FLORIDA DEPARTMENT OF Environmental Protection

South District
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Fort Myers FL 33902-2549
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Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

May 27, 2022

Big Cypress National Preserve
c/o Bob Sobczak
33100 Tamiami Trail East
Ochopee, FL 34141
robert_sobczak@nps.gov

File No. 0400501-003 SFG, Collier County

Dear Mr. Sobczak:

On February 16, 2022, we received your notice of intent to use a General Permit (GP), pursuant to Rule 62-331.225, Florida Administrative Code (F.A.C.), for Aquatic Habitat Restoration, Enhancement, and Creation Activities projects in state-assumed waters.

The proposed project is spread across three subareas – Tomato Farm East, Tomato Farm Central and Tomato Farm West – located within 2 miles of each other along the north side of Bear Island Grade in Big Cypress National Preserve.

Approximately 272 acres within these three areas were cleared for agriculture in the late 1970s, prior to the establishment of Big Cypress National Preserve (BICY). These farm fields were constructed with a system of perimeter dikes, perimeter ditches, and spreader swales. Vehicular access to the farms was by unimproved roads or trails. The farm fields were abandoned prior to 1984 and have been fallow for several decades.

The proposed Tomato Farm Restoration Project will restore the native vegetation (predominantly cypress forest and marsh) and hydrology of approximately 272 acres of former agricultural lands by removing the dikes, ditches, and swales, controlling invasive and nuisance plants, and planting native trees.

In total, the project will result in the removal and re-establishment to natural wetland grade of 18.25 miles of elevated berms and berm-adjacent ditches within a 272-acre area. The restoration will result in 33.6 functional units of lift. This Tomato Farm Restoration Project is intended to fulfill the mitigation requirement for the Nobles Grade 3-D Seismic Survey conducted by Burnett Oil Company (BOCI). The mitigation requirement for the seismic work is being vetted separately by applicable state (FDEP) and federal (NPS) review, permits, and/or enforcement actions.

The earthwork necessary for bringing the berms and ditches back to natural grade will occur in an estimated 42 acres of the total 272-acre restoration area (i.e. the total area of the berms and ditches), or about 16 percent of the total area enclosed by the perimeter levees. All restoration work shall be conducted according to the attached Detailed Plan, Tomato Farms Restoration Project.

Temporary impacts will be associated with the reclamation activities for the access routes required to get to and from the fields to conduct the work. National Park Service (NPS) has determined that the proposed access routes will traverse 1.85 acres of wetlands. The access routes are across old trails that were previously used to access the fields, but which have not been traversed in recent times. The impacts assessment for these access routes assigned value based on the current condition of the routes. The impacts assumed are that the vegetation that has colonized on the trail will be completely impacted, that hydrology will be slightly impacted, and that the location score will be only minimally impacted. These areas will be allowed to recover naturally without any planting. Any new rutting caused by the access will be restored to match pre-project elevations to the maximum extent practicable without importing any new fill. The impact calculations for the access routes were determined based on time lag factor from the impact scoring outlined above back to the existing condition. The lag associated with the roadway access recovery back to the current state would result in a need for 0.46 functional units of mitigation lift. A portion of the functional lift generated by the overall restoration project will be used to offset this functional loss.

Your intent to use a general permit has been reviewed by Department staff for State 404 Program authorization. **Your project qualifies for authorization**. However, this letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

State 404 Program Review – Approved

Based on the forms, drawings, and documents **submitted** with your notice, it appears that the project meets the requirements for the General Permit under Rule 62-331.**225**, F.A.C. Any activities performed under a general permit are subject to general conditions required in Rule 62-331.201, F.A.C., the conditions of Rule 62-331.**225**, F.A.C. (attached), and any specific conditions, below. Any deviations from these conditions may subject the permittee to enforcement action and possible penalties. Please read each section carefully.

Please be advised that the construction phase of the GP must be completed by December 22, 2025. State 404 Program permits cannot be extended or renewed.

Specific Conditions

1. All required submittals, such as certifications, monitoring reports, notifications, etc., shall be submitted to the Florida Department of Environmental Protection, South District Office,

Submerged Lands and Environmental Resource Permitting, P.O. Box 2549, Fort Myers, FL 33902-2549 or via e-mail to FTMERP_Compliance@dep.state.fl.us. All submittals shall include the project name and indicated permit number when referring to this project.

Note: In the event of an emergency, the Permittee should contact the Department by calling (800)320-0519. During normal business hours, the permittee should call (239)344-5600.

4. Construction and operation of the project shall comply with applicable State Water Quality Standards, namely:
   Rule 62-302.500, F.A.C. – Surface Waters: Minimum Criteria, General Criteria; and
   Rule 62-302.530, F.A.C. – Table: Surface Water Quality Criteria - Class III Waters.

5. Prior to initiation of any work authorized by this permit, all wetlands, surface waters, and storm drains, outside the specific limits of construction authorized by this permit shall be protected from erosion, siltation, sedimentation, and/or scouring, including the placement of staked erosion control devices around the project area and staging area(s) that are located outside of any authorized impact areas.

6. The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

SPECIFIC CONDITIONS LISTED SPECIES

7. This permit does not authorize the permittee to cause any adverse impact to or "take" of state listed species and other regulated species of fish and wildlife. Compliance with state laws regulating the take of fish and wildlife is the responsibility of the owner or applicant associated with this project. Please refer to Chapter 68A-27 of the Florida Administrative Code for definitions of "take" and a list of fish and wildlife species. If listed species are observed onsite, FWC staff are available to provide decision support information or assist in obtaining the appropriate FWC permits. Most marine endangered and threatened species are statutorily protected and a "take" permit cannot be issued. Requests for further information or review can be sent to FWCConservationPlanningServices@MyFWC.com.

Authority for review – Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, F.A.C.

Additional Information

Please retain this general permit. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the subsequent order may modify or take a different position than this action.

Petition for Administrative Hearing
A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399- 3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the

applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62- 110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver will not apply to persons who have not received written notice of this action.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399- 3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

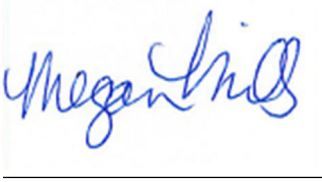
FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review
Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

Executed in Fort Myers Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Megan Mills
Permitting Administrator
Florida Department of Environmental Protection

Enclosures:
Rule 62-331.225, F.A.C.
General Conditions for All General Permits, Ch. 62-331.201, F.A.C.
Project drawings, **11** pages
Certification of Compliance with State 404 Program General Permit, form 62-331.200(1)
Detailed Plan, Tomato Farms Restoration Project.

CERTIFICATE OF SERVICE
The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

cc: Jimi Sadle, National Park Service, Jimi_Sadle@nps.gov

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

May 27, 2022

Clerk **Date**

Chapter 62-331 F.A.C.

