed TSP. It is nonsensical to let the one-size-fits-all 3x3x3 SMART planning process force this binary decision on the people of Florida when it is obvious a valid solution is available.

As further stated by IEPR “...due to the complex nature of this Project, including high risk factors for public safety, project performance, and project cost, the lack of technical details on the engineering analysis, geotechnical investigations, and hydrologic-hydraulic modeling of the alternatives is the Panel’s greatest concern. Without these details and data, the Panel cannot determine whether the Project is feasible or safe, and the Panel notes that the related uncertainties have led to very high cost contingencies being applied.” This statement by the IEPR adequately captures the Seminole Tribe’s greatest concerns. To our knowledge, the IEPR has not modified or rescinded this statement. Therefore, the Seminole Tribe urges the USACE to develop the information necessary to demonstrate feasibility and safety to the IEPR and the Tribe’s satisfaction before moving forward with this Project.

Sho Na Bish,

Marcellus W. Osceola, Jr.
Chairman
Seminole Tribe of Florida

- c. Councilman Larry Howard
- Jim Shore, Esquire
- Kevin Cunniff
- Stacy Myers
- Anne Mullins
- Paul Backhouse
- Patty Power



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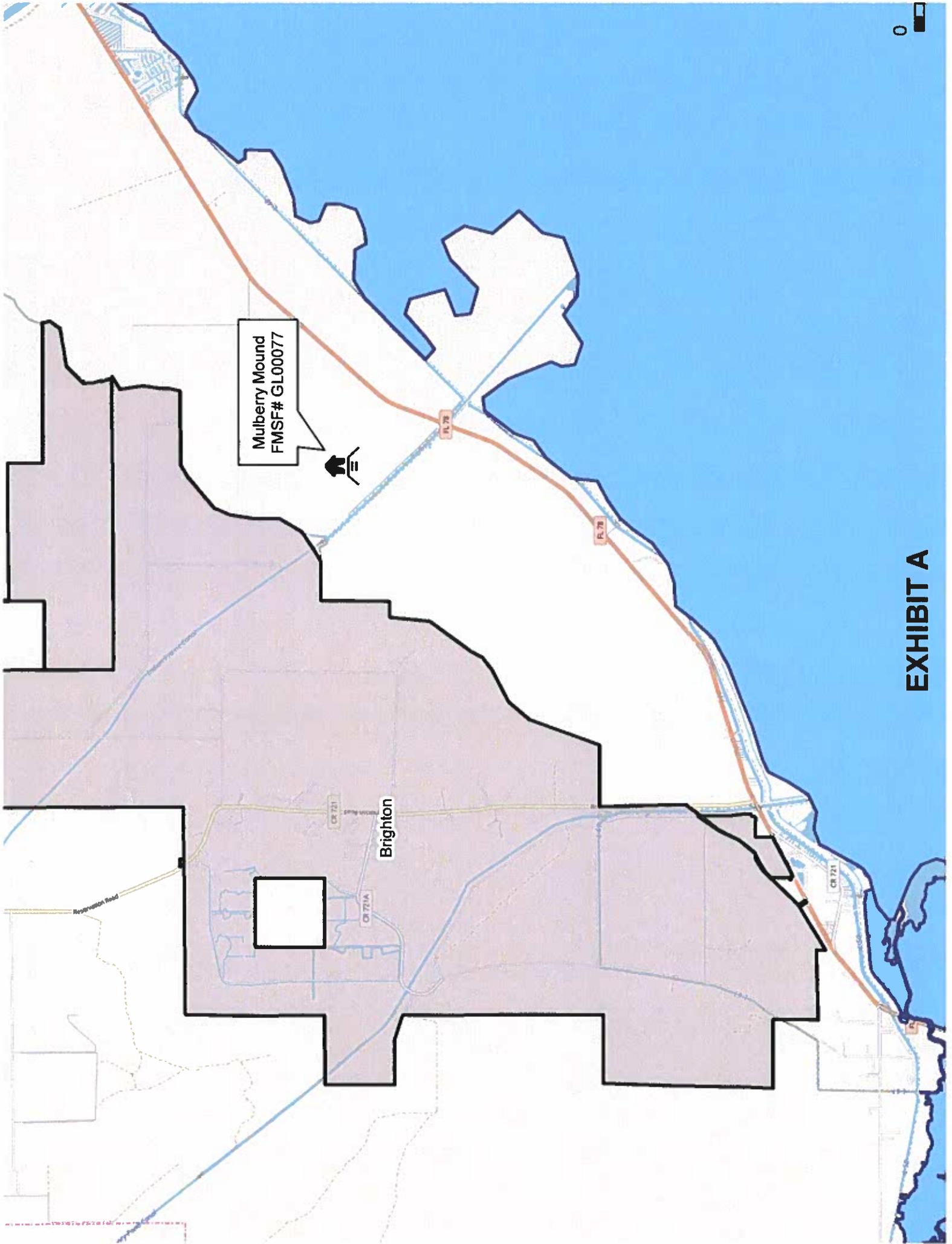


EXHIBIT A