

Protecting Archaeological Resources on Restoration Lands

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Problem Statement

- Restoration projects in South Florida involve acquiring large tracts of land (500 – >15,000 acres)
- Significant investment of public funds (Federal, state, local; >\$10M)
- Archaeological resources sites often identified after lands acquired and after initial surveys
- Conversion of land from the current condition (wetlands/uplands/agricultural) to future use (water storage and treatment) may significantly impact archaeological resources



Problem Statement continued

- Multiple Federal and state laws and rules invoked
- Multiple Tribal preferences:
 - Avoid identification of archeological resources sites
 - Once identified, redesign to exclude sites from project footprint if possible
 - If sites must be in project footprint, add features to protect and conserve sites
 - May conflict with project purpose and operations
- Requires additional investments of public funds to:
 - Acquire additional land if necessary
 - Protect sites by constructing additional features, and
 - Provide long-term operations and maintenance
- Relationship problem: reveals conflicting interests based on historical conflicts



Project Goals

- Obtain greater understanding of Native American perspectives* on identifying and protecting archaeological resources sites
- Develop best practices for
 - Coordination
 - Documentation
 - Protecting/conserving archaeological resources
- Create better collaboration between stakeholders

* Obtain greater understanding of other stakeholder perspectives, too



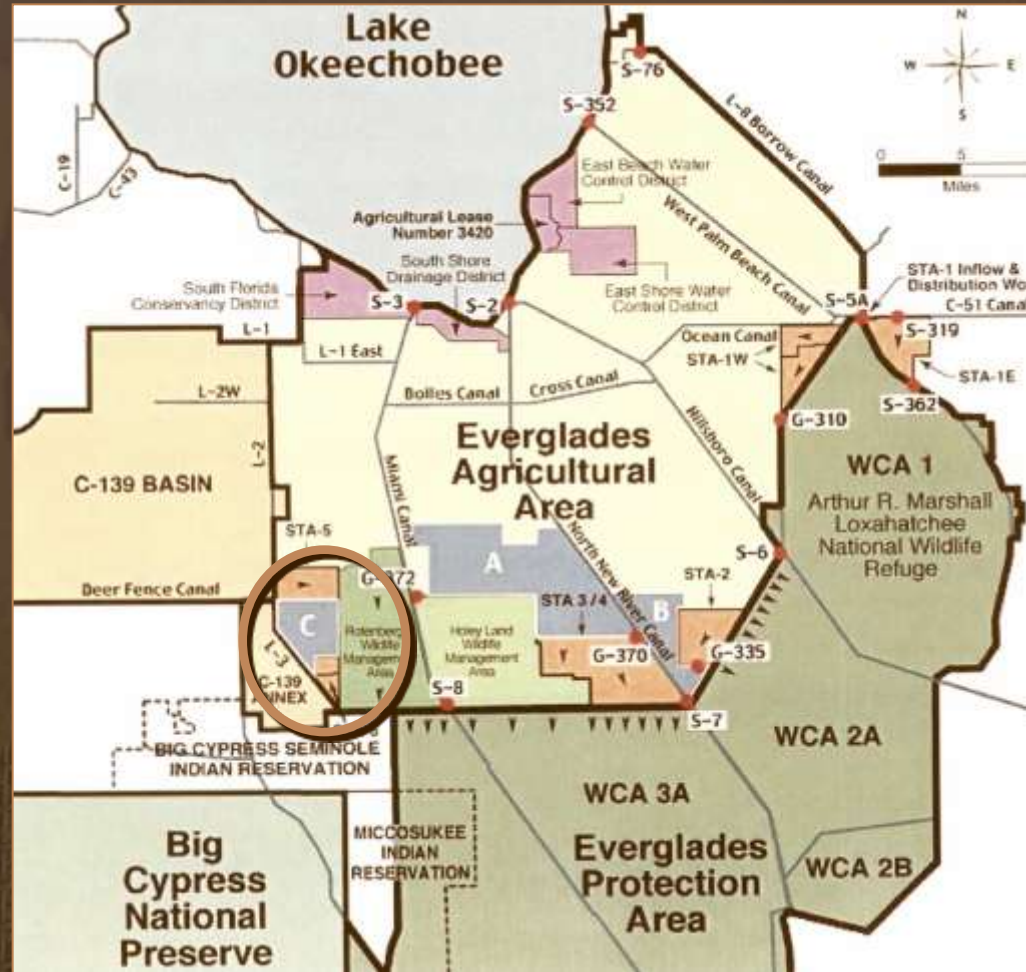
Desired Outcomes

- Greater level of trust between all stakeholders
 - Improved coordination and communication
- Protection and preservation of archaeological resources (respect!)
- Attain benefits of restoration projects while minimizing additional costs
- Implement cost-effective solutions that all stakeholders agree on