62-331.225 General Permit for Aquatic Habitat Restoration, Enhancement, and Creation Activities

(1) This general permit authorizes the following activities:

(a) Activities in state-assumed waters associated with the restoration, enhancement, and creation of non-tidal wetlands and riparian areas, the restoration and enhancement of streams and other open waters, provided those activities result in net increases in aquatic resource functions and services. To the extent that an activity requires a Section 404 permit, the activities authorized by this general permit, include, but are not limited to:

1. The removal of accumulated sediments;

2. The installation, removal, and maintenance of small water control structures, dikes, and berms, as well as dredging or filling to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed;

3. The installation of current deflectors;

4. The enhancement, rehabilitation, or re-establishment of riffle and pool stream structure;

5. The placement of in-stream habitat structures;

6. Modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders;

7. The removal of stream barriers, such as undersized culverts, fords, and grade control structures;

8. The backfilling of artificial channels;

9. The removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology;

10. The installation of structures or fills necessary to restore or enhance wetland or stream hydrology;

11. The construction of open water areas;

12. Activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species;

13. Re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed;

14. Mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation;

15. Other related activities.

(b) Relocation of waters, including wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

(2) This general permit does not authorize:

(a) The conversion of a stream or natural wetlands to another aquatic habitat type (*e.g.,* the conversion of a stream to wetland or vice versa) or uplands, except for the relocation of waters on the project site. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.

(b) Stream channelization.

(c) Lake restoration projects proposing any type of in-lake disposal of dredged or fill material.

(3) Authorized activities are subject to the following conditions:

(a) The aquatic habitat restoration, enhancement, or creation activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region, or it may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

(b) Only native plant species shall be planted at the site.

(c) Reporting. For those activities that do not require submittal of a notice of intent, the permittee must submit a report the to the Agency at least 30 days prior to commencing activities in state-assumed waters authorized by this general permit. The report shall include:

1. Information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats; and

2. A copy of:

a. The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or creation agreement, or a project description, including project plans and location map;

b. The Natural Resources Conservation (NRCS) or U.S. Department of Agriculture (USDA) Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or creation action; or

c. The Surface Mining Control and Reclamation Act permit issued by Office of Surface Mining Reclamation and Enforcement or the applicable state agency.

(4) Compensatory mitigation is not required for activities authorized by this general permit since these activities must result in net increases in aquatic resource functions and services.

(5) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing any activity, except for the following activities:

(a) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), NRCS, the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), the U.S. Forest Service (USFS), or their designated state cooperating agencies; or

(b) Voluntary stream or wetland restoration or enhancement action, or wetland creation action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

(6) This general permit can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects.

(7) If a site is to be reverted back to its documented prior condition, when the reversion will be conducted as described in paragraphs (a) through (c), below, the agreement or general permit shall contain language specifically stating the intent to revert at a later date. The reversion activities will require authorization through the use of the general permit in Rule 62-331.226, F.A.C., or a State 404 Program individual permit for activities associated with reversion but outside of the scope of the original permit.

(a) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland creation agreement, between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or their designated state cooperating agencies; or

(b) As a component of voluntary wetland restoration, enhancement, and creation actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

(c) In state-assumed waters for reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA,

FWS, or state agencies (even though the restoration, enhancement, or creation activity did not require a Section 404 permit).

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.201 Conditions for General Permits

(1) General permits shall be subject to the conditions in subsections (2) and (3), below, and the general conditions for all general permits in Rule 62-330.405, F.A.C., except subsections 62-330.405(7) and (10), F.A.C. The Agency may revise the general conditions in Rule 62-330.405, F.A.C. to include references to applicable rules under this Chapter, as necessary.

(2) When a project requires submittal of a notice of intent to use a general permit, the Agency shall impose specific conditions as necessary to assure that the activities will be conducted in compliance with this Chapter, and in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of wetlands or other surface waters, such as mitigation, monitoring, reporting, or recordkeeping requirements and protection measures for listed species or historical resources.

(3) In addition, general permits under this Chapter are subject to the following conditions:

(a) Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing shall be designed and constructed to minimize adverse effects to aquatic life movements.

(b) Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

(c) Migratory Bird Breeding Areas. Activities in state-assumed waters that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

(d) Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by general permits in Rule 62-331.211 or 62-331.244, F.A.C., or is a shellfish seeding or habitat restoration activity authorized by the general permit in Rule 62-331.225, F.A.C.

(e) Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or fill must be free from toxic pollutants in toxic amounts as listed in section 307 of the CWA, which is incorporated by reference in subparagraph 62-331.053(3)(a)3., F.A.C., or state law.

(f) Water Supply Intakes. No activity may occur within 1000 feet of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

(g) Fills Within 100-year Floodplains. The activity shall comply with applicable FEMA-approved state or local floodplain management requirements.

(h) Single and Complete Project. The activity must be a single and complete project. The same general permit cannot be used more than once for the same single and complete project unless otherwise stated within the general permit. (See 404 Handbook, section 3.2.1).

(i) Wild and Scenic Rivers. No general permit activity may occur in a component of the National Wild and Scenic Rivers System, or in a river officially designated by Congress as a study river for possible inclusion in the System while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(j) Tribal Rights. No general permit activity may cause more than minimal adverse effects on tribal rights (including treaty rights, settlement rights, or rights reserved under state or federal law), protected tribal resources (including cultural or burial resources off reservation), tribal waters, or to tribal lands.

(k) Listed species. No activity is authorized under any general permit which is likely to directly or indirectly jeopardize the continued existence of an endangered or threatened species or a species proposed for such designation, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any general permit which may affect a listed species or critical habitat, unless the Agency has consulted with, or been provided technical assistance by the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service under their respective authorities and appropriate measures to address the effects of the proposed activity have been implemented or are required as a specific condition to the general permit.

(l) Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 – 712 (2018), incorporated by reference herein

(https://www.flrules.org/Gateway/reference.asp?No=Ref-12068), and the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 – 668(d) (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12069). The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether incidental take permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

(m) Historic Properties. In cases where the Agency determines, based on information from SHPO, that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized until a determination of "no effect" or "no adverse effect" is provided by SHPO.

(n) Manatees. In waters that are accessible to manatees, the permittee shall follow the "Standard Manatee Conditions for In-Water Work (2011)", incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12070).

(o) Sea turtles, smalltooth sawfish, Gulf sturgeon, or shortnose sturgeon. In waters that are accessible to these species, the permittee shall follow the "Sea Turtle and Smalltooth Sawfish Construction Conditions" (March 23, 2006), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12071).

(p) Use of Multiple General Permits. The use of more than one general permit under this Chapter for a single and complete project is prohibited, except when specified within a specific general permit, or when the acreage loss of state-assumed waters authorized by the general permits does not exceed the acreage limit of the general permit with the highest specified acreage limit.

(q) Transfer of General Permit Verifications. If the permittee sells the property associated with the general permit verification, the permittee shall transfer the general permit verification to the new owner by submitting a completed Form 62-331.100(1) – "Transfer of State 404 Program General Permit Verification" (effective date), incorporated by reference in subsection 62-331.100(2), F.A.C., within 30 days of the sale, to the Agency that processed the original notice.

(r) Compliance Certification. Each permittee who receives a general permit verification letter under this Chapter must submit a completed Form 62-331.200(1) – "Certification of Compliance with a State 404 Program General Permit" (effective date), incorporated by reference in subsection 62-331.200(4), F.A.C., within 30 days of

completion of the authorized activity, or the implementation of any required compensatory mitigation, whichever is later.

