

LAND PROTECTION PLAN

EAST EVERGLADES ADDITION EVERGLADES NATIONAL PARK

APRIL 1991



Recommended By:

[Signature]
Superintendent

Date

4/27/91

Approved By:

[Signature]
Regional Director, Southeast Region

Date

6/26/91



United States Department of the Interior

NATIONAL PARK SERVICE SOUTHEAST REGIONAL OFFICE

75 Spring Street, S.W.
Atlanta, Georgia 30303



IN REPLY REFER TO:

FINDING OF NO SIGNIFICANT IMPACT ON ENVIRONMENTAL ASSESSMENT FOR LAND PROTECTION PLAN EAST EVERGLADES ADDITION EVERGLADES NATIONAL PARK FLORIDA

BACKGROUND

The National Park Service (NPS) has prepared and made available for public review the Land Protection Plan/Environmental Assessment (LPP/EA) for the East Everglades Addition of Everglades National Park (dated April 1991). The purpose of this plan is to identify land protection alternatives to assure the restoration and enhancement of the Everglades ecosystem in the addition and existing park. The plan has been prepared in compliance with relevant legislation, other congressional guidelines, Executive Orders, and departmental and NPS policies. The plan will be reviewed every 2 years, and updated accordingly, in order to deal with issues not fully addressed and to reflect new information about the park addition.

The purpose of this document is to record the comments on the draft LPP, clarify or expand identified subjects covered, make corrections as needed, and to add a Finding of No Significant Impact (FONSI) pursuant to the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (43 CFR 1500). This FONSI should be attached to the EA.

PUBLIC INVOLVEMENT

The LPP/EA was made available for public review May 3 to June 7, 1991, and a public workshop was held on May 22, 1991, in Miami, Florida, at the Metro-Dade Government Center. The workshop was attended by 105 persons, three television stations, and one newspaper. Fourteen persons made verbal comments and twelve written comments were received.

GENERAL COMMENTS

Comment: With four exceptions, all comments agreed with, supported, or did not oppose the goals and objectives set forth in the LPP. The exceptions were property owners who do not want to relocate and who disagree with the need for the restoration effort for the park. Several mentioned concern for the time-frame, emphasizing the need to begin acquisition and protection of the area immediately.

Response: The 5-year term for completion of the expansion is a target; frequently, land acquisition programs must be extended due to availability of funding. The NPS intends to move ahead with acquisition and restoration efforts as quickly as possible and to establish NPS presence in the expansion area. The comments from the Florida Department of Natural Resources, Bureau of Land Acquisition, confirmed the State's funding for the 20 percent of acquisition costs incorporated into the 1991/1992 Work Plan and the intent to transfer title for State lands and Chekika State Recreation Area pending discussions of specific terms and conditions.

LAND VALUES

Comment: The issue of payment for land is a major concern, and the question of what constitutes a "fair price" versus the determination of "fair market value" is paramount in all comments from landowners. It was also recommended that a Land Acquisition Office be established in the Miami area.

Response: Land acquisition will be handled by the NPS Land Acquisition Field Office in Naples, Florida, in accordance with Federal regulations. A satellite office will be opened in the greater Miami area to facilitate landowners. The establishment of fair market value will be accomplished through appraisals which reflect current prices for comparable land sales. Factors which affect market value include location, size, accessibility, and current zoned use of the property; original purchase price, taxes paid, etc., do not influence the market value.

Comment: Some lands in the East Everglades were granted Severable Use Rights (SUR's) by Metro-Dade County at rates that varied by location. How will these SUR's affect land values?

Response: The NPS will acquire all lands in fee. The SUR's serve no purpose toward the park restoration efforts. During acquisition negotiations, the NPS Lands Office will advise all landowners that SUR's may have value and that they may be retained, transferred, or sold in compliance with county ordinances.

COMPATIBLE/INCOMPATIBLE LAND USES

Comment: One landowner questioned NPS authority to identify incompatible uses and the boundary definition along the southern end which excludes lands already in agriculture.

Response: The legislation for the park expansion clearly states the intent of Congress to add these lands to Everglades National Park to be managed as park. The issues of compatible and incompatible uses--i.e., agriculture, private residences, recreational vehicles, hunting, etc.--were discussed, considered, and eliminated in the passage of Public Law (PL) 101-229. This LPP identifies the priorities and strategies for implementation of the law. The boundaries, too, were drawn with the intent of excluding all active agricultural lands along the periphery. This has resulted in an irregular boundary configuration; however, all lands within the boundary are considered essential for the restoration purposes.

LAND USE--AGRICULTURE

Comment: Although determined an incompatible use by NPS, one individual felt that selected areas for continuation of agriculture should be identified using techniques which enhance wildlife habitat and utilize landscape ecology management concepts (agricultural islands). One landowner queried whether NPS had considered aquaculture as an appropriate use.

Response: Agriculture has already been determined to be an incompatible use within Everglades National Park. The same policy will be applied in management of the expansion area. Aquaculture also is a use which is not compatible with the goal of restoration of a natural marsh ecosystem.

Comment: The owner of a mango orchard located within the park addition expressed strong opposition to selling his property.

Response: A primary purpose of the Addition is to restore the hydrology and ecosystems of this portion of the Everglades. As such, the acquisition of all lands, including the mango orchard, is essential to achieve this purpose. In negotiation with the property owner, options will be explored to minimize the impacts of acquisition should the owner decide to acquire alternate lands outside the park to establish a new grove.

CONCESSIONS

Comment: One comment stated that negotiations for air boat concession contracts should be expedited to provide visitor access and educational opportunities.

Response: Recognition that commercial operations will be permitted within the expansion is contained in PL 101-229. The feasibility and need for concession operations along Highway #41 will be evaluated following guidelines consistent with the Concessions Policy Act. The LPP identifies the acquisition of these commercial facilities as the third priority. The issue of land acquisition and concessions operations are separate issues; all of the commercial operations would be acquired, whether or not they remain as concession operations within the park.

LAND USE--AIR BOATS

Comment: Future use by both commercial and private air boat operators is a concern. The procedure for permitting and regulating this activity was queried.

Response: The use of air boats within the expansion is the one exception to the current policies of Everglades National Park recognized in PL 101-229. Regulations and operating guidelines/restrictions will be developed to address permitting procedure, regulations, operating zone identification, etc., in planning and development of special regulations for the management of the expansion area.

LAND USE--GILBERT'S MARINA

Comment: One comment asked for clarification of the Gilbert's Marina issue.

Response: This item was included in PL 101-229 to resolve a long-standing trespass condition of approximately 1 acre which was discovered when the southeast boundary was surveyed. The Congress specifically authorized an exchange to clear title for this minor boundary adjustment.

OTHER AGENCY COORDINATION

Comment: State and local officials emphasized the need to coordinate implementation of the plan with corresponding government agencies on issues of road alignments, legal status of structures, impacts of West Dade Well Field, the status of SUR's, transfer of State lands, and ownership of land between "old" and "new" Highway 41 alignment.

Response: The NPS will actively involve appropriate State, county, and metropolitan Miami government agencies in the planning and implementation of this plan. The park is currently involved in the planning process for the West Dade Well Field on both the technical and policy level and an NPS representative is on the Homestead Airport Expansion Advisory Board.

Determination of zoning compliance for structures and land use will continue with the building and zoning department. The NPS and U.S. Army Corps of Engineers (COE) are completing a Memorandum of Understanding to define their cooperative efforts on the acquisition and restoration project construction and design. The Florida Department of Natural Resources has identified funding for the State's portion of acquisition costs. Evaluation of road access and rights-of-way will be coordinated with the county and the Florida Department of Transportation.

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

The Miccosukee Tribe of Indians of Florida had several concerns:

Comment: The boundary adjustment adds a portion of the area between the old and new Highway 41 to the park; however, the Tribe may seek to have some of this area placed into Federal trust as part of the Miccosukee Reservation in partial settlement of a claim against the State. The Tribe has identified a need to expand the Miccosukee community "in its traditional homeland within the park" and this issue is not mentioned in the LPP.

Response: The Tribe's Special Use Permit defines the residential use area on lands west of the Shark Valley Road to the park's western boundary. The lands between the old and new Highway 41 west of Shark Valley are not included in the park expansion legislation and the NPS would have no objection to the Tribe's efforts to obtain that land for residential expansion.

The lands east of the Shark Valley road between the two Highway 41 definitions are essential to the restoration objective of the park expansion. The legislative history of PL 101-229 does not provide for any expansion of the Miccosukee community into the added area. Such expansion would be incompatible with the park restoration goals.

Comment: The plan does not address the subject of Tribal members rights to carry on cultural activities within the expansion nor the rights of Miccosukee Indians currently residing within the expansion area.

Response: The Act does not diminish any existing rights, nor does it grant any additional rights. As stated in the plan, the Tribal members' rights shall be in accordance with "other provisions of law applicable to Everglades National Park," as defined as "...not in conflict with the purposes for which, Everglades National Park is created." (16 U.S.C. 410b).

Comment: The plan needs to define "some considerations" for Osceola village. The Tribe does not want them relocated and they believe the LPP should expressly acknowledge that they will remain and will enter into a concession contract to continue air boat ride service.

Response: The LPP recognizes the presence of the existing Osceola Camp and the need to make accommodation for the continued use and occupancy of this property. The COE intends to address raising the Osceola Camp in its General Design Memorandum (GDM) within its legal authority to do so. The Osceola Camp will be included in the evaluation of commercial activities in determining the extent of concession services required as discussed under "Land Uses-Concessions".

Comment: The Tribe wants to be involved in development of the environmental education program at Chekika to include employment opportunities for Tribal members and participation in the interpretive programs developed by NPS.

Response: Specific operating plans for Chekika State Recreational Area will be defined in an addendum to the park's GMP and will not be addressed in the LPP. The Tribe's interest in being involved in this effort is noted and the park will be pleased to work with them as the planning process begins.

TEXT CHANGES/CORRECTIONS

Page 5, Item 2: Change to read: "At 30-Mile Bend on U. S. #41 (Tamiami Trail), a residence and commercial property exists known as the Everglades Boat Rides/Osceola Camp. The family that lives there are Miccosukee Indians that are not enrolled members of the Miccosukee Tribe nor do they live on the permitted area within the park. It is not known whether the family presently owns the land in fee simple. The COE has identified mitigation measures for raising the Osceola Camp in the General Design Memorandum (GDM)."

Page 15, Item 2, para. 1: Change reference to "Bureau of State Lands" to read: "Department of Natural Resources (DNR)."

SUMMARY OF ENVIRONMENTAL CONSEQUENCES

The EA of the LPP is defined on pages 23 through 25. It iterates the impacts of acquisition of lands in fee simple, establishment of easements, and no action. The summary indicates that to comply with the congressional intent to assure the enhancement and restoration of the wetland ecosystem through the restoration of natural hydrologic conditions and to manage the area to maintain natural abundance, diversity, and ecological integrity of an entire ecosystem, it will be necessary to acquire all lands within the Addition in fee simple. Actions resulting in the displacement of owners or tenants of structures will be subject to the Uniform Relocation Act, as amended.

Establishment of easements would allow for some development that would adversely affect the restoration process and is, therefore, inappropriate.

Taking no action would not restore the natural ecosystem.

Land acquisition will not adversely affect endangered or threatened species; however, Section 7 consultation on the effects of the restoration project on endangered or threatened species will take place in the preparation of the COE's General Design Memorandum (GDM).