Practicum Project Process

- Starting point
(Comprehensive Everglades Restoration Plan and Acceler8 Program)
- Current Context:
Compartment C Project
(addition to STA 5/EAA stormwater treatment area)
- Relevancy of issues and conflicts to other projects
- Where we need to go



**U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
AND
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**Policy Statement and Guidelines Regarding Human
Remains and the Comprehensive Everglades
Restoration Plan (CERP)**

Executive Summary

The Comprehensive Everglades Restoration Plan (CERP), a joint effort by the U.S. Army Corps of Engineers (USACE), the South Florida Water Management District (SFWMD), and other local sponsors, has the potential to affect archaeological sites that contain human remains. The Army Corps of Engineers and the South Florida Water Management District are committed to managing any such remains in full compliance with all applicable Federal and State laws and legislation. Additionally, both agencies understand the sensitivity of this issue to Native American groups and wish, to as full an extent as possible, to treat such remains in a manner that is sensitive to Tribal concerns. The Miccosukee Tribe in particular has made clear specific concerns that they have regarding human remains, their treatment and what may or may not be acceptable to them. The Miccosukee Tribe's proposal is described in detail later in this document and is included in Appendix A. As such, this document provides policies and guidelines that are intended to guide future archaeological work associated with CERP in ways that are both legal and sensitive to Tribal concerns while still maximizing overall project goals.

The overarching concept that underlies both the Federal and State response to the Miccosukee Tribe's request is the concept of consultation. The Federal Trust Doctrine with regard to Indian Tribes, which guides federal actions in this instance, is based on consultation as a way to come to a culturally sensitive outcome when a federal action may affect a tribal resource. State actions are in this case guided by Section 872.05, Florida Statutes which also prescribes consultation as a way to come to final resolution on how human remains encountered in the course of a project should be treated. Both the Federal process and the State process are based on consultation as a way to come to final agreement on how human remains and culturally sensitive sites are to be treated and as such, the consultation process can be entered into jointly by Federal and State actors in order to come to final resolution on any human remains that may be affected by joint Federal-State projects. While other laws, policies, regulations and Executive Orders may come into play as the Tribe's request is addressed, the process is fundamentally based on consultation as directed by the Federal Trust Doctrine and Section 872.05, Florida Statutes and as such will be implemented as a joint, seamless, Federal-State process.

Starting Point

Existing policy (2007)

- Provides legal framework
- Provides procedures
 - Research, surveys
 - Consultation
 - Mitigation
- Reflects input of some (not all!) stakeholders



“Inundation of burials is unacceptable.”