(s) Activities Affecting Structures or Work Built by the United States. If an activity also requires permission from the Corps pursuant to 33 U.S.C. § 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project, the prospective permittee is responsible for obtaining such permission separately from the Corps prior to commencing activities authorized by the general permit.

(t) If during the ground disturbing activities and construction work within the permit area, there are archaeological or cultural materials encountered which were not the subject of a previous cultural resources assessment survey or to which such impacts were not anticipated, including but not limited to pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement; the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Agency within the same business day. The Agency shall then notify the State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) or tribe when the interested tribe does not have a THPO, to assess the significance of the discovery and devise appropriate actions.

(u) Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries or effects to historic properties as referenced in accordance with condition (t), above, and if deemed necessary by the SHPO, or THPO(s), Tribes, or Agency. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the SHPO and THPO(s), or tribe when the interested tribe does not have a THPO, concerning potential effects to cultural resources or historic properties for finds under their jurisdiction, and from the Agency.

(v) In the event that unmarked human remains are identified, they shall be treated in accordance with Section 872.05, F.S. All work and ground-disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Agency, and State Archaeologist within the same business day. The Agency shall then notify the appropriate SHPO and THPO(s) and appropriate tribes and other appropriate consulting parties. Based on the circumstances of the discovery, equity to all

parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the medical examiner, State Archaeologist, and from the Agency. Additionally, if the unmarked remains were identified on federal lands, or lands where the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa – 470mm (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12072), or the Native American Graves Protection Repatriation 25 U.S.C. §§ 3001-3013 (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12073), applies, such activity shall not resume without written authorization from the SHPO, the appropriate THPO(s), and the federal land manager.

(w) Noncompliance. The permittee shall timely notify the Agency of any expected or known actual noncompliance.

(x) Inspection and entry. The permittee shall allow the Agency, upon presentation of proper identification, at reasonable times to:

1. Enter upon the permittee's premises where a regulated activity is located or where records must be kept under the conditions of the permit,

2. Have access to and copy any records that must be kept under the conditions of the permit,

3. Inspect operations regulated or required under the permit, and

4. Sample or monitor, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(y) The permittee shall comply with all conditions of the permit, even if that requires halting or reducing the permitted activity to maintain compliance. Any permit violation constitutes a violation of Part IV of Chapter 373, F.S., and this Chapter, as well as a violation of the CWA.

(z) The permittee shall take all reasonable steps to prevent any unauthorized dredging or filling in violation of this permit.

(aa) Upon Agency request, the permittee shall provide information necessary to determine compliance status, or whether cause exists for permit modification, revocation, or termination.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

Received Electronically
Feb 16, 2022
South District

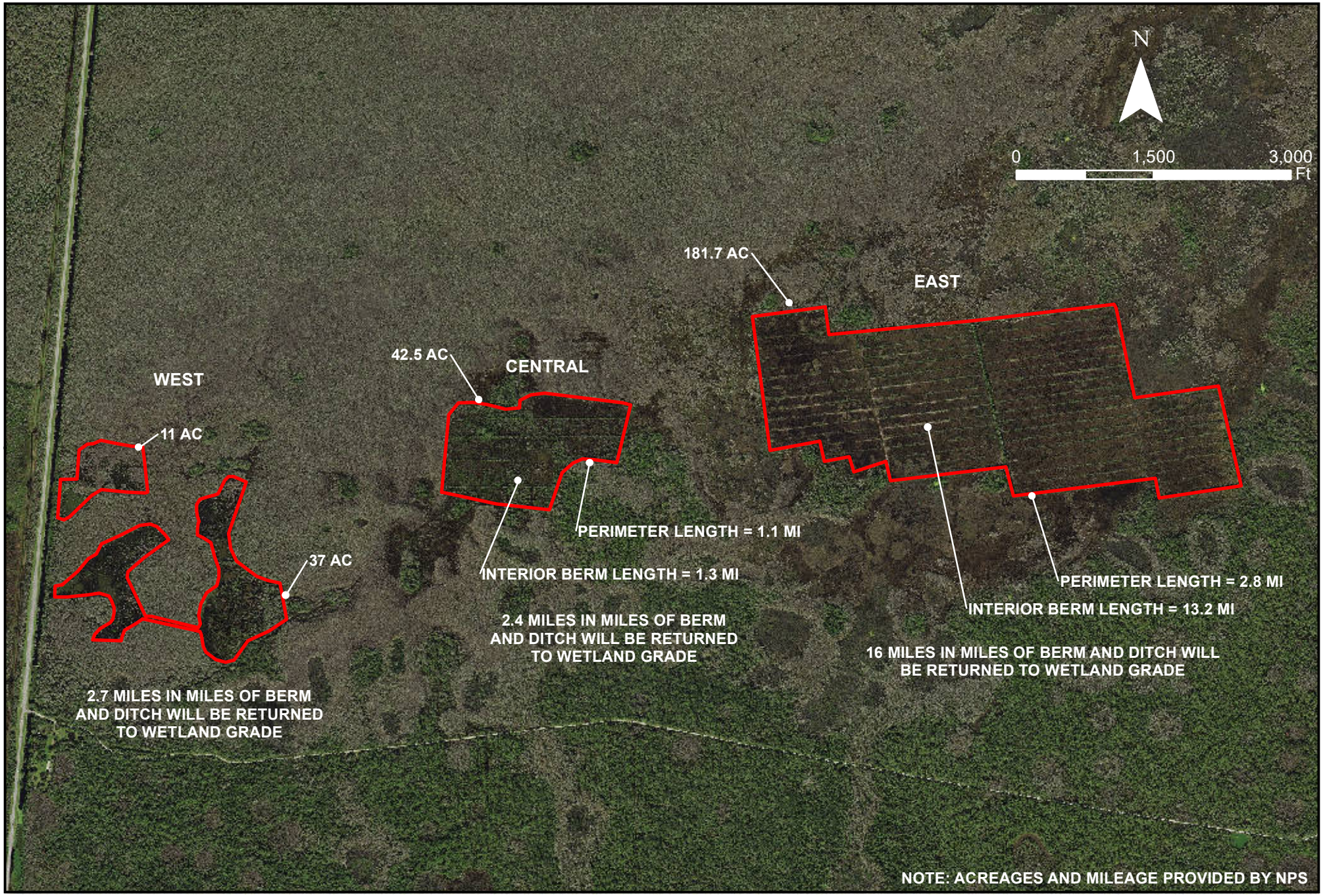
Florida Department of Environmental Protection
Permit Number
400501-003 SKG
South District
Fort Myers

Tomato Farm Restoration Project

Tomato Farm East

Tomato Farm Restoration Project

Big Cypress National Preserve
March 30, 2021



Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3484 Exchange Ave. Suite B. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

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BIG CYPRESS
TOMATO FARM RESTORATION

Florida Department of Environmental Protection
Permit Number
40-0501-003-SFG
South District
Fort Myers

DRAWN BY:	RMJ	REVISION:	SCALE:	1 "=1,380.35 '
CREATED:	07-27-21	N/A	FILE PATH: P:\1753.01 Big Cypress\GIS \MITIGATION_AERIALS\ TOMATO_FIELDS.mxd	
JOB NO.:	1753.01	N/A		
SHEET:	01	N/A		

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Permit Number
400501-003 SFG
South District
Fort Myers