No Statement of Findings will be prepared for this project as there will be no adverse impacts within the floodplain or wetlands. No prime or unique farmlands will be affected by the land acquisition recommendations in the plan. The classification "unique farm lands" is applied to any land in Dade County, Florida, presently in cultivation due to the south Florida climate which allows winter vegetable, tropical fruit, and citrus production. In the Addition, less than 3 percent of the Addition, including the mango grove, falls into this "unique" classification. Agricultural use is categorized as incompatible with the restoration objectives for the addition in PL 101-229 and will be eliminated.

There will be no adverse effects on historic or archeological resources as a result of this proposal. The potential impacts of the restoration project will also be addressed in the preparation of the GDM.

CONCLUSION

After reviewing the comments on the LPP/EA for the East Everglades Addition to Everglades National Park, the NPS has determined that implementation of the proposal does not constitute a major Federal action significantly affecting the human environment and that an Environmental Impact Statement will not be prepared. Therefore, the NPS will move forward with the acquisition of lands in the East Everglades.

Approved: _____

Acting

E. W. Ogle
Robert M. Baker
Regional Director
Southeast Region

Date: 7-25-91

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Federal		0
Other public		43,000 (approx.)
Private		65,000 (approx.)
2. Number of Non-Federal Tracts		
		10,000 (approx.)
3. Interest/Method of Protection Proposed*		
-- Fee (long-term protection)		107,600 (approx.)
4. Statutory Acreage Ceiling		
		None
5. Funding Status		
Authorized Ceiling		None
Appropriated**		\$7,500,000
Expended		\$ 0
Unappropriated		N/A

The National Park Service is in the process of compiling ownership information for the addition; thus the acreage calculations and number of owners are approximate.

6. Top Priority

This project is integral to the restoration of the hydroperiod and sheet flow of the Shark River Slough.

In order to enhance and restore the ecology and hydroperiod of the East Everglades and the Shark River Slough, it will be necessary to acquire fee ownership of the entire 107,600 acres. In the long term, no private uses of the land will be compatible with this goal.

The undisturbed, privately-owned tracts needed to enhance and restore the ecology through the restoration of the hydrologic system constitute the top priority for protection. Generally, the undisturbed tracts will be considered for priority acquisition.

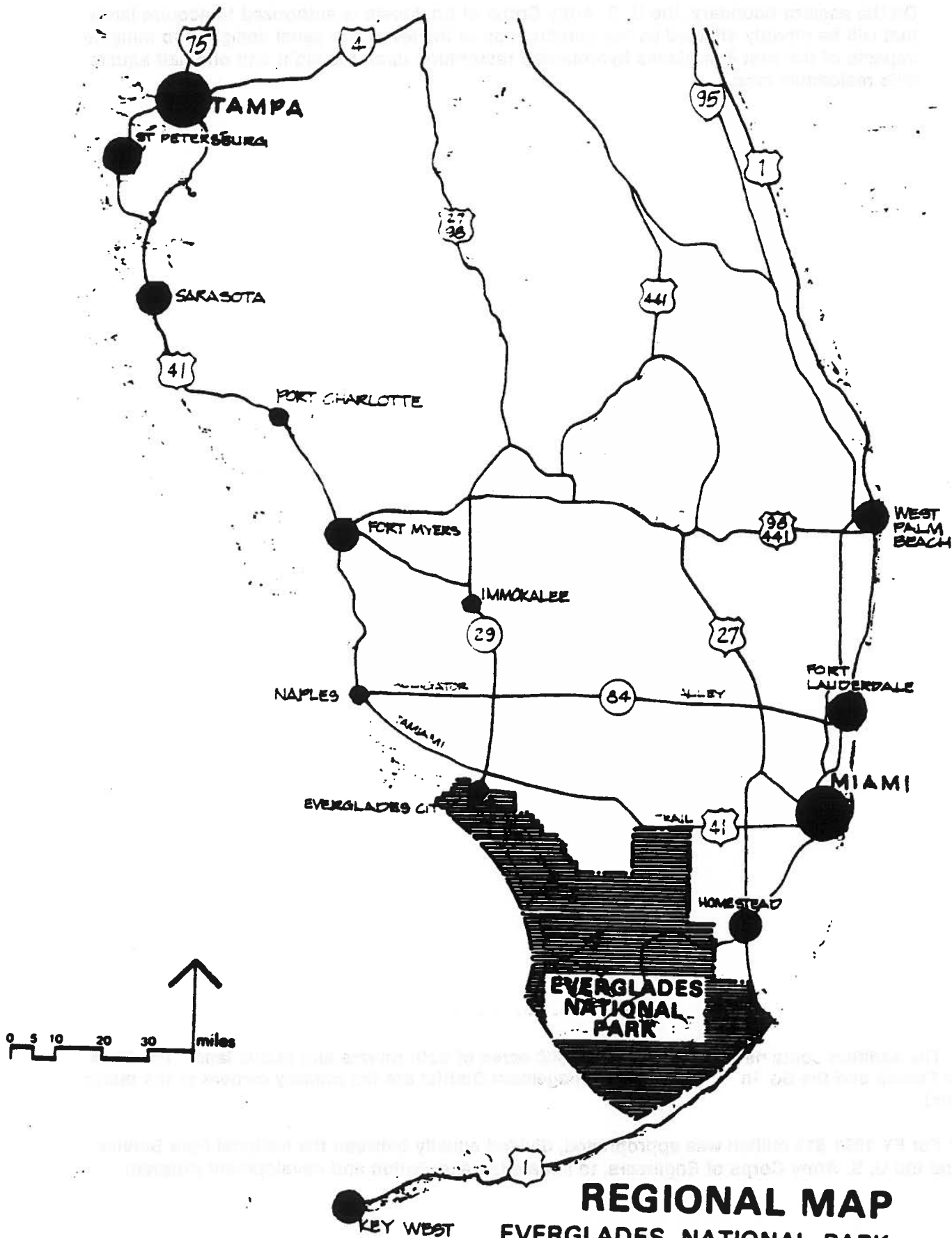
State and other non-Federal public lands comprise the second priority grouping, while the commercial tracts along U.S. 41 constitute the third priority group. Third party mineral rights are included in the fourth priority grouping.

On the eastern boundary, the U. S. Army Corps of Engineers is authorized to acquire lands that will be directly affected by the construction of the levee and canal designed to mitigate impacts of the east Everglades hydroperiod restoration upon the eight and one-half square mile residential area.

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* The addition contains approximately 107,600 acres of both private and public land. The State of Florida and the South Florida Water Management District are the primary owners of the public land.

** For FY 1991 \$15 million was appropriated, divided equally between the National Park Service and the U. S. Army Corps of Engineers, to initiate the acquisition and development program.



REGIONAL MAP

EVERGLADES NATIONAL PARK

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

LAND PROTECTION PLAN

EVERGLADES NATIONAL PARK/EAST EVERGLADES ADDITION

I. Introduction

A. Department and National Park Service Land Protection Policies

In May 1982, the Department of the Interior published in the Federal Register a policy statement for use of the Federal portion of the Land and Water Conservation Fund. Each agency responsible for land protection in Federally administered areas is required to:

- Identify what lands or interests in land need to be in Federal ownership to achieve management purposes consistent with public objectives in the unit.
- To the maximum extent practical, use cost-effective alternatives to direct Federal purchase of private lands and, when acquisition is necessary, acquire or retain only the minimum interests necessary to meet management objectives.
- Cooperate with landowners, other Federal agencies, State and local governments, and the private sector to manage land for public use or protect it for resource conservation.
- Formulate, or revise as necessary, plans for land acquisition and resource use or protection to assure that socio-cultural impacts are considered and that the most outstanding areas are adequately protected and managed.

In response to this policy, the National Park Service (NPS) has prepared a Land Protection Plan for the East Everglades Addition of Everglades National Park. The purpose of this plan is to identify land protection alternatives to assure the restoration and enhancement of the Everglades ecosystem in the addition and existing park, to restore natural hydrologic conditions, and to provide for appropriate administrative facilities and visitor use. The plan has been prepared in compliance with relevant legislation, other Congressional guidelines, executive orders, and Departmental and NPS policies. The plan will be reviewed every two years, and updated accordingly, in order to deal with issues not fully addressed and to reflect new information about the park addition.

B. Protection Issues

The major issues addressed in this plan include: setting priorities for protection and acquisition, defining compatible and incompatible uses within the addition, public and administrative access to important resources, and the protection of wetlands and wetland ecosystems. Resolution of the issues and land protection strategies will evolve in the context that Congress intended – that actions enhance and restore ecological values of Everglades National Park through the restoration of natural hydrologic conditions. Further, Congress intended that the focus of management of the area be conducted, to the broadest extent possible, to maintain natural abundance, diversity, and ecological integrity of an entire ecosystem, not just a water flow way through a section of the Shark River Slough.

These broad issues may be addressed more specifically in the following ways:

1. The first major issue deals with disturbed and undisturbed privately owned lands. How are these lands to be differentiated in establishing priorities for acquisition? What uses may be acceptable in the short term?
2. What interim measures of protection are available until sufficient funds are appropriated to acquire all priority areas?
3. What are the timing and procedures for the donation of State, Water Management District, and county lands within the addition? This will have to be complemented by the appropriate NPS actions to ensure effective management upon acquisition. What measures may be implemented until such time as these lands are donated to the Federal government?
4. What priority for protection should be assigned on those commercial properties along U.S. 41? The Secretary of the Interior (Secretary) was authorized to negotiate and enter into concession contracts with owners of commercial airboat and tour facilities within the addition, in existence on or before January 1, 1989. The issue of assessing the needs for public accommodation of use of the area must be examined through appropriate NPS concession feasibility processes pursuant to the Concessions Policy Act and NPS policy.
5. What priority should be placed on the acquisition of third-party mineral rights? These rights must be assessed to determine the extent and nature of those ownerships and any possible threats that would detrimentally affect the restoration and enhancement of the ecosystem and natural hydrologic conditions.
6. The restoration of natural hydrologic conditions is essential for the successful restoration and enhancement of the wildlife habitat and the ecological values of the addition and the park in general. This process is dependent upon the completion of a General Design Memorandum (GDM) and the Detailed Design Memorandum (DDM) for specific elements of the redesign and modification of the water delivery system by the U. S. Army Corps of Engineers (USACOE). This process requires coordination with a variety of agencies and interests which must join with the intent of Congress to enhance and restore ecological values and provide for the natural abundance, diversity, and ecological integrity of native plants and animals.
7. The final boundary of the addition in the vicinity of the eight and one-half square mile residential area has not yet been firmly established and will be determined pursuant to the USACOE GDM and DDM for the Modified Water Deliveries for the northeast Shark River Slough. Should the Secretary of the Army make a determination of adverse effect upon this residential area caused by the restoration of natural hydrologic conditions, a flood protection levee will be constructed to mitigate the impacts of the GDM implementation. The footprint of this levee will establish the eastern boundary of the park at the eight and one-half square mile area and may require fee simple acquisition of some residences for development of the flood mitigation structures.

In addition to the above, the Land Protection Plan addresses other more specific land protection issues as follows:

1. At present, two AM radio antenna fields exist along the U.S. 41 (Tamiami Trail), consisting of multiple antenna arrays several hundred feet in height. Before

acquisition is initiated, an assessment will be completed to address issues such as intrusion on park resources, impact upon wetlands and the GDM implementation which will increase hydroperiod in the Shark Slough, frequency and location authorizations granted by the Federal Communications Commission (FCC), and aesthetic intrusion.

2. At 30-Mile Bend on the U.S. 41 (Tamiami Trail), a residence and commercial property exists known as the Everglades Boat Rides/Osceola Camp. The family that lives there are Miccosukee Indians that are not enrolled members of the Miccosukee Tribe nor do they live on the permitted area within the park. It is unknown whether the family presently owns the land in fee simple. The COE has identified mitigation measures for raising the Osceola Camp in the General Design Memorandum (GDM).