MICCOSUKEE POSITION ON ACCELERATED EVERGLADES RESTORATION PROJECTS

1. **THE TRIBE MAINTAINS THAT ARCHAEOLOGICAL DATA RECOVERY IS NOT APPROPRIATE. WE WILL ALWAYS STATE THAT PRESERVATION IN PLACE REMAINS OUR FIRST CHOICE.**
2. **Inundation of burials is unacceptable.** Avoidance of burials is the first choice. Lowering the water levels or that inundation will not affect these sites is appropriate. If nature causes inundation through an unique event, such as a hurricane or tropical storm, that that is OK. However, recurring flooding of these sites due to storm water runoff is not OK.
3. **The South Florida Water Management District and the Corps of Engineers should make every attempt to exclude burials from projects** that will cause them to become inundated.
4. If every attempt to exclude burials has been done, then these two agencies need to determine what they can do to prevent these burial sites from becoming inundated within the project without disturbing the burial site.
5. If every attempt to prevent burial sites from becoming inundated has been done and these burial sites will still become inundated, then, **AS A LAST RESORT EFFORT**, excavation of the burial site should be done. The remains should be reinterred as close as possible to the original location in the same orientation and manner in which they were found. If additional fill can be placed on the site and the remains reinterred above the water level, than that is acceptable. If the remains must be relocated to an adjacent site, outside of the project area, than that is also acceptable, as long as no burial on the adjacent site will be disturbed. **HOWEVER, A CENTRAL DEPOSITORY FOR REMAINS IS NOT ACCEPTABLE.**
6. **EVERY SITE IS UNIQUE. THIS IS NOT A COOKIE CUTTER OR ONE SIZE FITS ALL APPROACH. EACH SITE WILL HAVE TO BE DEALT WITH ON A CASE BY CASE BASIS.**
7. For Cultural Resources sites that are excluded from effects of the project area, the method used to determine these site boundaries is acceptable. However, for sites within a project area that will be directly effected by the project, shovel test sites will have to be considerably closer in order to determine if there are any burials on the site. Grids will have to be tighter with a distance of 2-3 meters within the site to see if there are any burials. A posthole digger could be used in conjunction with the 1 meter square shovel tests on these tight grids.
8. If an isolated human remain is found, such as a tooth, then every reasonable and good faith effort should be made to determine if it is associated with a burial. Do 2 meter grids in the cardinal directions from the shovel test that found the isolate.
9. When reporting information from these sites to the Tribe, please use a little common sense. We do not need door stops. Be concise, tell us what method was used, what was found on the site, location of the site on an aerial map or ortho-photos equal in relation to the project (include multiple sites on one big map), and a photograph(s) of the site. This will allow us to evaluate the sites.
10. **Steve Fern and Enal Daskoff are the only Cultural Representatives for the Miccosukee Tribe. DO NOT CONTACT ANYONE ELSE PERIOD.** See attached letter from the Tribal

Key Stakeholder's Position

- Not aligned with other stakeholders
- Highlights interests:
 - Respect
 - Trust
 - Communication

“...make every attempt to exclude burials from projects. . .”

“DO NOT CONTACT ANYONE ELSE PERIOD!”



Context

Compartment C Project

- USACE issued Sec 404 permit to SFWMD for construction of Compartment C Project
 - Lands originally obtained with Federal funds for South Florida ecosystem restoration (Talisman land acquisition)
 - DOI approved providing lands to SFWMD to construct the project
(Sec 106 of Historic Preservation Act applies)
 - SFWMD under legal mandate to construct project (water quality litigation)
- Permit application/EIS reviewed and project approved by State DHR
 - Included relocation of archeological resources sites