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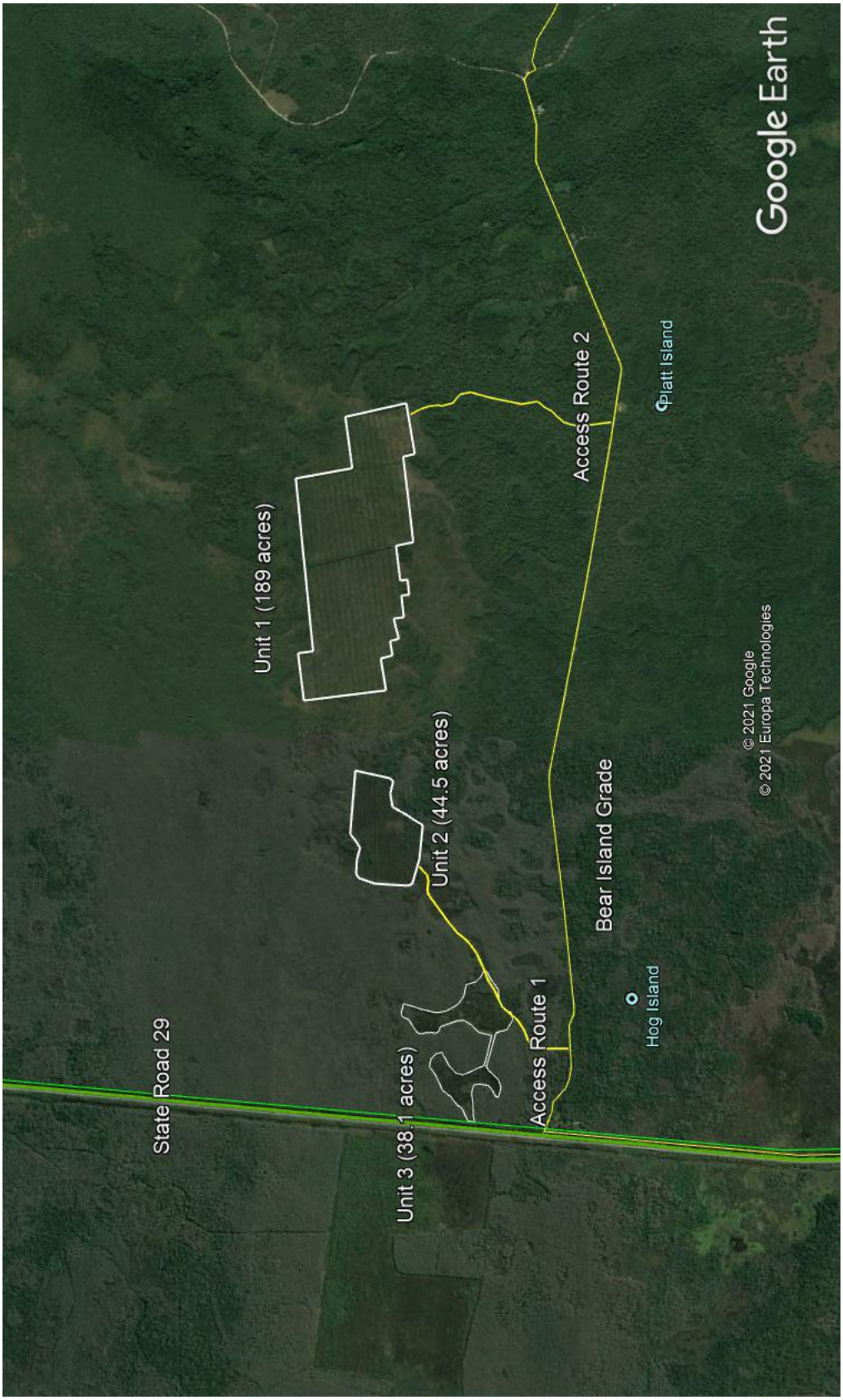
Overview Map

Tomato Farm Restoration Project

Big Cypress
National Preserve
March 30, 2021



Project area and access routes provided by NPS

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Tomato Farm East

Tomato Farm Restoration Project

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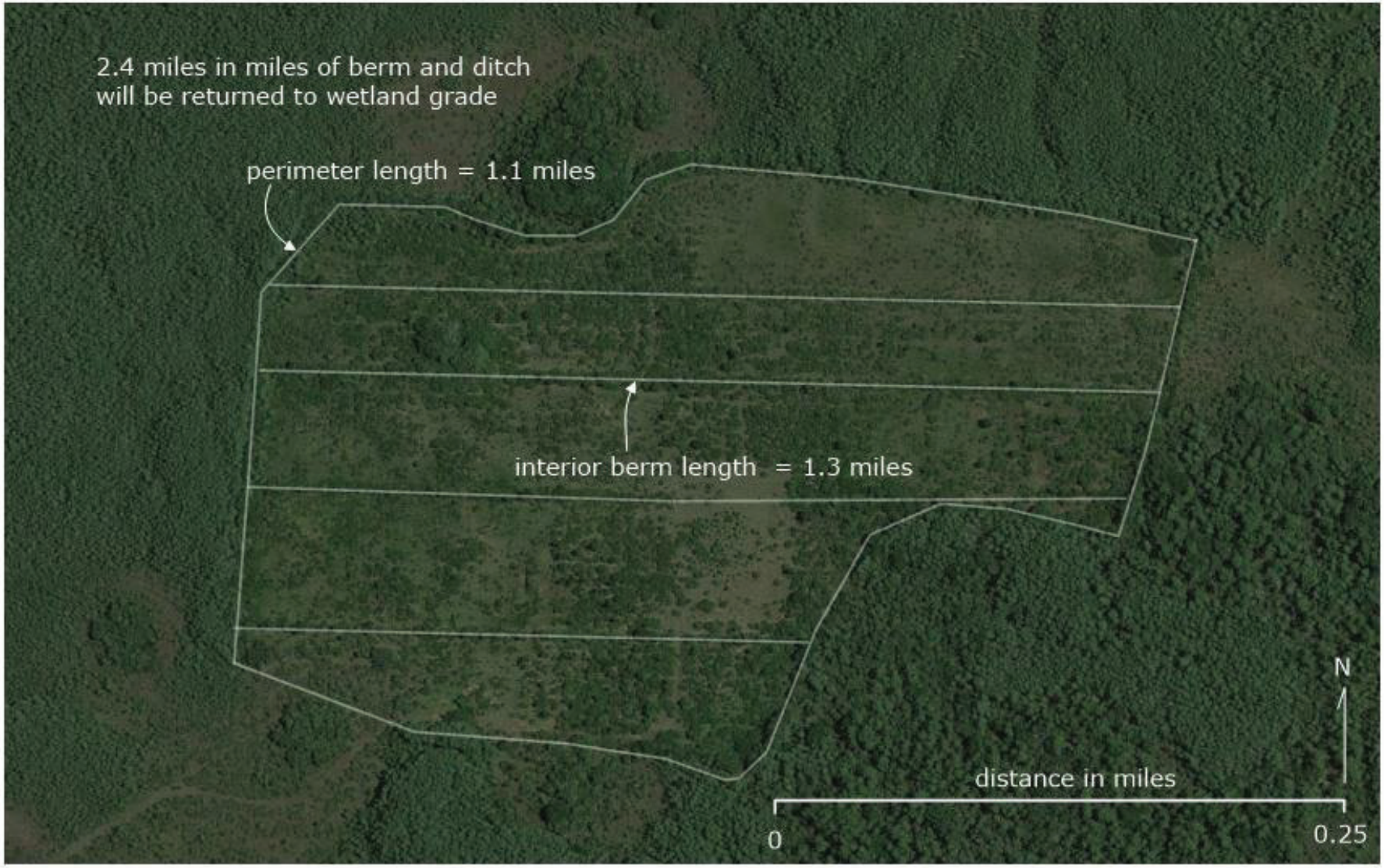