3. The northern Park boundary along U. S. Highway 41 (Tamiami Trail) has long been defined as the "old Tamiami Trail"; however, when the road was realigned to the north, creating the "new Tamiami Trail" (still designated U. S. 41) the strip of land between the "old" and "new" Tamiami Trail rights-of-way became an area of unclear ownership and jurisdiction. At times, neither the State nor the county has claimed ownership. The resulting management and jurisdiction void has created law enforcement and wetlands protection issues. P. L. 101-229 has clarified the issue and provided Congressional intent by expanding the park boundary to add to the park the lands "south of the right-of-way of existing U. S. Highway 41 and north of existing boundary between Structure 333 and Structure 12-B." Further, the law expanded the park boundary to add those lands "south of the U. S. 41 right-of-way and north of existing boundary extending west of Structure 12-A to the Indian Trail Baptist Chapel boundary and Big Cypress National Preserve boundary". These boundary adjustments along U. S. Highway 41, although minor, will require significant interaction with both the State and the county in order to resolve property ownership and jurisdiction issues.

4. Chekika State Recreational Area, managed by the Florida Department of Natural Resources, is a 640 acre unit of the State Park System located within the addition. Continued public ownership of this area is considered important to the hydrologic and ecological restoration objectives of the East Everglades legislation. Public use of this area is also considered an important public purpose which should be continued within Everglades National Park. Should the State transfer Chekika to the Federal government, the National Park Service proposes to operate and maintain facilities for public use and enjoyment in this area as part of Everglades National Park. An evaluation would also be completed with the goal of expanding environmental education opportunities, facilities, and programs at Chekika.

5. To assure that donated or acquired lands are provided the management protection required by Congress, the NPS will establish on-site management within the addition. This on-site management would likely be located at or near Chekika. A suitable site for the initiation of NPS protection operations most probably will concentrate along this east-central portion of the addition due to the extent of existing public access and adjacent residential and agricultural uses. This operational site will be confined to an already human-altered location in order to avoid disruption to wetland ecosystems.

6. Within the addition there are numerous roads. Significant interaction with Dade County will be required to resolve ownerships and right-of-way alignments with the ultimate vacation of these rights to the Federal government as adjacent lands are acquired. Land management planning will identify those roads required for public accommodation or use for resource protection and operation by the NPS. The

accommodation or use for resource protection and operation by the NPS. The evaluation will also consider which roads should be removed to further the purposes of enhancing hydrologic and ecological restoration of the East Everglades.

7. Gilbert's Marina: For purposes of acquiring property by exchange, the Secretary may exchange the approximately one acre of Federal land known as "Gilbert's Marina" for non-Federal land of equal value located within the boundaries of the addition. Portions of this marina were illegally constructed within Everglades National Park on the north side of Jewfish Creek, west of U. S. Highway 1, on a parcel of land that was filled and extended into the park. The improvements made on the filled land occurred prior to 1968. Further expansion of the improvements by Gilbert's into the park, which would expand their trespass against the United States and violate National Park and Wilderness statutes, will not be allowed. NPS policy clarifies that this use cannot be allowed to continue as a trespass on National Park property. The East Everglades legislation authorizes an exchange of lands -- those already impacted lands at Gilbert's -- for an equivalent value within the East Everglades addition. This exchange will be explored with the owners of Gilbert's. If an exchange is completed, then the one acre at Gilbert's will be proposed for deletion from the park. If, however, Gilbert's does not effect an exchange of interests, then these incompatible and unauthorized facilities and activities at Gilbert's will have to be removed from Federal lands within the park.

C. The Plan as a Guide

This plan does not constitute an offer to purchase land or interests in land. It will generally guide subsequent activities subject to the availability of funds and other constraints. This plan does not diminish the rights of non-Federal landowners.

II. Purpose of the Expansion and Resources to be Protected

A. Purpose

The purposes of the Congressional Act are two-fold and all land protection actions must be responsive to this Congressional direction:

1. "To increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades to Everglades National Park; and,
2. "Assure that the park is managed in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem."

B. Resources to be Protected

Everglades National Park was established in 1947. Its almost 1.4 million acres of cypress, pine, and mangrove forests, sawgrass prairies, fresh water sloughs, and salt marshes provide habitat and protection for fourteen endangered and six threatened plant and animal species. Its international significance is recognized by the United Nations through three

prestigious designations -- a World Heritage Site, an International Biosphere Reserve, and a Wetland of International Importance. It is the final remnant of the vast natural Everglades that once covered the southern tip of Florida.

Historically, water flowed gradually from the Lake Okeechobee basin in a southwesterly direction through the Everglades into Florida Bay and the Gulf of Mexico, with most of the water moving through the Shark River Slough. When the park was established, only half of the slough was included within the park boundary with the eastern portion remaining outside the park in the area known as East Everglades.

The East Everglades is generally described as the 153,600 acre region lying between the old Everglades National Park boundary and the urban/rural limits of Dade County. The region is bounded by Tamiami Trail (U. S. 41) on the north, the L-31 levee and C-111 canal on the east, and the original Everglades National Park boundary on the south and west. It represents most of what remains of the eastern portions of the original Everglades marshland ecosystem in Dade County.

The East Everglades contains the headwaters of the Northeast Shark River Slough and Taylor Slough which are the primary sources of water flow to the park. The sloughs provide important water storage and aquifer recharge functions for Dade and Monroe Counties. During the rainy season (April-October), water levels rise to the edges of the slough. During the drier winter months, water recedes toward the center of the slough, allowing the edges to gradually dry. This naturally occurring ebb and flow is crucial to the survival of much of the region's wildlife.

Efforts to manage south Florida's water by the USACOE and the South Florida Water Management District (SFWMD) have redirected the natural water flow so that the western half of the slough, which had traditionally carried 40 percent of the water flow, instead receives 90 percent of the entire flow. The flow through the eastern half (in East Everglades) is reduced to only 10 percent. This disruption has resulted in the habitat loss and population decline of many native species.

The portion of the Shark River Slough drainage basin in the East Everglades is composed of wetland communities typical of those parts of the southern Everglades which are inundated for 9-12 months each year. Vegetation consists of a mosaic of sawgrass marshland, lower-lying flats and sloughs, and tree islands and hardwood hammocks at higher elevations. The substrates in the heart of the slough primarily are peat soils covered by a dense layer of periphyton algae.

South of the Northeast Shark River Slough there are slightly higher elevated marl wetland prairies and rocky glade communities. Typical hydroperiods in these zones range from two to six months during average hydrological years. There are also ecologically diverse irregular mosaics of grass types interspersed by hundreds of small bayheads and tree islands which form the northern and central reaches of the Taylor Slough drainage basin.

The undeveloped portions of the East Everglades provide crucial habitat benefits to Everglades National Park, and many wildlife species rely on both areas for feeding, foraging, cover, and nesting. The East Everglades supports 359 recorded species of fish, reptiles, mammals, birds, and amphibians. Federally-listed endangered species within the addition include Florida panther, Cape Sable sparrow, bald eagle, wood stork, and snail kite. In addition, there are Federally or State-listed threatened species.

The East Everglades contains the primary home range for at least two Florida panthers. Additional animals use the area on an occasional basis. These individuals comprise the

park's only known remaining panther population. Habitat loss is a primary element endangering the panther which requires large, undisturbed areas for its range.

The East Everglades also contains critical habitat (designated in accordance with the Endangered Species Act) of the Cape Sable sparrow. The sparrow inhabits the freshwater sawgrass and muhly grass marshes. Maintenance of this habitat requires the proper hydrologic and fire regime.

Wood storks have suffered routine nesting failures since the early 1960's. During this period, the nesting population in the park declined from 2,500 to 150 pairs. The population decline is due in large part to loss of feeding habitat. The East Everglades historically provided feeding areas through the annual nesting period of wood storks, from the early dry season when the highest marshes were drying to late in the dry season when the lowest areas provided available food. The East Everglades region represents thirty-five percent of the feeding habitat available to Everglades National Park's wood stork populations; however, the area is no longer suitable for wood storks during the crucial nesting period because of the water level manipulation. Restoration of the hydroperiod in this area should facilitate wood stork recovery.

The lowered water levels in the East Everglades have had dramatic effects on wildlife populations. The decrease in length of flooding has reduced the aquatic productivity of the area and altered the pathways of the food chain. Measurements of yearly mean fish densities of the East Everglades indicate populations are only 20 percent of densities in non-altered marshes. Populations correlate with lower numbers of higher-level consumers such as alligators and wading birds.

At least twelve rare, endemic plant species are found in the East Everglades. These populations provide supplemental gene pools to the protected plant species in Everglades National Park, where vegetation has been adversely affected by ecological changes within the East Everglades. The lowered water levels there have caused more frequent and severe fires in the area. The fires burn into the park under conditions which rarely occurred historically, causing changes in plant species composition. Fires in the East Everglades have consumed organic soils and altered vegetation patterns. The altered hydrologic and fire regimes promote the spread of exotic woody species, especially melaleuca and Australian pine, which displace native plant communities.

C. Legislative, Administrative, or Congressional Directives and Constraints

P. L. 101-229 (December 13, 1989) articulates that Everglades National Park is both nationally and internationally significant and that the park has been adversely affected and continues to be adversely affected by external factors which have altered the ecosystem including the natural hydrologic conditions within the park. Additionally, the legislation identified that portion of the Northeast Shark River Slough which lies within the area Congress added to the park as vital to long-term protection of the park and restoration of natural hydrologic conditions within the park. This restoration action will halt the deterioration of park wildlife resources and their associated habitats which have been adversely impacted by the alteration of natural hydrologic conditions within the park.

Role of National Park Service

Lands and interests may be acquired by donation, purchase with donated or appropriated funds, or exchange.

Any lands or interests in land which are owned by the State of Florida or any political subdivision thereof, may be acquired only by donation. These ownerships involve the following State or county entities:

- Central and Southern Florida Flood Control District
- Trustees of Internal Improvement Trust Fund, State of Florida
- South Florida Water Management District
- Dade County

Congress directed that acquisition within the boundaries of the addition shall be completed not later than five years after December 13, 1989, but the authorization to acquire lands shall remain in effect until all acquisition is completed.

When any tract of land is only partly within the boundaries, the Secretary may acquire all or any portion of the lands outside such boundary in order to minimize the payment of severance costs. Lands so acquired outside of the boundary may be exchanged for non-Federal lands within the boundaries or reported to the General Services Administration for disposal.

Prompt and careful consideration shall be provided to any offer to sell property if the owner notifies the Secretary that the continued ownership of such property is causing or would result in undue hardship.

Not more than 80 percent of the cost of such acquisition may be provided by the Federal government. Not less than 20 percent of such cost shall be provided by the State of Florida.

The area shall be administered in accordance with P.L. 101-229 and such other provisions of law applicable to Everglades National Park and those generally applicable to units of the National Park System. Further, whatever statutory authority available shall be utilized for the "preservation of wildlife and natural resources as deemed necessary to carry out the purposes of the Act." The area shall be managed "in order to maintain natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem."

The park and all acquired lands shall be closed to the operation of airboats "...except that within a limited capacity and on designated routes within the addition, owners of record of registered airboats in use within the addition as of January 1, 1989, shall be issued non-transferable, non-renewable permits, for their individual lifetimes, to operate personally-owned airboats for non-commercial use in accordance with the rules prescribed by the Secretary to determine ownership and registration, establish uses, permit conditions, and penalties, and to protect the biological resources of the area." At a later date an assessment of needs to accommodate airboat use and a plan to articulate and manage airboat use will be developed.