Context

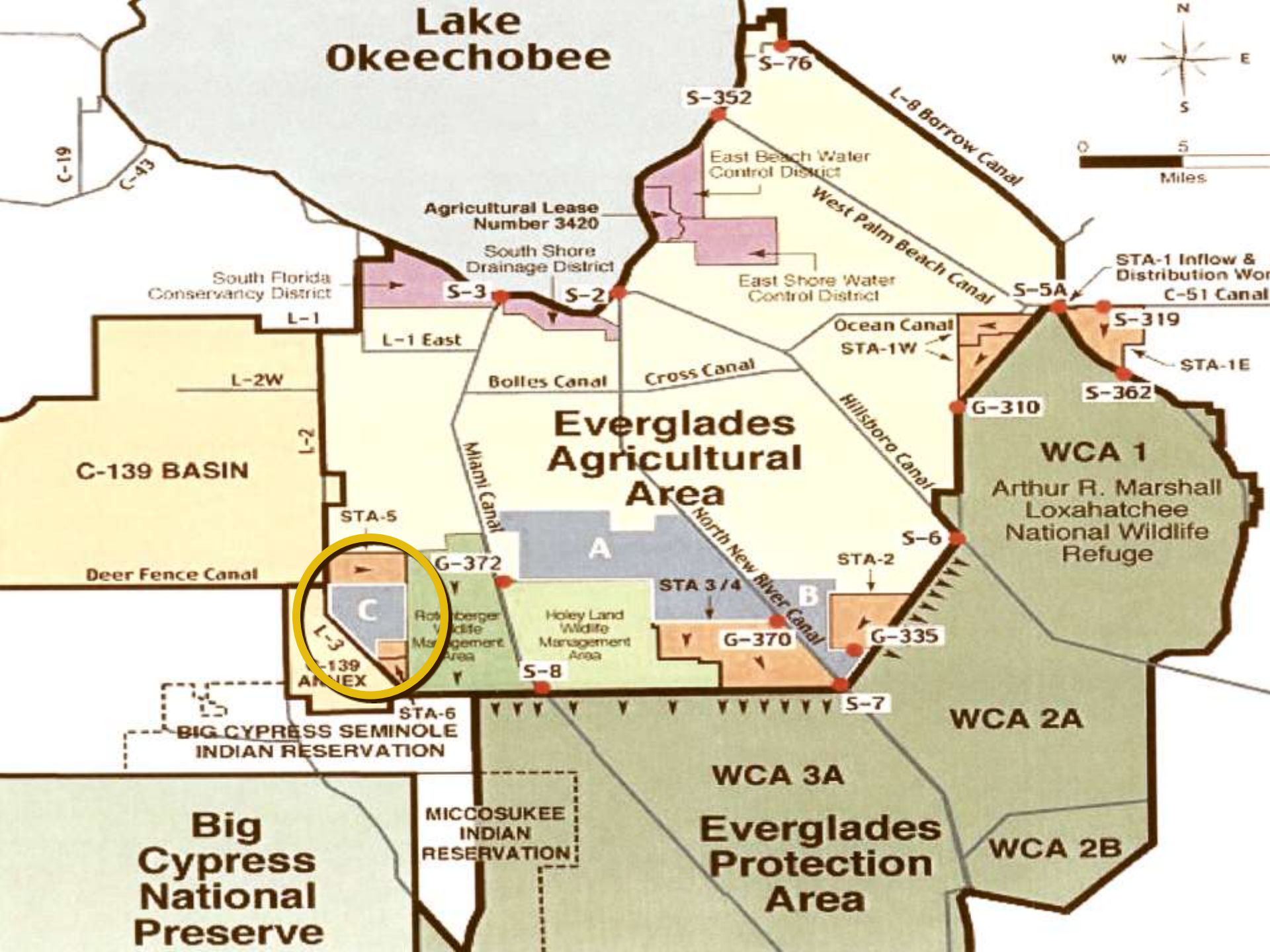
Compartment C Project continued

- After construction initiated, archaeological resources more extensive than originally known
 - Relocation no longer preferred by Seminole Tribe
 - Relationship-building and problem-solving now required!
- Bigger picture: there are other similar projects involving same stakeholders. How do we work together to accomplish mutual goals and satisfy separate interests?