Tomato Farm Central

Tomato Farm Restoration Project

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March 30, 2021

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400501-003 SFG
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Tomato Farm West

Tomato Farm Restoration Project

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March 30, 2021

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Feb 16, 2022
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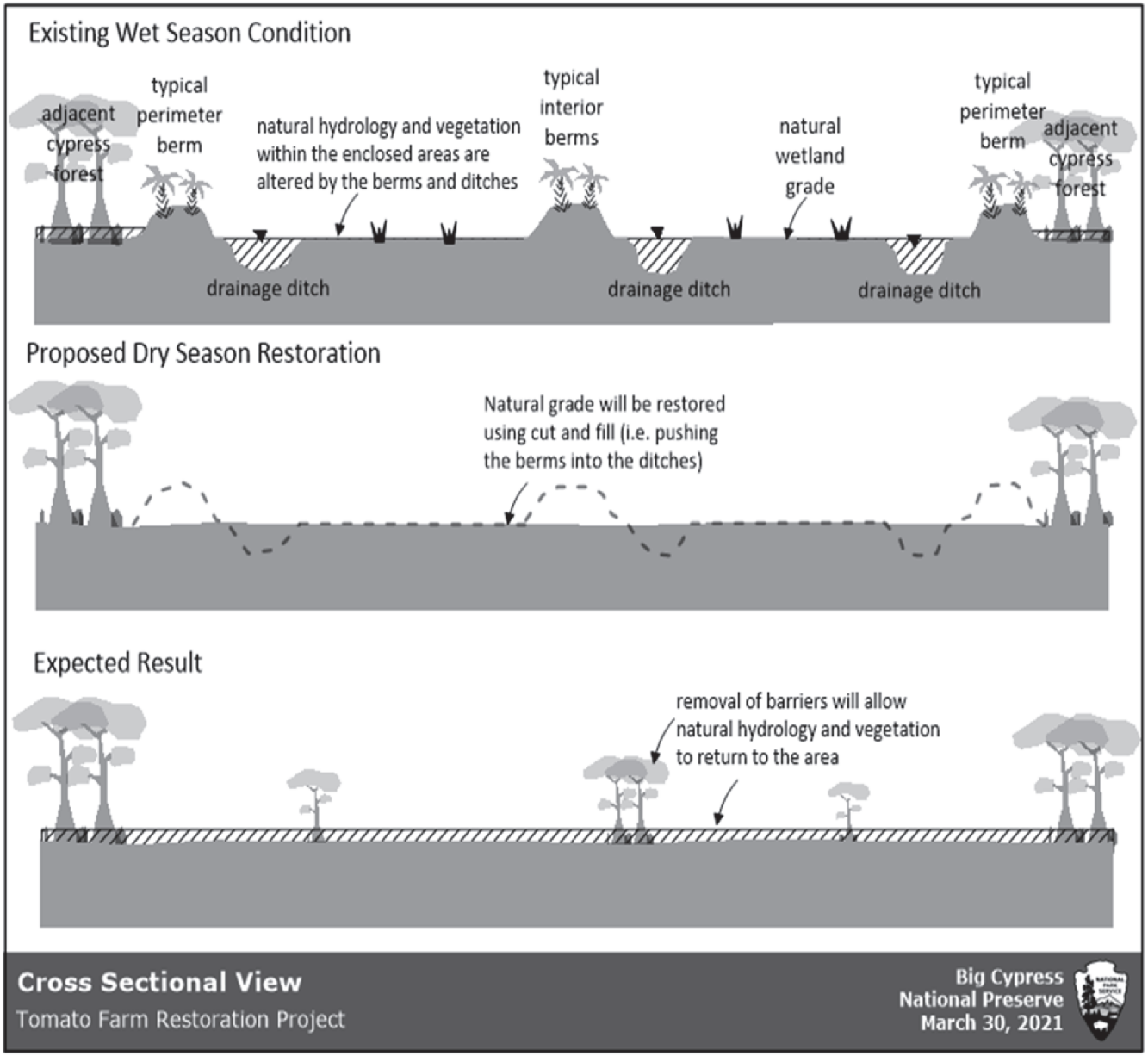

Cross Sectional View

Tomato Farm Restoration Project

Big Cypress National Preserve
March 30, 2021

Florida Department of Environmental Protection
Permit Number
400501-003 SFG
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As hydrologist of Big Cypress National Preserve, I certify these drawings to be an accurate representation of the project area.

ROBERT SOBCZAK

Digitally signed by ROBERT SOBCZAK
Date: 2021.04.08 10:53:18 -04'00'

WILLIAM H SHELLEY
LICENCE
NO 66676
STATE OF
FLORIDA
PROFESSIONAL ENGINEER

William H Shelley

Digitally signed by WILLIAM SHELLEY
Date: 2021.04.20 08:56:32 -04'00'

Tomato Farms Miitgation Site UMAM Summary

	Acreage	Location and Landscape		Water Environment		Community Structure		Pre-Restoration Score	Post-Restoration Score	Total Delta	Time Lag		Risk	RFG	Mitigation Lift
		Pre	Post	Pre	Post	Pre	Post				Years	Factor			
Tomato Farm East Berm	19.40	0	9	0	9	0	6	0.00	0.80	0.80	5	1.14	2	0.35	6.81
Tomato Farm East Ditch	19.40	7	9	4	9	3	6	0.47	0.80	0.33	5	1.14	2	0.15	2.84
Tomato Farm East Open Field	142.90	9	9	6	9	8	8	0.77	0.87	0.10	1	1	1	0.10	14.29
Tomato Farm Central Berm	3.65	0	9	0	9	0	6	0.00	0.80	0.80	5	1.14	2	0.35	1.28
Tomato Farm Central Ditch	3.65	7	9	4	9	3	6	0.47	0.80	0.33	5	1.14	2	0.15	0.53
Tomato Farm Central Open Field	35.20	9	9	6	9	8	8	0.77	0.87	0.10	1	1	1	0.10	3.52
Tomato Farm West Berm	4.10	0	8	0	7	0	6	0.00	0.70	0.70	5	1.14	2	0.31	1.26
Tomato Farm West Ditch	4.10	7	8	4	7	3	6	0.47	0.70	0.23	5	1.14	2	0.10	0.42
Tomato Farm West Open Field	39.80	8	8	5	7	8	8	0.70	0.77	0.07	1	1	1	0.07	2.65
TOTALS	272.20														33.60

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400501-003 SFG
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Tomato Farms Access UMAM Summary

	Acreage	Location and Landscape		Water Environment		Community Structure		Pre-Restoration Score	Post-Restoration Score	Total Delta	Time Lag		Risk	t value accounting for Lag	Mitigation Required
		Pre	Post	Pre	Post	Pre	Post				Years	Factor			
Eastern Access	0.432	10	10	8	5	8	0	0.87	0.50	-0.37	34	2.45	1.25	-0.052	-0.107
Western Access	0.494	10	10	8	5	8	0	0.87	0.50	-0.37	34	2.45	1.25	-0.059	-0.122
Western to Central Access	0.927	10	10	8	5	8	0	0.87	0.50	-0.37	34	2.45	1.25	-0.111	-0.229
TOTALS	1.853														-0.46

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Permit Number
400501-003 SFG
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Certification of Compliance with a State 404 Program General Permit

Instructions: To be completed, executed, and submitted to the Agency within 30 days of completion of the authorized activity.