Commercial or business operations in existence within the addition on or before January 1, 1989, may be considered for concession contracts subject to the Concessions Policy Act (P. L. 89-249) and the assessment of the need for public services. These operations are not guaranteed concession contracts. Whatever services are deemed necessary and appropriate for public accommodation will be managed under such rules and conditions as deemed necessary for the "...protection of the biological resources of the area."

Role of U. S. Army Corps of Engineers

P. L. 101-229 authorizes and directs the USACOE to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park. Further, the project modifications to restore these natural hydrological conditions are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require any further economic justification. Accordingly, specific water structures or water delivery programs have a clear priority focus of restoring natural hydrologic conditions benefiting the park ecosystem and any required land acquisition actions in the park addition must be reflective of this intent.

Modifications to the Central and Southern Florida Project to improve water deliveries into the park shall be based upon the findings of the experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a GDM to be prepared by the USACOE, Jacksonville District, entitled "Modified Water Deliveries to Everglades National Park."

The exact location of segments of the eastern boundary of the addition is subject to a determination of adverse effect upon the residential area within the East Everglades known as the eight and one-half square mile area caused by the restoration of natural hydrologic conditions. If the Secretary of the Army makes a determination that residents in the "eight and one-half square mile area" will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood mitigation system for that portion of presently developed land within the area. One segment of this flood mitigation system may be a levee constructed to the west of the "eight and one-half square mile area" and will demarcate the park boundary. The footprint of this levee may require fee simple acquisition of several residences; however, because the USACOE is responsible for all aspects of water delivery and flood protection structures pursuant to P. L. 101-229, the acquisition of lands to effect those requirements will be the responsibility of the Secretary of the Army.

Land acquisition and hydrologic modifications are to be coordinated by the Secretary of the Interior and Secretary of the Army to permit both to proceed concurrently and to avoid unreasonable interferences with property interests in lands that will be acquired.

Role of State of Florida and/or Political Subdivisions

The northeastern boundary of the park addition is bounded by the L-31 North levee and canal managed by the SFWMD. No land protection activities or restoration of natural hydrologic conditions within the addition shall infringe upon the required maintenance of appropriate water levels below the maximum authorized operating level as of December 13, 1989. The committee report on P. L. 101-229 noted that the current maximum authorized operating level is 6.0 feet in Canal L-31 North.

Dade County is currently involved in a major planning effort centered on the development of a new well field known as the West Dade Well Field to be located just northeast of the area to be added to the park and will be used to supply part of Miami's water supply. Certain limitations are placed upon the operation of this well field to prevent and alleviate significant adverse impacts on the resources of the park.

In addition to providing not less than 20 percent of acquisition costs, the State of Florida will donate approximately 43,000 acres of land.

D. Resource Management and Visitor Use Objectives

Although a General Management Plan (GMP) for the addition has not been prepared, P. L. 101-229 is quite clear in its direction for resource management, stating that the area will be managed "...to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem." The Act further states that administration of the area shall be in accordance with "...other provisions of law applicable to Everglades National Park..."

It is the intent of park management to focus strictly on the authorizing language for restoration of the functioning hydrological system and protection of the vast range of flora and fauna dependent on this ecosystem. Appropriate public access and interpretive opportunities will be provided. Details will be set forth in subsequent management and planning documents.

To further define resource management and visitor use objectives for the addition, a Management/Development Plan will be completed and added as an amendment to the park's General Management Plan (1979). A similar amendment will be prepared for the park's Statement for Management adapting current management objectives to fit specific conditions of the expansion lands.

III. Land Ownership and Uses

A. Description of Private and Other Non-Federal Ownership and Uses

The vast majority of the approximately 107,600 acres of non-Federal land within the addition is open wetlands. This includes lands owned by nearly 10,000 private individuals and a number of State and county agencies. Predominantly along the eastern and northern boundaries, some changes in land use have occurred. These include at least two mango groves, less than ten residences, a camp occupied by Native Americans, two AM radio antenna fields, a radio tower, a glider landing strip, and several commercial airboat establishments, gasoline stations, and souvenir shops. On lands addressed by the USACOE in the GDM, there were approximately fifteen to twenty residences prior to the relocation of the USACOE project to minimize impacts upon existing residences.

State and local agencies managing land in the addition include the Trustees of the Internal Improvement Fund, the South Florida Water Management District, and Dade County.

Metropolitan Dade Aviation Authority owns a small tract in the southeast corner of the addition adjacent to the Homestead county airport.

Subsurface oil, gas, and mineral rights may exist in the addition; however, none are being exercised at the present time.

P. L. 101-229 refers to approximately 43,000 acres of State and local public land and approximately 65,000 acres of private land. As the mapping of the addition progresses, these acreage figures will be verified and adjusted accordingly.

B. Compatible and Incompatible Uses of Private Ownership

Since the East Everglades addition represents an area to be protected and managed for enhancement and restoration of ecological values (including the restoration and management of endangered species habitat), the restoration of natural hydrologic conditions (which will extend the hydroperiod on lands) and the provision for appropriate public enjoyment, private uses of the addition that would perpetuate these values and are consistent with laws applicable to the National Park System, would be compatible with addition purposes. Activities that would disturb the ecology, interfere with the restored hydrologic system, or prevent public enjoyment of the addition would be incompatible. Residential, commercial or industrial construction or agricultural activities would not be compatible with the park and this addition thereto. Major additions to existing developments or agricultural activities, as well as the construction of utility lines and roads, also would not be compatible.

Hunting and off-road vehicle use (e.g. airboats, all-terrain vehicles and 4-wheel drive motor vehicles), except as authorized in the enabling legislation, also would not be compatible with the purposes of the addition. Basically, any activity that would alter the ecological values and integrity of the wildlife habitat, or the restored hydrology, would not be compatible.

Compatible private uses in the addition are those that would not alter the natural resources. These would include recreational fishing, hiking, and passive recreational activities, such as bird watching and nature photography.

Restoration and enhancement of the ecosystem and hydrologic conditions will not occur immediately. Based on past projects, sufficient funds for acquiring the land base to accomplish this goal will take a minimum of five years. Management of the resource on currently undisturbed areas will involve significant funding, both for the gathering of scientific data to prescribe the methods and to accomplish the task. Thus, for areas that are disturbed, current uses may continue that have been described as incompatible with the purposes of the addition until the lands are acquired or long-term restoration plans can be developed. In addition, the location of the site relative to the short-term or long-term goals for restoration of ecological and hydrological systems will be a determining factor. The expansion or enhancement of uses defined as incompatible normally will not be tolerated by the National Park Service; however, routine repairs and maintenance, such as replacing a roof on an existing incompatible structure would be tolerated. Additions to existing structures, such as a patio, porch, or an additional room, also would be a tolerable, short-term measure. The additional area should not exceed 25 per cent or 500 square feet of the floor area, whichever is smaller.

Due to the critical and sensitive nature of the Everglades ecosystem, the NPS must monitor existing uses in the addition to ensure that no detrimental activities occur.

The following are examples of appropriate activities on disturbed areas:

- 1) Normal maintenance and upkeep of property
- 2) Minor modifications to existing structures and out-buildings
- 3) Repairs and reconstruction to comply with safety or sanitation codes
- 4) Shoring up structures threatened by settling of soil

5) Repair or replacement of electric and telephone lines

Existing structures may be razed and replaced as long as the new structure is designed to serve the same purpose as its predecessor, occupies essentially the same site, and is built in compliance with State and county codes. Replacements which require or would incur additional environmental changes would not be appropriate, e.g. dredge activities, placing fill on unfilled/undisturbed portions of a tract, expansion of sewage or water systems, etc. Internal or external renovation or remodeling of an existing structure is acceptable provided the structure will continue to be used for the same purpose as before. Thus, a single-family residence could have an additional room added, or a screened porch, so long as the use continues to be for a family residence and not a multi-family unit.

The following are examples of inappropriate activities on disturbed areas and would be considered detrimental to the short-term purposes of the addition:

- 1) Subdivision of tract and sale of undeveloped portion(s)
- 2) Dredge and fill operations, road construction, lime rock mining, or introduction of pollutants into surface or subsurface waters other than those types and volumes of effluent and runoff normally associated with single family residences and small businesses
- 3) Alterations to existing structures as of June 1, 1991, or new construction having one or more of these characteristics:
 - New separate residences or new residences physically linked to the existing structures (duplex construction)
 - Replacement of a structure with one that is substantially different in location or purpose from its predecessor, especially involving additional fill on undisturbed portions of the tract
 - Conversion of non-commercial property to commercial uses
- 4) Deterioration of structures that would be hazardous to health and safety
- 5) Agricultural operations in non-agricultural areas
- 6) Non-permitted wildland burning

Commercial activities are generally not compatible, except for those facilities and operations that are concessions under contract or permit pursuant to the Concessions Policy Act. Concerning the existing operations in a narrow area along U.S. 41 (Tamlami Trail), as provided in P. L. 101-229 and in its legislative history, the Secretary may make a finding that commercial activities operated as park concessions are necessary for the accommodation of visitors and the protection of biological resources of the addition. These would be located along U.S. 41 (Tamlami Trail). Accordingly, all existing commercial properties will be acquired by the Federal government and be subject to the rules and regulations of the Secretary.

Several radio towers are located along U.S. 41 (Tamlami Trail) -- the northern boundary of the addition. The effects of these structures and associated facilities are unclear and their identification as compatible/incompatible will depend upon an assessment of these sites to determine their intrusion upon park resources, impact upon wetlands and the GDM

Implementation which will increase hydroperiod in the Shark Slough, and consistency with the enhancement and restoration goals articulated by P.L. 101-229.

In the areas identified for public visitor use and for the administration and management of the addition, no private uses would be compatible.

C. Overview of Protection Program

No lands or interests in lands have been acquired within the boundaries of the addition.

D. Status of Protection Program

- | | |
|--|-------------|
| 1. Statutory land acquisition ceiling: | None |
| 2. Appropriations to date: | \$7,500,000 |
| 3. Expenditures to date: | None |
| 4. Condemnation actions: | None |
| 5. Acreage limitation: | None |
| 6. Acreage acquired: | None |

E. Social/Cultural Characteristics

There are two distinct groups with established social or cultural patterns in the addition. The Everglades Boat Rides/Osceola Camp, located in the extreme northwest corner of the addition, is a Native American camp. The residents are not enrolled members of the Miccosukee Tribe. For many years, airboat users and hunters have gained access into the slough at a privately owned airboat camp, located along Tamiami Trail. P.L. 101-229 specifically excludes this ten-acre tract from the addition to accommodate the airboat users, but establishes strict permitting and use restrictions on airboat activities within the park.

IV. Protection Alternatives

A. Federal, State and Local Laws

1. Federal

- a. NPS Organic Act (39 Stat. 535)
- b. Historic Sites Act of 1935 (49 Stat. 666)
- c. National Trust Act of 1949 (63 Stat. 927)
- d. Reservoir Salvage Act of 1960 (74 Stat. 220)
- e. Department of Transportation Act of 1966 (80 Stat. 931)
- f. National Historic Preservation Act of 1966 (80 Stat. 915) and amendments
- g. National Environmental Policy Act of 1969 (31 Stat. 852)
- h. Executive Order 11593 (36 F.R. 8921)

- i. Archeological and Historical Preservation Act of 1979 (88 Stat. 174)
- j. Executive Order 11988 (Flood Plain Management)
- k. Executive Order 11990 (Wetlands Management)
- l. Endangered Species Act of 1973 (87 Stat. 884)
- m. Executive Order 11987 (Exotic Organisms, May 24, 1977)
- n. Clean Water Act (Section 404 and all other applicable sections)
- o. Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1984, as amended
- p. The Resource Conservation and Recovery Act (RCRA) of 1976, as amended
- q. Clean Air Act
- r. The Federal Aviation Administration is responsible for air traffic control in the area.