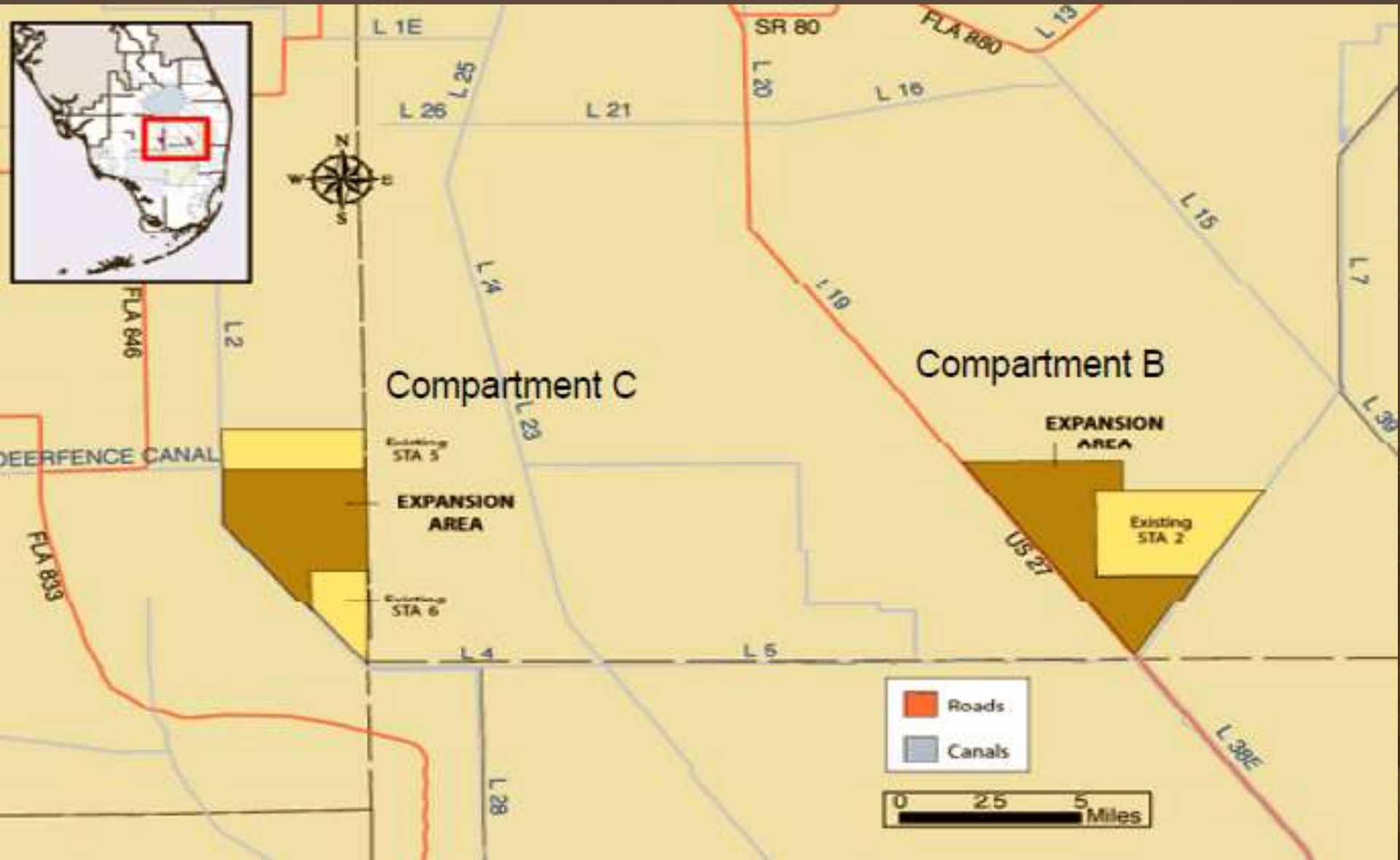


Stakeholders

- Seminole Tribe of Florida
 - Tribal Counsel
 - Historic Preservation Officer
 - Attorneys
- Miccosukee Tribe of Indians of Florida
 - Tribal Counsel
 - Cultural Resources Staff
- Poarch Band of Creek Indians (Alabama)
- Creek Nation, Oklahoma
- Seminole Nation of Oklahoma
- Unaffiliated Native Americans
- South Florida Water Management District
- St Johns River Water Management District
- Cultural Resources Contractor
- U. S. Army Corps of Engineers (regulatory/project design)
- State of Florida Department of State, Historic Preservation Office
- Advisory Council on Historic Preservation
- U. S. Department of Interior



Location of Compartments B&C





C139
BASIN

STA 5-3A

STA 5-3B

STA 5-4A

STA 5-4B

COMPARTMENT C
BUILDOUT PHASE

STA 5-5A

STA 5-5B

8HN54

8HN55

8HN56

8HN47

8HN46

STA 6-2
CELL 4

8HN49

STA 6-2

C139
ANNEX

STA 6-1
CELL 5

ROTENBERGER
WILDLIFE
MANAGEMENT
AREA

L-3 CA

Archaeological Resources Sites

(Image and drawing courtesy of SFWMD)