Permit No: Permittee's Name:

Permittee's Address:

Telephone Number:

Location of the Work:

Date Work Started: Date Work Completed:

PROPERTY IS INACCESSIBLE WITHOUT PRIOR NOTIFICATION: YES NO
TO SCHEDULE AN INSPECTION, PLEASE CONTACT AT

Description of the Work (e.g., bank stabilization, residential or commercial filling, docks, dredging, etc.):

Acreage or Square Feet of Impacts to state-assumed waters:

Describe Mitigation completed (if applicable):

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

I certify that all work, and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

_____ _____
Signature of Permittee Date:

_____
Name and Title

Enclosures:
☐ Attached drawing(s) depicting deviations from the permit (if any)
☐ Other

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SUMMARY

In the late 1970s, 272 acres of wetland forests were cleared for agriculture, prior to the establishment of Big Cypress National Preserve (BICY). These farm fields were constructed with a system of perimeter dikes, perimeter ditches, and spreader swales. Vehicular access to the farms was by several unimproved roads or trails. The farm fields were abandoned prior to 1984 and have been fallow for several decades.

The proposed Tomato Farm Restoration Project will restore the native vegetation (predominantly cypress forest and marsh) and hydrology of approximately 272 acres of former agricultural lands by removing dikes, ditches, swales, invasive and nuisance plants and planting native trees.

Tomato Farm East
Tomato Farm Restoration Project

Big Cypress National Preserve
March 30, 2021

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Feb 16, 2022
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PROJECT AREA

In total, the project will result in the removal and re-establishment to natural wetland grade of 20.5 miles of elevated berms and berm-adjacent ditches within a 272-acre area.

The earthwork necessary for bringing the berms and ditches back to natural grade will occur in an estimated 42 acres of the total 272-acre restoration area (i.e. the total area of the berms and ditches), or about 16 percent of the total area enclosed by the perimeter levees.

The project will occur across three subareas – Tomato Farm East, Tomato Farm Central and Tomato Farm West – located within 2 miles of each other along the north side of Bear Island Grade in Big Cypress National Preserve. The three subareas are as follows:

(1) Tomato Farm East

Tomato Farm East is surrounded by 2.8 miles of perimeter berm and contains 13.2 miles of interior berm for a total length of 16.0 miles. The perimeter berm contains a ditch (i.e. small canal) on its interior side. Interior berms have ditches on their southern side.

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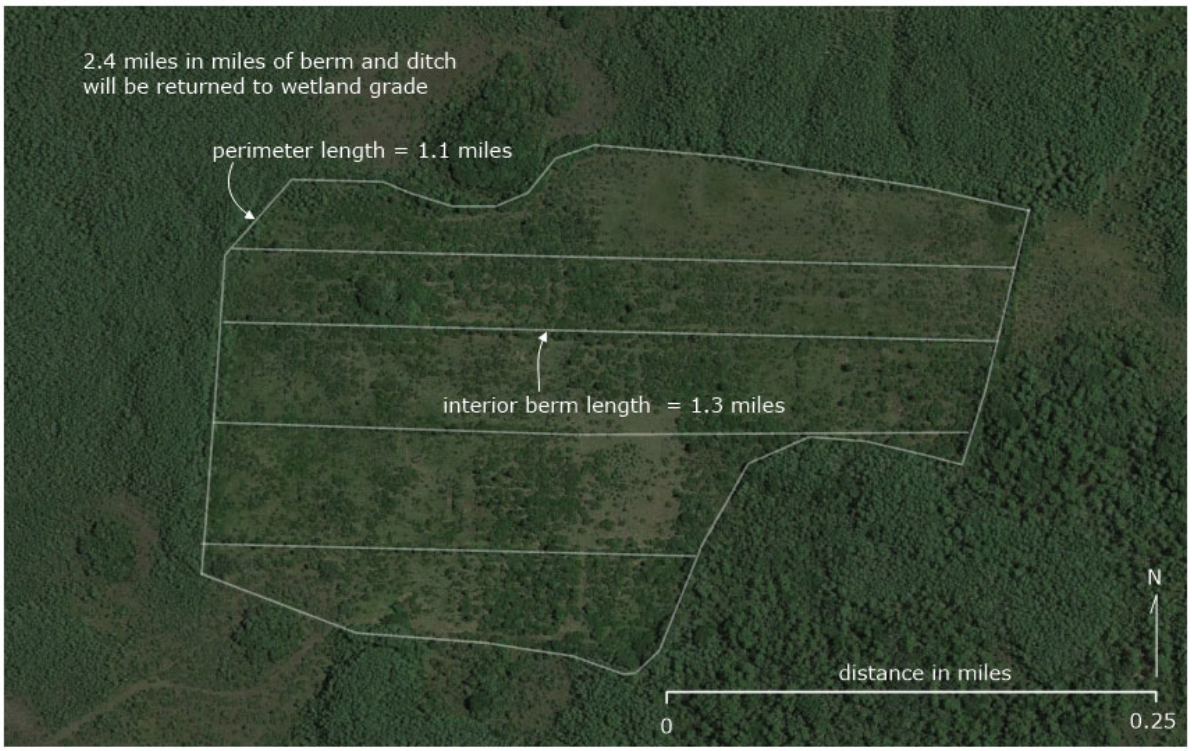
Tomato Farm East
Tomato Farm Restoration Project

Big Cypress
National Preserve
March 30, 2021

(2) Tomato Farm Central

Tomato Farm Central is surrounded by 1.1 miles of perimeter berm and contains 1.3 miles of interior berm for a total length of 2.4 miles. The perimeter berm contains a ditch (i.e. small canal) on its interior side. Interior berms have ditches on their southern side.



Tomato Farm Central
Tomato Farm Restoration Project

Big Cypress
National Preserve
March 30, 2021

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(3) Tomato Field West

Tomato Farm West consists of three separate fields. The northwestern field is surrounded by a berm and ditch, but this feature will not be removed as part of this work to avoid impacts that would occur from accessing the site. Restoration activities at this site will be restricted to exotic plant control, implementation of prescribed fire and planting of trees. The southeastern and southwestern fields are surrounded by 2.1 miles of perimeter berm and do not contain any interior berms. These perimeter berms are proposed to be returned to wetland grade. The perimeter berm contains a ditch (i.e. small canal) on its interior side.