2. State of Florida

The State of Florida Game and Freshwater Fish Commission exercises authority over fishing, hunting, and trapping regulations on private land and non-Federal public lands. The Department of Environmental Regulations (DER) issues and reviews State wetland permits in conjunction with the Department of Natural Resources (DNR). The Game and Freshwater Fish Commission, along with the Division of Forestry, jointly manage the 35,000 acre State tract which constitutes the southern portion of the addition. The Department of Forestry has had fire management responsibility for the east Everglades. As the land Protection Plan is implemented and lands acquired by the United States, management responsibility for fire throughout east Everglades will be transferred to the National Park Service.

Other State laws and regulations dealing directly with the protection of resources within the addition include the Governor's Executive Order on the Everglades, the Surface Water Improvement Management Act (SWIM), and the State Clean Water Act. The DER, on behalf of the Environmental Protection Agency, monitors air, groundwater, and surface water quality. The Florida Growth Management Act of 1985 establishes requirements for community planning by individual counties within the State.

Everglades National Park exercises concurrent jurisdiction over lands and waters within the park boundary. This jurisdiction was ceded by Act of the State of Florida legislature and approval by the Governor. Similar jurisdiction is necessary to effectively manage applicable laws and regulations in the east Everglades addition. Consistent with the State statute, concurrence by the Governor is necessary to grant this jurisdiction to the National Park Service.

3. Local

Metropolitan Dade County protects and manages wetland areas through its Class IV Permit regulatory program. Wetlands are defined, under Dade County code, by

vegetation and/or hydrologic characteristics. By definition, all undeveloped portions of the East Everglades are considered wetlands, and further identified as Management Area 2, Permanent Wetlands (flooded for at least nine months of a normal hydrologic year), and Management Area 3A, Seasonal Wetlands--Tree Island/West Prairie (land flooded three to nine months during an average year). Zoning has been in place for a number of years, but variances are continuously sought and frequently granted.

The Metro Dade County Department of Environmental Regulation Management enforces regulations of the State DER and county environmental protection ordinances.

The Metropolitan Dade County Sewer and Water Authority is responsible for the planning of the West Dade well field to be located near the addition's northeastern boundary. P. L. 101-229 requires that before approval is granted for construction, a multi-agency agreement be completed that will prescribe a set of pumping limitations. This is to assure that the operation of the well field will cause no significant adverse impacts on the resources of the park and will require revisions by the SFWMD to alleviate any adverse impacts.

Florida Power and Light Corporation supplies electricity to both private and public customers within the boundaries of the addition and owns a right-of-way for a new power line through the park addition.

B. Reasonable Alternative Methods of Protecting Land/Analysis/Evaluation

Acquisition and management of land may not be the only effective or desirable method of protection for the resources of the addition in all cases. In the discussion of protection alternatives that follow, specific protection methods are assessed as to their ability to achieve management objectives.

1. Protection Alternatives other than Acquisition

Technical Assistance and Education: Technical assistance involves providing information about land protection requirements and encouraging voluntary actions to reduce adverse impacts of development. In addition, the NPS maintains a cooperative relationship with the U.S. Fish and Wildlife Service which provides substantial consultation on habitat and wildlife management issues. By providing landowners of altered or disturbed areas with technical information about natural resources, soils, and appropriate farming practices, it may be possible for them to continue using those areas until such time as the National Park Service is in a position to acquire those areas and take appropriate steps to restore them to their natural conditions. Although such uses have been identified as incompatible with the long-term objectives of the addition, in the short-term they could continue, pending making progress on the land acquisition program. The NPS could target its technical assistance efforts at tracts based on their location in the addition. This alternative would have general application throughout the addition, but would have only very limited application in some key areas. Such approaches depend entirely upon the landowner's willingness to sell and cannot provide any permanent assurance that resources will be protected. Advantages of educational approaches include low cost, building of community support, and the potential for voluntary cooperation by landowners, pending acquisition.

Coordination with Other Agencies: Actions by Federal and local agencies to permit, license, or provide financial assistance may have significant impacts on addition resources. Under provisions of the National Environmental Policy Act, major Federal actions are subject to public review processes to assure adequate consideration of possible impacts on the environment. As a concerned property owner and neighbor, park management can ensure that other agencies are fully aware of any impacts proposed actions may have on addition resources. Participation in public hearings and review processes is one means of expressing concerns. Coordination also may be improved by memoranda of understanding or advance requests to agencies that the park be notified when certain actions are being considered. Park management's participation in project or permit review processes will seek to encourage compatible designs, locations, and operating requirements wherever possible and prevent or mitigate the effects from incompatible uses.

The NPS will continue to coordinate comments with the U. S. Fish and Wildlife Service on Federal actions in reference to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, under provisions of the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended; 16 U. S. C. 661 et seq.), and on projects concerning Federally-listed threatened and endangered species under the provisions of the Endangered Species Act of 1973, as amended. In spite of these laws and regulations, development is often mitigated and not prevented.

Agreements: Agreements between the National Park Service and owners of commercial operations could help ensure that, in the short run, changes in land use would not occur that would be detrimental to the legislated purposes of the addition.

2. Easements

Land ownership may be envisioned as a package of rights. Easements convey only some of those rights from one owner to another, while all of the other rights of ownership remain unchanged. Easements can be positive--conveying a right of access; or negative--limiting specific uses of the land. Due to the clear intent of Congress to restore and enhance the ecology and the hydrologic regime, which also entails the restoration of endangered species habitat, the use of easements is not appropriate for this project. Also, easements would not be useful on lands needed for public access or the development of visitor or administrative facilities. As indicated in the section dealing with compatible and incompatible uses of private land, the only private uses that could be retained in the addition would be those associated with passive recreation.

3. Fee Acquisition

When all of the rights in property are acquired, the fee interest is transferred from one party to another. Where permanent protection of addition resources and purposes are recommended, fee acquisition would be the preferred protection alternative. Disadvantages of Federal fee acquisition include high initial costs, perpetual maintenance and management requirements, and possible negative economic and other impacts on the local community.

In the long run, acquisition of fee would be the most reliable alternative for restoring and enhancing the ecology and the natural hydrological conditions and allowing for

the restoration of endangered species habitat. It would also be the most applicable with areas needed for the development of visitor use and administrative facilities.

A reserved use and occupancy of property acquired in fee is a means to permit the landowner to remain on the land (following its purchase at fair market value less the value of the reservation) for a specific period of time). This method of acquisition normally will not be acceptable in the East Everglades addition. Most often, the terms of the agreement extend from five to twenty years. Allowing continued incompatible use of the property for this time period would impede efforts to enhance and restore the ecosystem. It is, therefore, not a feasible alternative. Congress has directed that the acquisition for East Everglades be completed within 5 years. In those rare exceptions where a use and occupancy is deemed appropriate, it will be considered only for a period of time to not exceed that date which is five years from the date the Land Protection Plan is approved.

P. L. 91-646, as amended, provides for the uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal programs and provides for certain payments and benefits for those displaced.

Methods of Acquisition (applicable to fee and less-than-fee) include:

Donation: Landowners may be motivated to donate their property or interests in the land to achieve conservation objectives. Tax benefits of donation also may be an important incentive. Donations to the United States of fee ownership may be deductible from taxable income. Easement donations also may provide deductions from taxable income, but are subject to certain Internal Revenue Service (IRS) requirements to qualify as a charitable contribution. Individuals interested in making donations should consult their qualified tax advisors.

The NPS may be able to provide some general examples of tax advantages, but cannot provide tax advice or commitments of what deductions will be allowed by the IRS. Nonprofit foundations, out of concern for protecting addition and resource-related values, can also purchase the land for donation to the NPS.

Purchase: Acquisition by purchase requires funds to be appropriated by Congress or donated from private sources. Funding for purchases depends primarily on future appropriations. For Fiscal Year 1991, Congress appropriated \$7,500,000 for acquisition in East Everglades.

Exchange: Land or interests in land may be acquired by exchange. Land to be exchanged must be of approximately equal value. Differences in value may be equalized by making cash payments, subject to the availability of funds. Any Federal land involved in a potential exchange would require an assessment for significant resources.

Condemnation: Through its power of eminent domain, the Federal government has the authority to acquire property through the Federal court system when that property is required to fulfill the purpose of national park areas. Where land or interests in land are to be purchased, every effort will be made to reach a price agreement with the owner; however, condemnation authority may be used to clear title, establish just compensation, or prevent imminent harm to resources when other methods are inadequate. This judicial process assures the landowner of just compensation when private land is acquired for NPS purposes. Condemnation actions may take one of the following two forms.

a. **Complaint Process:** Through this process, title does not transfer to the Federal government until the court action is complete and judgement is rendered.

b. **Declaration of Taking:** Through this process, the government obtains immediate title, control, and possession of the land. A declaration of taking vests title to property in the United States immediately upon filing in the court and the deposit of an estimate of just compensation. A portion of this deposit may be withdrawn by the owner as approved by the court.

4. No Action

This alternative would be acceptable in the short run when it is unlikely that the tract would undergo land use change and public access is not immediately needed. No action would not be acceptable when changes to the existing use would adversely affect the addition's resources and the purposes of the addition. It is not a long-term solution, as all lands within the addition are proposed for acquisition in order to achieve hydroperiod and ecological restoration goals.

V. Recommendations and Land Protection Priorities

To comply with the Congressional Intent to assure the enhancement and restoration of the ecosystem through the restoration of natural hydrologic conditions, and to manage the area to maintain natural abundance, diversity, and ecological integrity of an entire ecosystem (not just a water flow through the Shark Valley Slough), it will be necessary to acquire all lands within the park addition in fee. Lands needed for public use and administrative purposes also will be acquired in fee. Until lands are acquired by the Federal government, the NPS will encourage private and non-Federal public (State and local agencies) landowners to engage in activities that will not be detrimental to the integrity of the resources.

The NPS will cooperate with Federal, State, and local agencies to ensure that actions taken outside the boundary will not have a detrimental effect on the addition's resources.

Protection by Area (In order of priority):

Priority I. Priority Resource Protection and Restoration Lands (PRPR)

Privately-owned lands that are needed for the restoration and enhancement of the ecosystem through the enhancement of the natural hydrologic conditions comprise approximately 65,000 acres. They are generally located in the northern two-thirds of the addition and along its eastern boundary. These lands fall into two broad categories: tracts whose resources are effectively undisturbed, and tracts containing residences and agricultural or commercial operations (disturbed tracts).

In most instances, the undisturbed lands will be placed in a higher priority than the disturbed properties. Factors affecting the priority of the undisturbed tracts include: endangered species habitat, wading bird nesting areas, essential hydrological characteristics, exotic species threats, ecosystem habitat needs, animal population dynamics, key habitat restorative requirements, and those tracts necessary for the implementation of the GDM.

Generally, disturbed areas will be acquired after undisturbed tracts. The uses of these tracts have been analyzed as being incompatible with the long-range purposes of the addition. Factors affecting the acquisition of these tracts include location within the addition (this ties into the experimental water delivery program), actions taken by the landowner that would further alter the resource and scientific data that will enhance management's ability to reclaim the area and restore it to its natural condition. Disturbed tracts that are important to the future operation and management of the addition, and/or implementation of the GDM will also be considered for early acquisition.