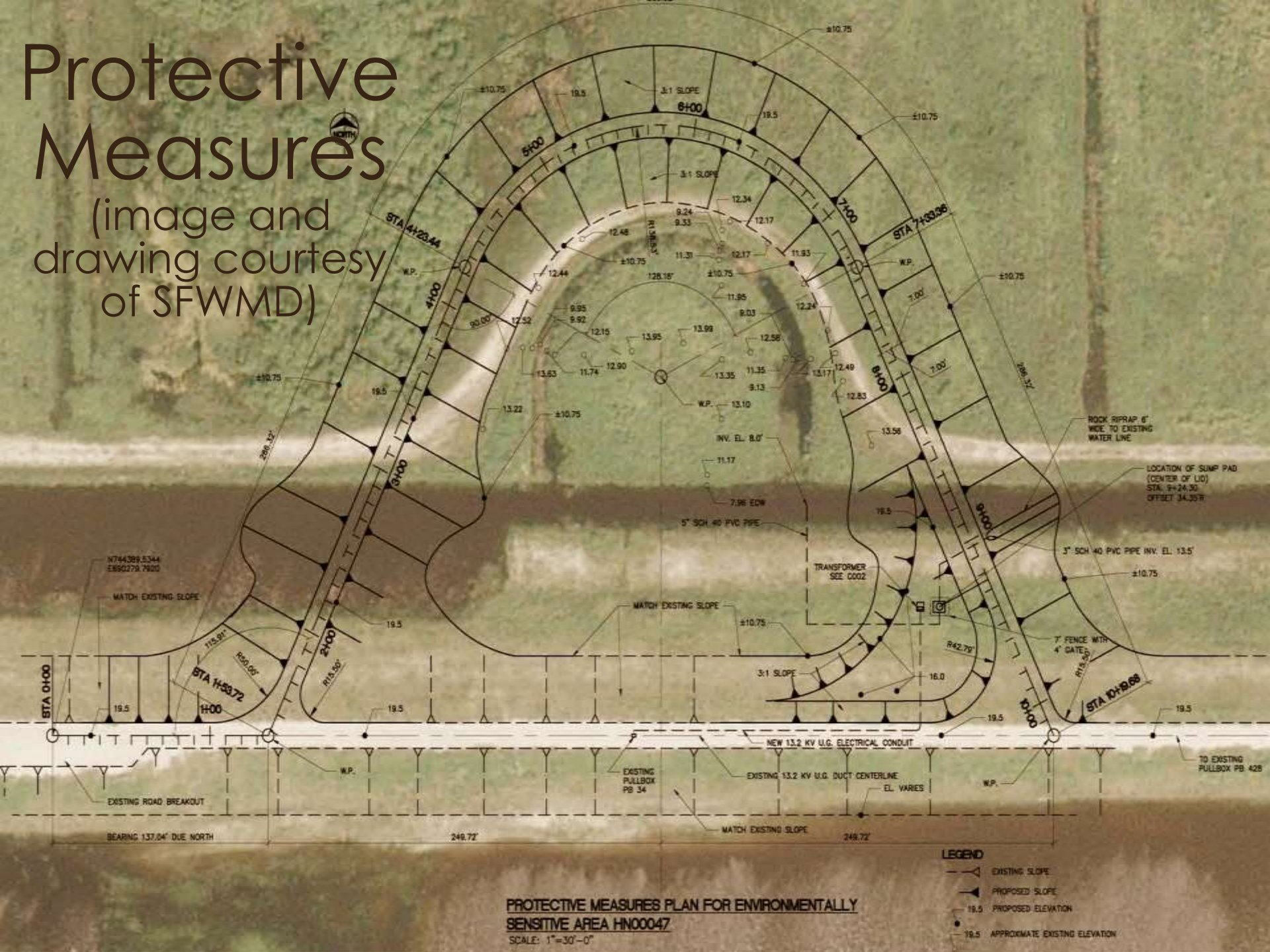
LOCATION OF HN00056

LOCATION OF HN00047



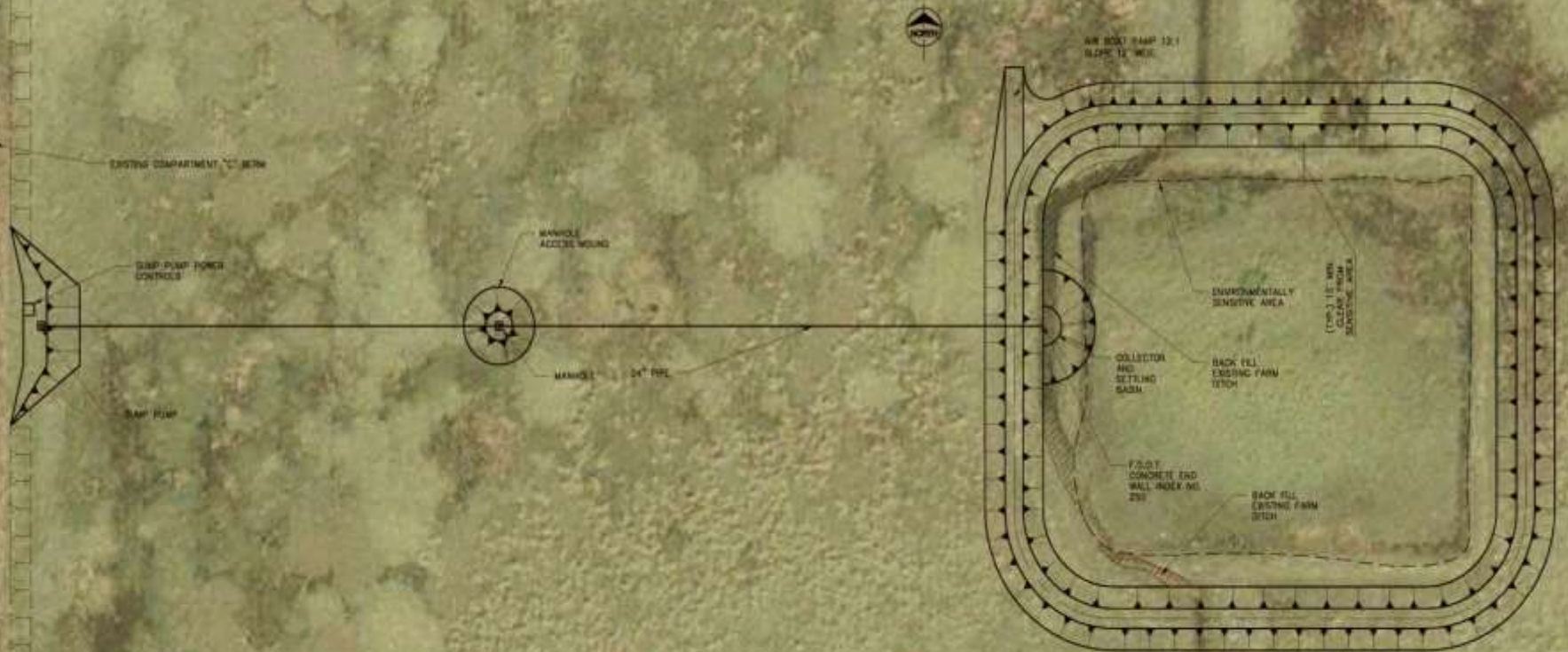
Protective Measures

(image and drawing courtesy of SFWMD)



Protective Measures

(Image and drawing courtesy of SFWMD)



Next Steps

- Broaden a sustainable framework for stakeholders to operate in
- Develop options matrix
 - Obtain agreement!
- Train staff/management
- Implement carefully!



Draft Options Matrix

DRAFT PLANNING MATRIX FOR HUMAN REMAINS DURING PROJECT DESIGN

Project Number:		Project Name:		Florida Master Site File Number:				
No.	Option	Engineering: Constructability	Engineering: Costs	Cultural Resource Impacts	OSM Feasibility and Cost	Ecological Benefits	Total Score	Remarks (Primary comments for quick references)
1	Avoid Impact							
2	Leave remains in place and inundate							
3	Leave remains in place and minimize inundation with grading and operational controls							
4	Leave Remains in Place and add enough sterile fill-dirt sufficient to create an island.							
5	Relocate the remains, build up the mound and then replace the remains in the same area creating a small island							
6	Relocate and consolidate the remains to a high area as close as possible but outside the construction area.							
7	Leave the remains in place and mound on top of the remains, but place a <u>non-permeable barrier</u> around the outer edge to keep remains from being inundated with ground water.							