PROJECT METHODS

The method for berm removal will be cut and fill using excavators, and therefore will require no hauling of soil to or from the restoration area. All fill from the berms will be pushed into the adjacent ditches.

- Restoration activity would occur during the dry season.
- Degrading spoil banks will be accomplished using excavators or similar earthmoving equipment.
- Access to the restoration sites will be through designated access routes established by the NPS.

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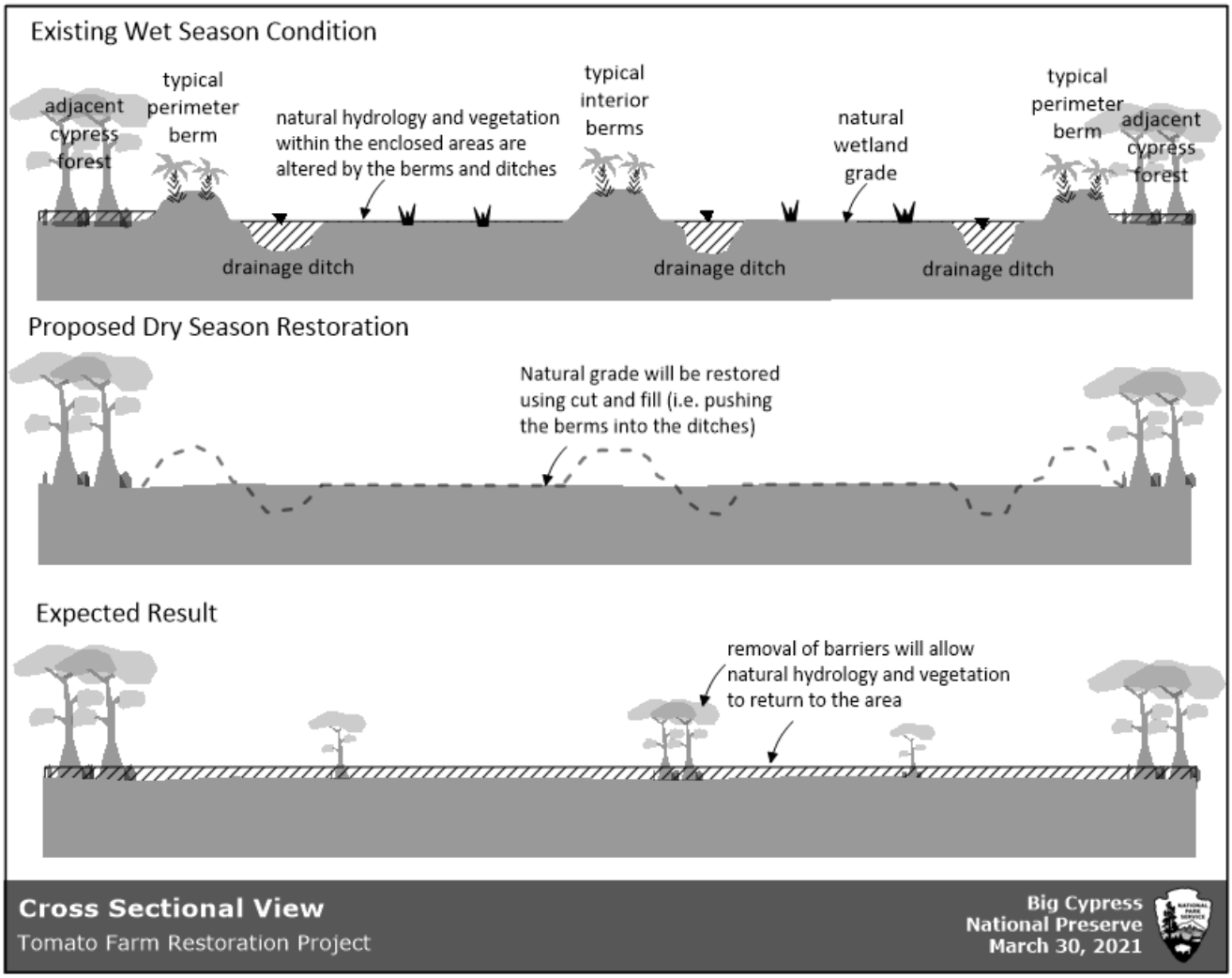
- Turbidity barriers will be used where appropriate to prevent offsite discharge of turbidity into any nearby open-water channels.



MONITORING AND INVASIVE PLANTS

Monitoring will be focused on documenting the hydrologic and vegetative recovery, and ensuring it remains free of exotics. Invasive plants, non-native plants and nuisance vegetation (cattail etc.) will be treated after the completion of the hydrologic restoration.

Additionally, prescribed fire and mechanical clearing followed by selective herbicide applications will be used as a first step to offset and remove invasive species in this region of the Preserve in early 2022. These treatments will be focused on vegetation in the project areas outside of the existing berms and ditches that will be restored during construction.

The construction component of the restoration would begin during the 2022 dry season. Work would be completed prior to the onset of the wet season. The dry season in south Florida is typically from January to May. In the event the work is not completed before weather conditions change, the work would be paused until the next dry season.

Proposed Sequencing

2021
1. Complete compliance and obtain required permits.

a. The South Florida Water Management District issued an Environmental Resource General Permit to BICY on May 7, 2021 for the restoration (General Permit No. 11-105129-P). Application materials are being submitted here for an FDEP 404 permit.

b. Section 106 Compliance was completed September 2021, summarized in the Cultural and Historic Compliance section, below. Consultation with USFWS on potential impacts to federally listed species will be completed prior to conducting vegetation clearing and earthmoving work.

2022
1. Pre-construction, photo monitoring points will be taken in the cardinal directions from future monitoring plots. Elevation transects will also be established prior to commencement of restoration work.

2. Obtain the services of a contractor to conduct the hydrologic restoration of 272 acres of former agricultural lands including:

a. Trees and shrubs from the existing berms and ditches, with the exception as noted in paragraph (c) below, would be mechanically removed using an excavator or similar earthmoving equipment during the dry season (2022). The vegetation and the degraded spoil would be dispersed throughout the site or used to backfill ditches/swales. Vegetation would not be piled.

b. Original surface hydrology in the disturbed wetland areas would be re-established by backfilling the ditches and swales using material from the dikes and surrounding area. Followed by grading the surface to natural ambient elevation.

c. Several small sections of berm that are adjacent to hammocks would be left in place as these contain mature native trees. These areas are depicted in the figure below.

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East and Central restoration sites depicting areas (highlighted in purple) where berm and associated vegetation will not be removed.

3. Any remaining invasive plant species from the dikes, ditches and swales will be treated with herbicide via a contractor or in-house by the NPS.

4. Plant approximately 13,000 cypress saplings from BICY seed sources. The saplings would be ready to plant in May/June 2022 at the onset of the rainy season. Cypress saplings would be planted at approximately 45 trees/acre (a total of 13,000 trees). Trees would be planted randomly to mimic the natural spacing and density of the forested areas surrounding the impact sites."

5. Establish monitoring plots. Four to six 10 x 10m plots will be set up in each farm field to assess ground vegetation and shrub layers, along with monitoring cypress establishment and development (survival and growth). To evaluate graminoid and shrub recovery, species composition, percent cover and height will be recorded. To assess cypress establishment, trees will be tagged. Trees will be counted in subplots to monitor sapling survival, diameter at breast height (DBH) greater than 2 cm of trees and tree height by height classes will be recorded across the 10 m^2 plots.