In anticipation of the land acquisition process and the need to establish an administrative/management presence in the addition, a disturbed site or sites will be selected for this purpose. Initially, a site may be chosen to serve temporary needs. A General Management Plan addendum will identify the criteria and location of permanent administration and protection facilities for the addition. In light of the Congressional intent to restore and enhance the ecological values of the area, it would be wise to select and acquire a disturbed area, either privately or publicly owned, for the headquarters and any other support structures.

Priority II. State and County Lands

P. L. 101-229 states that the State of Florida may not provide less than 20 percent of the acquisition costs of the project and will donate approximately 43,000 acres of land. Nearly 35,000 acres of this land lies within the East Everglades Wildlife and Environmental Area (EEWEA). This area is divided into two separate management units. The southern unit is presently closed to hunting, fishing, and trapping. The northern unit has been open to hunting during a regular hunting season. The remaining 8,000 acres (approximately) are under the ownership of the Trustees of the Internal Improvement Fund (TIIF). The donation of these lands is critical to the resource protection and restoration needs of the addition and may be donated concurrent with all land protection plan priorities. Hunting has occurred on portions of these lands and is not deemed to be compatible with the intent of P. L. 101-229 to restore wildlife habitats and wildlife populations. Further, State wildfire suppression methods on these lands are not compatible with these resource protection and restoration goals. Accordingly, the Federal government proposes to initiate dialogue with the State at the earliest opportunity to facilitate the donation of these lands in order to assure the expeditious protection and recovery of the natural resource.

Priority III. Lands in Commercial Use

This land protection priority is specifically responsive to P. L. 101-229, Section 103(d), Concession Contracts. The Secretary is authorized to negotiate and enter into concessions contracts with the owners of commercial airboat and tour facilities in existence on or before January 1, 1989. All of these operations lie along the U.S. 41 (Tamiami Trail). All of these private lands are proposed for acquisition. An assessment of public accommodation needs and park resource values will be completed in order to determine whether it is necessary and appropriate for any of these operations to receive a concession contracts. No decision has been made yet concerning to what extent concession operations for these airboat operations are considered necessary and appropriate. Also, the lands will have to be evaluated to assess what the impacts of implementing the GDM, and expanding the hydroperiod, will have upon these commercial operations. Until such time as sufficient lands are acquired upon which potential public use might be legally accommodated, no assessment of public use needs will be conducted; however, should any major expansion of present commercial uses be undertaken, an

assessment will be conducted to determine if the expansion will detrimentally affect the Intent of P.L. 101-229. Should resource protection and restoration goals be compromised by commercial facility expansion, Federal acquisition may be accelerated.

Priority IV. Subsurface Mineral Rights

Third party subsurface rights are scattered throughout the addition. These constitute the last group of properties to be addressed in the land protection process. Owners of these third party rights are required to submit a Plan of Operations (as per 36 CFR 9B) in order to exploit mineral resources. Any effort to exercise these rights could be detrimental to the purposes of the addition and could cause the NPS to implement the acquisition process in a timely manner.

In addition to the four major categories of properties, several outstanding land protection issues remain that will be approached on a case-by-case basis.

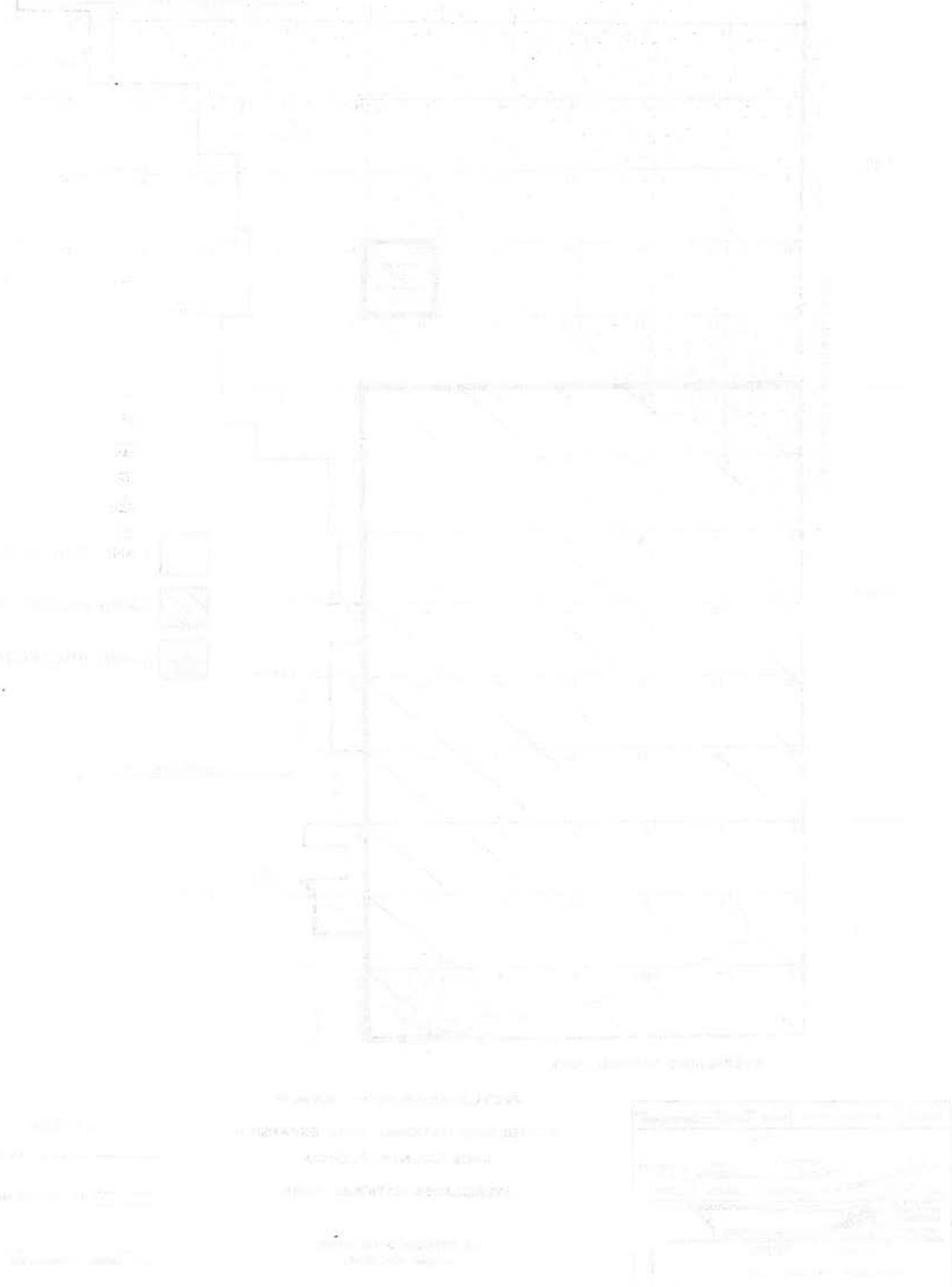
1. The NPS will initiate appropriate actions with the owners of Gilbert's Marina to resolve this issue, consistent with Federal law. Gilbert constructed the marina on Federal land (later declared as Wilderness). The East Everglades legislation authorizes an exchange of lands -- those already impacted lands at Gilbert's for an equivalent value within the East Everglades addition. A successful resolution will result in the acquisition of property by Gilbert's within the boundary of the addition which will be exchanged for the land on which the marina is located. The deletion of Gilbert's Marina from the boundary of Everglades National Park would then be proposed. Further expansion of the improvements by Gilbert's into the park, which would expand their trespass against the United States and violate National Park and Wilderness statutes, will not be allowed. NPS policy clarifies that this use cannot be allowed to continue as a trespass on National Park property; however, if Gilbert's does not effect an exchange of interests, then these incompatible and unauthorized facilities and activities at Gilbert's will have to be removed from Federal lands within the park. The National Park Service will take all legal actions as necessary to have these lands removed from the park.
2. The NPS will initiate a dialogue with the owners of the AM radio station antenna fields located along U.S. 41 (Tamiami Trail) and the appropriate government agencies to assess the effects of those towers on the addition.
3. An assessment of the Everglades Boat Rides/Osceola Camp (commercial airboat facility) will be initiated to determine the effect of this operation on the restoration project. The assessment also will examine the issue of Native American rights and determine its implications. Because this may be the site of a traditional Miccosukee camp, an archeological and ethno-historical assessment may be required.
4. The NPS encourages the USACOE to proceed expeditiously in its efforts to prepare and complete the GDM and DDM. The results of these actions will assist the NPS in its land protection and land acquisition strategies. They will also guide the USACOE land acquisition efforts along the eastern boundary of the addition.
5. In its dialogue with the appropriate State and local agencies the NPS will resolve the property ownership, resource protection, and jurisdiction issues that resulted from the redefinition of the existing northern boundary as described in P. L. 101-229.

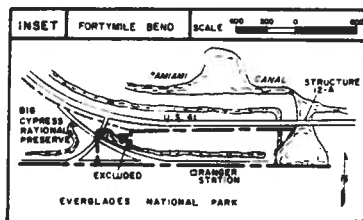
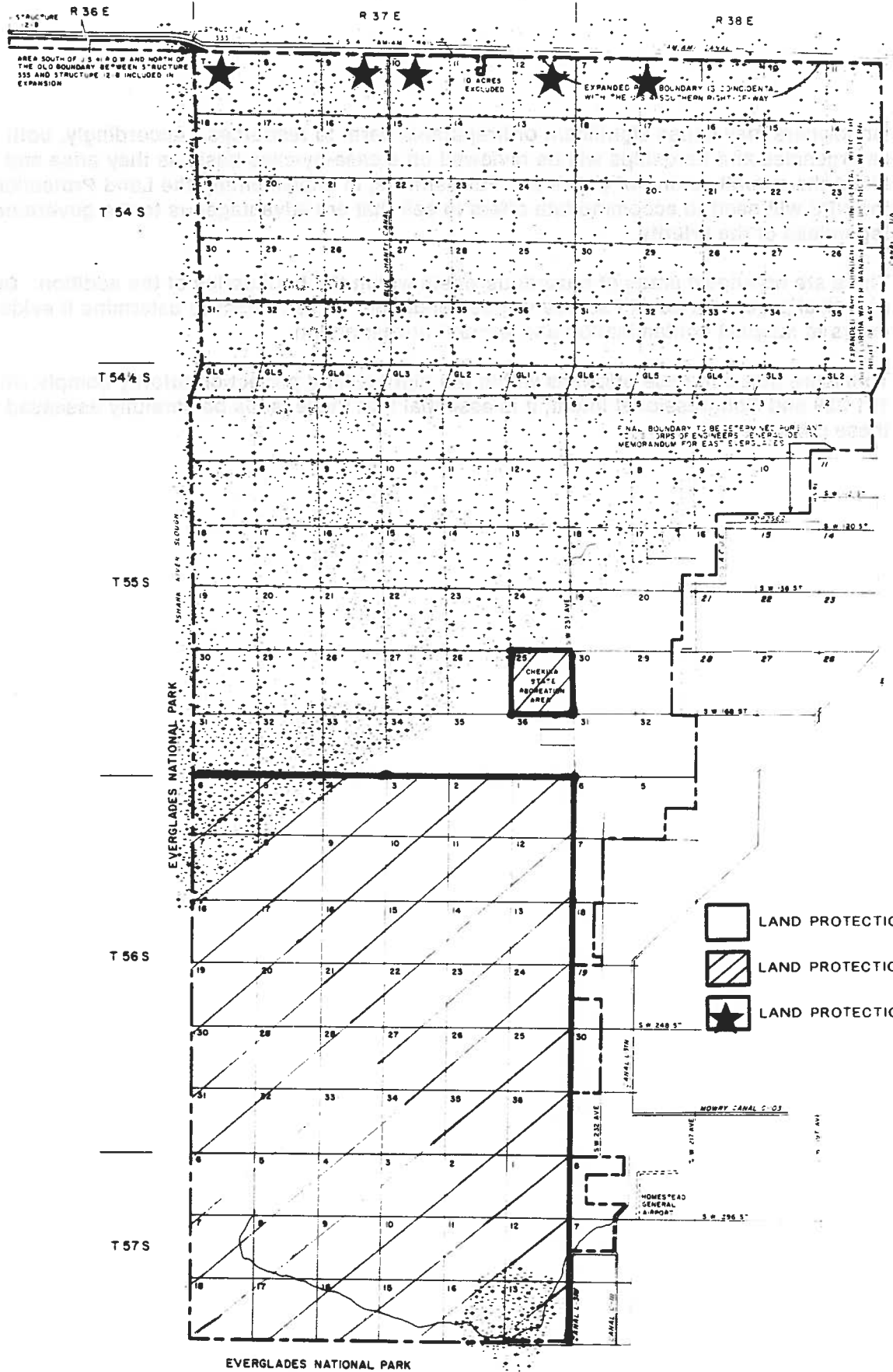
It is not possible to predict in advance when landowners may be subject to hardships that require them to dispose of land or improvements in land, or to know when actions by