8	Construct a levee and interior seepage ditch around site. Manage seepage using passive methods first.							

Score	Constructability Matrix	Cost Matrix	Cultural Resource	OSM Feasibility and Costs	Ecological Impacts
Score	Design and Construction Difficulty	Price Sensitivity	Impacts to Remains	Price Sensitivity (50 year Costs)	Level of Impacts
1	Simple	Less than 0.01% Project Limit	No Impact	Less than 0.01% Project Limit	No additional adverse impacts to environment.
2		Less than 0.1% Project Limit		Less than 0.1% Project Limit	
3		Less than 1% Project Limit		Less than 1% Project Limit	
4		Less than 2% Project Limit		Less than 5% Project Limit	
5	Complex	More than 2% Project Limit	Highly Complex Impacts	More than 5% Project Limit	Creates adverse impacts to environment
R-Reformulation *					

*Options ranked with an R would require reformulation. Scoring for option cannot be completed until plan is reformulated. All other options must be ruled out before R-option is implemented
 **Completion of Planning document and matrix is not constitute Tribal Consultation..

Lessons Learned

- Sensitive issue
- Multiple Stakeholders involved
 - Who has most power?
 - Who has most practical influence?
- Informal facilitator built trust
- Institutional change required
 - True partnership
 - Trust obligations
 - “Seek first to understand”
- Communication is key, but challenging
 - Appropriate frequency
 - Appropriate levels
- Ongoing efforts; more opportunities to build trust (and restore the Everglades!)