6. During year 1 surveys, post-construction photo monitoring points will be taken at each monitoring plot. For years 2-5, photo monitoring points will be taken during survey periods at monitoring plots.

Performance Standards and Monitoring

A minimum of two years is anticipated for herbaceous cover to recolonize the restoration sites with cover and biomass similar to natural surroundings. Cover of 75% native, non-woody, non-

nuisance species would be expected after one year and 90% after two years and for the remainder of the monitoring period. Four to six 10 x 10m plots will be set up in each farm field for ground vegetation, shrub, and cypress recovery evaluation. Species composition, percent cover and shrub height will be evaluated in three randomly selected subplots and (3) $1m^2$ quadrats within the three randomly selected subplots will be used to assess ground cover in each $10m^2$ plot. These monitoring plots will assess the spatial variation across and within the farm fields, along with evaluating this variation temporally.

Trees take many years to reach a fully functional level. Most bald cypress take twenty years at a minimum to start reproducing at the Preserve. Within the same $10m^2$ monitoring plots described above, cypress' survival, DBH of trees 2 cm in diameter, and height measured in height classes will be evaluated to assess the survival and growth of planted cypress. Trees will be counted in subplots to monitor sapling survival. Trees will be initially tagged during monitoring plot set up to assist with tree assessment across the five years. Trees are very slow growing in this wetland landscape. Any increases in height or DBH would indicate growth. At least 50% of planted trees need to survive through year five post-planting.

Monitoring of the restoration project would occur for five years (starting in 2022) to verify that the restoration project meets its identified restoration objectives, or whether corrective action(s) would be necessary to achieve, facilitate or eliminate obstacles to restoration success. The following criteria, parameters for measurement, methods and timing would be used to monitor the success of the restoration project:

1. Elevation transects will be established extending across dikes, ditches and swales extending 50m into adjacent wetlands prior to commencement of restoration work. Transects will be resampled post-restoration, prior to planting. These measurements will be used to assess that the restoration area was returned to the natural gradient of the swamp.

2. Documentation of species composition and percent cover of the vegetation community via monitoring plots would be used to compare sites within the project area to adjacent reference sites. This would assess the degree of change over time from baseline values, along with providing invasive/nuisance plant cover information. Survival and growth metrics of planted cypress trees would also be determined.

3. Photos at each monitoring plot/point from cardinal directions would be used as a tool for documenting the engineering, hydrologic and botanical aspects of the restoration across time.

4. Annual detailed monitoring reports would be created by BICY. The first report would include conditions at time zero, prior to restoration activities, along with post-restoration conditions. Monitoring reports would include survey data, descriptive vegetative statistics, and corresponding site photographs.

Contingency Actions

Immediately after restoration construction grading is complete the grades will be surveyed to determine that elevations have been established that match the surrounding surface elevations on both the interior and exterior edges of the graded area. Any areas that are determined to be

three inches or greater above or below the adjacent surrounding undisturbed elevations will be regraded to within the three-inch threshold to the extent practicable using onsite materials. Slope of the graded area will match any natural elevation differences between undisturbed lands on the interior and exterior of the graded areas. Transitions from graded areas to adjacent natural elevations will be smooth and free from escarpments. Actions to achieve the three-inch threshold shall be limited to regrading material already onsite that is immediately adjacent to the locations at issue. No additional fill material will be brought from offsite or from other portions of the restoration area in order to limit the potential for unanticipated impacts.

BICY staff will verify that the threshold of 75% percent cover of native non-woody plants (after one year after seeding or planting) has been achieved. If native non-woody plants do not cover at least 75% of the ground surface of the entire restoration area within the first year of growth, or if the native ground cover does not reach 90% after the second year of growth, then open areas will be planted with native seedlings and/or non-native plants will be removed and replaced with native seedlings to achieve percent-cover targets. If the fifth-year monitoring report shows that less than 50% of the planted cypress saplings (less than 6,500 seedlings) survived, then new saplings will be planted in an amount that will bring the number of planted and survived saplings up to 6,500.

FLOODING ASSURANCE

The 272-acre restoration area is contained completely within and surrounded by NPS lands. The project can be expected to nominally improve drainage for upstream areas by opening up and allowing regional sheet flow within the 272-acre restoration area and will have no effect on downstream lands.

MITIGATION ASSURANCE

The project is not being used as mitigation for any NPS proposed activities or actions, nor is it associated with another SFWMD or FDEP issued environmental resource permit (ERP). Rather, the 272-acre Tomato Farm Restoration Project fulfills the agreed upon mitigation requirement for the Nobles Grade 3-D Seismic Survey conducted by Burnett Oil Co., Inc. (BOCI). The mitigation requirement has already been vetted by applicable state (FDEP) and federal (NPS) review and permits.

CULTURAL AND HISTORIC COMPLIANCE

The Preserve performed cultural and historical compliance for this project as described below. FDEP indicated to the NPS on a phone call on January 20, 2022 that they would reach out to the Florida SHPO for the cultural resource survey report completed by NPS as necessary.

- On July 7, 2021, we sent NHPA Section 106 letters to the Florida SHPO and the Miccosukee Tribe of Indians of Florida (Miccosukee Tribe), the Seminole Nation of Oklahoma (Seminole Nation), and the Seminole Tribe of Florida (Seminole Tribe) with our report on the cultural resource survey of the Tomato Fields conducted between March of 2021 and May of 2021 and recommendation of "No Historic Properties

Effected" from implementation of a revised compensatory wetland mitigation plan there.

- On July 8, 2021, the Seminole Nation responded in a pair of emails with no concerns.

- On August 5, 2021, the Seminole Tribe responded in an email with no objections or comments and requested notification of any inadvertent discoveries during implementation. NPS would notify the Florida SHPO and the Tribes of inadvertent discoveries.

- On October 4, 2021, the Florida SHPO responded in a letter concurring with our no effect determination.

- Though email correspondence was shared and meetings were held with their THPO regarding the project in the spring and summer of 2021, no response to our July 7, 2021, Section 106 letter was received from the Miccosukee Tribe.

ASSURANCE OF SPECIAL CONDITIONS

This detailed plan is being submitted in support of a 404 General Permit application. The Preserve has received permit approval from the SFWMD for the project as a General Use Permit, application no. 210305-5528. Any and all special conditions noted in rule 62-330.631(3) will be applied during all project activities.

SIGNED AND CERTIFIED DRAWINGS

Signed and certified drawings are included as an additional attachment

Supplemental Narrative to the Drawings: The proposed work is consistent with the authorized activities as described in the Florida Administrative Code 62-331.225(1)(a), F.A.C and 62-331.225(3)(a), F.A.C, as follows:

> The proposed project is associated with the restoration, enhancement, and creation of non-tidal wetlands and which result in net increases in aquatic resource functions and services.
>
> The proposed project been planned, designed, and will be implemented to result in aquatic habitat that resembles an ecological reference of the same type that exists in the region and only include planting of native species. Monitoring and reporting will be performed to measure the ecological outcome and satisfaction of project restoration targets.

HABITAT/VEGETATION MAP

Please see additional attachment.