landowners may cause significant or irreparable harm to resources. Accordingly, both emergencies and hardships will be reviewed on a case-by-case basis as they arise and will not affect the overall setting of priorities. Furthermore, in implementing the Land Protection Plan, the NPS will need to accommodate offers to sell that are advantageous to the government regardless of the priority.

There are no known areas of hazardous waste within the boundaries of the addition. During the appraisal process a Level I survey will be conducted on each tract to determine if evidence exists to suspect contamination and warrant further action.

To assure that purchase priorities within the highest land protection priority comply with P. L. 101-229 and Congressional Intent, it is essential that these lands be carefully assessed with these criteria in mind.





BOUNDARY MAP
EVERGLADES NATIONAL PARK EXPANSION
DADE COUNTY, FLORIDA
EVERGLADES NATIONAL PARK

U.S. DEPARTMENT OF THE INTERIOR
 NATIONAL PARK SERVICE

LEGEND

- ACQUISITION AREA
- 8 1/2 SQUARE MILE AREA

4000 0 4000 8000
 SCALE 1" = 1 MILE

ENVIRONMENTAL ASSESSMENT

PURPOSE AND NEED FOR THE PLAN

In May 1982, the Department of the Interior published in the Federal Register, a policy statement for use of the Federal portion of the Land and Water Conservation Fund which requires each agency responsible for land protection in Federally-administered areas to:

- Identify what lands or interests in land need to be in Federal ownership to achieve management purposes consistent with public objectives in the unit.
- To the maximum extent practical, use cost-effective alternatives to direct Federal purchase of private lands and, when acquisition is necessary, acquire or retain only the minimum interests necessary to meet management objectives.
- Cooperate with landowners, other Federal agencies, State and local governments, and the private sector to manage land for public use or protect it for resource conservation.
- Formulate, or revise as necessary, plans for land acquisition and resource use or protection to assure that socio-cultural impacts are considered and that the most outstanding areas are adequately managed.

In response to this policy, the National Park Service (NPS) has prepared a Land Protection Plan for the East Everglades Addition of Everglades National Park. The purpose of this plan is to identify land protection alternatives to assure the restoration and enhancement of the Everglades ecosystem in the addition and existing park, the restoration of natural hydrologic conditions, and to provide for appropriate administrative facilities and visitor use. The plan has been prepared in compliance with relevant legislation, other Congressional guidelines, executive orders, and Departmental and NPS policies. The plan will be reviewed every two years and updated as appropriate to deal with issues not fully addressed and to reflect new information about the addition.

AFFECTED ENVIRONMENT

The East Everglades is generally described as the 153,600 acre region lying between Everglades National Park and the urban/rural limits of Dade County. The region is bounded by Tamiami Trail (U. S. 41) on the north, the L-31 levee and C-111 canal on the east, and Everglades National Park on the south and west. It represents most of what remains of the eastern portions of the original Everglades marshland ecosystem in Dade County.

The East Everglades contains the headwaters of Northeast Shark River Slough and Taylor Slough which are the primary sources of water flow to the park. The sloughs provide important water storage and aquifer recharge functions for Dade and Monroe Counties. During the rainy season (April-October), water levels rise to the edges of the slough. During the drier winter months, water recedes toward the center of the slough, allowing the edges to gradually dry. This naturally occurring ebb and flow is crucial to the survival of much of the region's wildlife.

The portion of the Shark River Slough drainage basin in the East Everglades is composed of wetland communities typical of those parts of the southern Everglades which are inundated for 9-12 months each year. Vegetation consists of a mosaic of sawgrass marshland, lower-lying flats and sloughs, and tree islands and hardwood hammocks at higher elevations. The substrates in the heart of the slough are primarily peat soils covered by a dense layer of periphyton algae.

South of the Northeast Shark River Slough there are slightly higher elevated marl wetland prairies and rocky glade communities. Typical hydroperiods in these zones range from two to six months during average hydrological years. There are also ecologically diverse irregular mosaics of grass types interspersed by hundreds of small bayheads and tree islands which form the northern and central reaches of the Taylor Slough drainage basin.

The undeveloped portions of the East Everglades provide crucial habitat benefits to Everglades National Park, and many wildlife species rely on both areas for feeding, foraging, cover, and nesting. The East Everglades supports 359 recorded species of fish, reptiles, mammals, birds, and amphibians. Federally-listed endangered species within the East Everglades include Florida panther, Cape Sable sparrow, bald eagle, wood stork, and snail kite. Four Federally or State-listed threatened species are also present within the area.

The East Everglades contains the primary home range for at least two Florida panthers. Additional animals use the area on an occasional basis. These individuals comprise the park's only known panther population. Habitat loss is a primary element endangering the panther because it requires large, undisturbed areas for its range.

The East Everglades also contains critical habitat (designated in accordance with the Endangered Species Act) of the Cape Sable sparrow. The sparrow inhabits the freshwater sawgrass and muhly grass marshes. Maintenance of this habitat requires the proper hydrologic and fire regime.

PROPOSAL AND ALTERNATIVES

To comply with the Congressional intent to assure the enhancement and restoration of the wetland ecosystem through the restoration of natural hydrologic conditions, and to manage the area to maintain natural abundance, diversity, and ecological integrity of an entire ecosystem (not just a water flow through the Shark Valley Slough), it will be necessary to acquire all lands within the addition in fee. Lands needed for public use and administrative purposes also will be acquired in fee. Until lands are acquired by the Federal government, the NPS will encourage private and non-Federal public (State and local agencies) landowners to engage in activities that will not be detrimental to the integrity of the resources; however, these efforts would only be effective as short-term measures until efforts to restore the ecosystem begin and land acquisition proceeds.

The NPS will cooperate with Federal, State, and local agencies to ensure that actions taken outside the boundary will not have a detrimental effect on the addition's resources.

Easements would allow for some development that would have adverse impacts on water flows, the restoration of the wetland ecosystem, and endangered species.

By taking no action, efforts would not go forward to restore the natural ecosystem.

ENVIRONMENTAL CONSEQUENCES

1. Impacts on Land Use

In most cases, land uses on the disturbed tracts affected by this plan would change in the long term. Agricultural practices would cease, as would the occupancy of residential areas. These properties would revert to the natural ecology and natural hydrologic conditions of the Everglades. They would not be suitable for habitation, farming, or other commercial practices. In the short term these disturbed areas will continue to be occupied until measures are instituted to restore the ecology and/or the lands are acquired. In areas where visitor use and administrative activities are contemplated, neither residential use nor commercial activities would be appropriate. In the short run, commercial operations along U.S. 41 (Tamiami Trail) would continue to operate until such time as the NPS assesses the concession needs of the addition and initiates acquisition.

2. Impact on Unit's Resources

The alternatives considered are likely to have the following positive impacts on the unit's resources and the ability to restore the nature ecosystem. For a description of each alternative see Section IV.

	<u>Fee</u>	<u>Easement</u>	<u>No Action</u>	<u>Coop w/ Others</u>	<u>T.A. Educ. Zoning</u>
Private Undisturbed	High	None	None	Low	Low
Private Disturbed	High	Low	None	Low	Low
State and Local	High	None	Low	Low	Low
Commercial	High	Low	None	Low	Low

An addendum to the General Management Plan, development concept plans, and other site specific planning documents will address environmental concerns in detail.

103 STAT. 1946

PUBLIC LAW 101-229—DEC. 13, 1989

Public Law 101-229
101st Congress

An Act

Dec. 13, 1989
[H.R. 1727]

To modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Everglades
National Park
Protection and
Expansion Act of
1989.
Florida.
16 USC 410r-5
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Everglades National Park Protection and Expansion Act of 1989".

**TITLE I—EVERGLADES NATIONAL PARK
EXPANSION**

16 USC 410r-5.

SEC. 101. FINDINGS, PURPOSES AND DEFINITION OF TERMS.

(a) FINDINGS.—The Congress makes the following findings:

(1) The Everglades National Park is a nationally and internationally significant resource and the park has been adversely affected and continues to be adversely affected by external factors which have altered the ecosystem including the natural hydrologic conditions within the park.

(2) The existing boundary of Everglades National Park excludes the contiguous lands and waters of the Northeast Shark River Slough that are vital to long-term protection of the park and restoration of natural hydrologic conditions within the park.

(3) Wildlife resources and their associated habitats have been adversely impacted by the alteration of natural hydrologic conditions within the park, which has contributed to an overall decline in fishery resources and a 90 percent population loss of wading birds.

(4) Incorporation of the Northeast Shark River Slough and the East Everglades within the park will limit further losses suffered by the park due to habitat destruction outside the present park boundaries and will preserve valuable ecological resources for use and enjoyment by future generations.

(5) The State of Florida and certain of its political subdivisions or agencies have indicated a willingness to transfer approximately 35,000 acres of lands under their jurisdiction to the park in order to protect lands and water within the park, and may so transfer additional lands in the future.

(6) The State of Florida has proposed a joint Federal-State effort to protect Everglades National Park through the acquisition of additional lands.

(b) PURPOSE.—The purposes of this Act are to—

(1) increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore

the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades to Everglades National Park; and

(2) assure that the park is managed in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

(c) **DEFINITIONS.**—As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "addition" means the approximately 107,600 acre area of the East Everglades area authorized to be added to Everglades National Park by this Act.

(3) The term "park" means the area encompassing the existing boundary of Everglades National Park and the addition area described in paragraph (2).

(4) The term "project" means the Central and Southern Florida Project.

SEC. 102. BOUNDARY MODIFICATION.

16 USC 410r-6.

(a) **AREA INCLUDED.**—The park boundary is hereby modified to include approximately 107,600 acres as generally depicted on the map entitled "Boundary Map, Everglades National Park Addition, Dade County, Florida", numbered 160-20,013B and dated September 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

Public information.

(b) **BOUNDARY ADJUSTMENT.**—The Secretary may from time to time make minor revisions in the boundaries of the park in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 and following). In exercising the boundary adjustment authority the Secretary shall ensure all actions will enhance resource preservation and shall not result in a net loss of acreage from the park.

(c) **ACQUISITION.**—(1) Within the boundaries of the addition described in subsection (a), the Secretary may acquire lands and interests in land by donation, purchase with donated or appropriated funds, or exchange. For purposes of acquiring property by exchange, the Secretary may, notwithstanding any other provision of law, exchange the approximately one acre of Federal land known as "Gilberts' Marina" for non-Federal land of equal value located within the boundaries of the addition. Any lands or interests in land which are owned by the State of Florida or any political subdivision thereof, may be acquired only by donation.

(2) It is the express intent of Congress that acquisition within the boundaries of the addition shall be completed not later than 5 years after the date of enactment of this section. The authority provided by this section shall remain in effect until all acquisition is completed.

Termination date.

(d) **ACQUISITION OF TRACTS PARTIALLY OUTSIDE BOUNDARIES.**—When any tract of land is only partly within boundaries referred to in subsection (a), the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs. Land so acquired outside of the boundaries may be exchanged by the Secretary for non-Federal lands within the boundaries, and any land so acquired and not utilized for exchange shall be reported to the General Services Administration for disposal.

103 STAT. 1948

PUBLIC LAW 101-229—DEC. 13, 1989

under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377).

(e) **OFFERS TO SELL.**—In exercising the authority to acquire property under this Act, the Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the addition to sell such property, if such owner notifies the Secretary that the continued ownership of such property is causing, or would result in undue hardship.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—(1) Subject to the provisions of paragraph (2), there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(2) With respect to land acquisition within the addition, not more than 80 percent of the cost of such acquisition may be provided by the Federal Government. Not less than 20 percent of such cost shall be provided by the State of Florida.

(g) **ASSISTANCE.**—Upon the request of the Governor of the State of Florida, the Secretary is authorized to provide technical assistance and personnel to assist in the acquisition of lands and waters within the Kissimmee River/Lake Okeechobee/Everglades Hydrologic Basin, including the Big Cypress Swamp, through the provision of Federal land acquisition personnel, practices, and procedures. The State of Florida shall reimburse the Secretary for such assistance in such amounts and at such time as agreed upon by the Secretary and the State. Notwithstanding any other provision of law, reimbursement received by the Secretary for such assistance shall be retained by the Secretary and shall be available without further appropriation for purposes of carrying out any authorized activity of the Secretary within the boundaries of the park.

16 USC 410r-7.

SEC. 103. ADMINISTRATION.

(a) **IN GENERAL.**—The Secretary shall administer the areas within the addition in accordance with this Act and other provisions of law applicable to the Everglades National Park, and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4). In order to further preserve and protect Everglades National Park, the Secretary shall utilize such other statutory authority as may be available to him for the preservation of wildlife and natural resources as he deems necessary to carry out the purposes of this Act.

(b) **PROTECTION OF ECOSYSTEM.**—The Secretary shall manage the park in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

Boating.

(c) **PROTECTION OF FLORA AND FAUNA.**—The park shall be closed to the operation of airboats—

(1) except as provided in subsection (d); and

(2) except that within a limited capacity and on designated routes within the addition, owners of record of registered airboats in use within the addition as of January 1, 1989, shall be issued nontransferable, nonrenewable permits, for their individual lifetimes, to operate personally-owned airboats for non-commercial use in accordance with rules prescribed by the Secretary to determine ownership and registration, establish

uses, permit conditions, and penalties, and to protect the biological resources of the area.

(d) **CONCESSION CONTRACTS.**—The Secretary is authorized to negotiate and enter into concession contracts with the owners of commercial airboat and tour facilities in existence on or before January 1, 1989, located within the addition for the provision of such services at their current locations under such rules and conditions as he may deem necessary for the accommodation of visitors and protection of biological resources of the area.

(e) **VISITOR CENTER.**—The Secretary is authorized and directed to expedite the construction of the visitor center facility at Everglades City, Florida, as described in the Development Concept Plan, Gulf Coast, dated February 1989, and upon construction shall designate the visitor center facility as "The Marjory Stoneman Douglas Center" in commemoration of the vision and leadership shown by Mrs. Douglas in the protection of the Everglades and Everglades National Park.

Marjory
Stoneman
Douglas.

SEC. 104. MODIFICATION OF CERTAIN WATER PROJECTS.

16 USC 410r-8.

(a) **IMPROVED WATER DELIVERIES.**—(1) Upon completion of a final report by the Chief of the Army Corps of Engineers, the Secretary of the Army, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park.

(2) Such modifications shall be based upon the findings of the Secretary's experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a General Design Memorandum to be prepared by the Jacksonville District entitled "Modified Water Deliveries to Everglades National Park". The Draft of such Memorandum and the Final Memorandum, as prepared by the Jacksonville District, shall be submitted as promptly as practicable to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives.

(3) Construction of project modifications authorized in this subsection and flood protection systems authorized in subsections (c) and (d) are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require further economic justification.

(4) Nothing in this section shall be construed to limit the operation of project facilities to achieve their design objectives, as set forth in the Congressional authorization and any modifications thereof.

(b) **DETERMINATION OF ADVERSE EFFECT.**—(1) Upon completion of the Final Memorandum referred to in subsection (a), the Secretary of the Army, in consultation with the South Florida Water Management District, shall make a determination as to whether the residential area within the East Everglades known as the "Eight and One-Half Square Mile Area" or adjacent agricultural areas, all as generally depicted on the map referred to in subsection 102(a), will be adversely affected by project modifications authorized in subsection (a).

Agriculture and
agricultural
commodities.

103 STAT. 1950

PUBLIC LAW 101-229—DEC. 13, 1989

(2) In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army shall consider the impact of any flood protection system proposed to be implemented pursuant to subsection (c) on such agricultural areas.

(c) FLOOD PROTECTION; EIGHT AND ONE-HALF SQUARE MILE AREA.—If the Secretary of the Army makes a determination pursuant to subsection (b) that the "Eight and One-Half Square Mile Area" will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area.

(d) FLOOD PROTECTION; ADJACENT AGRICULTURAL AREA.—(1) If the Secretary of the Army determines pursuant to subsection (b) that an adjacent agricultural area will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for such area. Such determination shall be based on a finding by the Secretary of the Army that:

(A) the adverse effect will be attributable solely to a project modification authorized in subsection (a) or to a flood protection system implemented pursuant to subsection (c), or both; and

(B) such modification or flood protection system will result in a substantial reduction in the economic utility of such area based on its present agricultural use.

(2) No project modification authorized in subsection (a) which the Secretary of the Army determines will cause an adverse effect pursuant to subsection (b) shall be made operational until the Secretary of the Army has implemented measures to prevent such adverse effect on the adjacent agricultural area: *Provided*, That the Secretary of the Army or the South Florida Water Management District may operate the modification to the extent that the Secretary of the Army determines that such operation will not adversely affect the adjacent agricultural area: *Provided further*, That any preventive measure shall be implemented in a manner that presents the least prospect of harm to the natural resources of the park.

(3) Any flood protection system implemented by the Secretary of the Army pursuant to this subsection shall be required only to provide for flood protection for present agricultural uses within such adjacent agricultural area.

(4) The acquisition of land authorized in section 102 shall not be considered a project modification.

(e) PERIODIC REVIEW.—(1) Not later than 18 months after the completion of the project modifications authorized in subsection (a), and periodically thereafter, the Secretary of the Army shall review the determination of adverse effect for adjacent agricultural areas.

(2) In conducting such review, the Secretary of the Army shall consult with all affected parties, including, but not limited to, the Secretary, the South Florida Water Management District and agricultural users within adjacent agricultural areas.

(3) If, on the basis of such review, the Secretary of the Army determines that an adjacent agricultural area has been, or will be adversely affected, the Secretary of the Army is authorized and directed, in accordance with the provisions of subsection (d), to construct a flood protection system for such area: *Provided*, That the provisions of subsection (d)(2) shall be applicable only to the extent that the Secretary, in consultation with the Secretary of the Army, determines that the park will not be adversely affected.

Agriculture and
agricultural
commodities.

(4) The provisions of this subsection shall only be applicable if the Secretary of the Army has previously made a determination that such adjacent agricultural area will not be adversely affected.

(f) **CURRENT CANAL OPERATING LEVELS.**—Nothing in this section shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal below the maximum authorized operating level as of the date of enactment of this Act.

(g) **NO LIMITATION ON OTHER CLAIMS.**—If the Secretary of the Army makes a determination of no adverse effect pursuant to subsection (b), such determination shall not be considered as a limitation or prohibition against any available legal remedy which may otherwise be available.

(h) **COORDINATION.**—The Secretary and the Secretary of the Army shall coordinate the construction program authorized under this section and the land acquisition program authorized in section 102 in such a manner as will permit both to proceed concurrently and as will avoid unreasonable interference with property interests prior to the acquisition of such interests by the Secretary under section 102.

(i) **WEST DADE WELLFIELD.**—No Federal license, permit, approval, right-of-way or assistance shall be granted or issued with respect to the West Dade Wellfield (to be located in the Bird Drive Drainage Basin, as identified in the Comprehensive Development Master Plan for Dade County, Florida) until the Secretary, the Governor of the State of Florida, the South Florida Water Management District and Dade County, Florida enter into an agreement providing that the South Florida Water Management District's water use permit for the wellfield, if granted, must include the following limiting conditions: (1) the wellfield's peak pumpage rate shall not exceed 140,000,000 gallons per day; (2) the permit shall include reasonable, enforceable measures to limit demand on the wellfield in times of water shortage; and (3) if, during times of water shortage, the District fails to limit demand on the wellfield pursuant to (2), or if the District limits demand on the wellfield pursuant to (2), but the Secretary certifies that operation of the wellfield is still causing significant adverse impacts on the resources of the Park, the Governor shall require the South Florida Water Management District to take necessary actions to alleviate the adverse impact, including, but not limited to, temporary reductions in the pumpage from the wellfield.

(j) **PROTECTION OF NATURAL VALUES.**—The Secretary of the Army is directed in analysis, design and engineering associated with the development of a general design memorandum for works and operations in the "C-111 basin" area of the East Everglades, to take all measures which are feasible and consistent with the purposes of the project to protect natural values associated with Everglades National Park. Upon completion of a general design memorandum for the area, the Secretary shall prepare and transmit a report to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives on the status of the natural resources of the C-111 basin and functionally related lands.

Reports.

103 STAT. 1952

PUBLIC LAW 101-229—DEC. 13, 1989

TITLE II—FORT JEFFERSON NATIONAL MONUMENT REDESIGNATION STUDY

SEC. 201. FORT JEFFERSON NATIONAL MONUMENT REDESIGNATION STUDY.

The Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, not later than 2 years after the date of enactment of this Act, a feasibility and suitability study of expanding and redesignating Fort Jefferson National Monument in the Dry Tortugas as Fort Jefferson National Park. The study shall include cost estimates for any necessary acquisition, development, operation, and maintenance, as well as alternatives, including a joint Federal and State management scheme, to further protect the waters, reef tracts, fisheries, and shallow banks in and around the Florida Keys and Fort Jefferson National Monument.

Approved December 13, 1989.

LEGISLATIVE HISTORY—H.R. 1727 (S. 724):

HOUSE REPORTS: No. 101-182, Pt. 1 (Comm. on Interior and Insular Affairs) and Pt. 2 (Comm. on Public Works and Transportation).

CONGRESSIONAL RECORD, Vol. 135 (1989):

Nov. 7, considered and passed House.

Nov. 21, considered and passed Senate, amended, in lieu of S. 724. House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 25 (1989):
Dec. 13, Presidential statement.

