

South Florida Water Management District

Resolution No. 2006 - _____

A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT REQUESTING REIMBURSEMENT FROM THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ACQUISITION OF LAND INTERESTS CONTAINING 1.72 ACRES, MORE OR LESS, IN THE TOTAL AMOUNT OF \$791,840.00, TOGETHER WITH STATUTORY COSTS AND ATTORNEY'S FEES IN THE TOTAL AMOUNT OF \$136,960, AND ALL ASSOCIATED COSTS, FROM FLORIDA FOREVER TRUST FUND; FOR THE KISSIMMEE RIVER PROJECT IN HIGHLANDS COUNTY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the District has an active program underway to acquire land interests for the Kissimmee River Project ("Project");

WHEREAS, pursuant to Section 373.139 (3)(c) Florida Statutes, the District is required to submit a resolution to the Department of Environmental Protection when requesting funds from a trust fund, including the Florida Forever Trust Fund; and

NOW THEREFORE, BE IT RESOLVED by the Governing Board of the South Florida Water Management District:

(1) It does hereby advise the Secretary of the Department of Environmental Protection of its intent to acquire fee title to 1.72 acres, more or less, for the Kissimmee River Project in Highlands County. The District has a contract to acquire the following land interests for a total consideration of \$791,840.

Owners	Tract No.	Interest	Acres	Appraised Value	Purchase Price
John J. and Nancy A. Leadingham	19-103-804	Fee*	1.72	\$510,000	\$791,840
Totals			1.72	\$510,000	\$791,840

*Subject to a use and occupancy agreement until October 1, 2007 afforded the Owners, which is not reflected in the Appraised Value or the Purchase Price

The legal interest to be acquired is the fee simple estate. The lands are described in Exhibit "A" and as shown on location map Exhibit "AA", which are attached hereto and made a part hereof. The lands are subject to the owner's right of occupancy until October 1, 2007.

(2) It does hereby advise the Secretary of the Department of Environmental Protection of its intent to pay One Hundred Thirty-Six Thousand Nine Hundred Sixty Dollars (\$136,960) for the owner's statutory costs and attorney's fees. Pursuant to Chapter 73, Florida Statutes, if a settlement is reached between a condemning authority and a property owner prior to condemnation lawsuit being filed, the property owner who settles in lieu of condemnation shall be entitled to recover statutory costs and attorney's fees.

(3) At the option of the Owners (the "Option"), the District will convey by quit claim deed to the

owner approximately 5.10 acres located in Highlands County, (the "Surplus Property"). The Option must be exercised by the owner by January 31, 2007. The quit claim deed will contain a reservation of a perpetual flowage and inundation easement with respect to approximately 2.16 acres of the Surplus Property. The appraised value of the Surplus Property encumbered by the reservation is \$79,500. The \$79,500 will be withheld from the purchase price at Closing. If the owner exercises the Option and is conveyed the Surplus Property, the \$79,500 will be retained by the District. If the Option is not exercised, the \$79,500 will be disbursed to the owner;

(4) The total \$791,840 consideration given by the District exceeds the \$510,000 appraised value based on the certified appraisal(s) used to determine the value of the land interests to be purchased, taking into account the value of non-cash considerations, defects in title or outstanding interests. Staff has determined that acquiring these land interests required by the Project for a total consideration of \$791,840 or 55% over the approved appraised value is in the District's best interest to avoid the risks inherent in the condemnation process. Regarding condemnation risks, within the last few years the District's experience in five recent condemnation cases resulted in a range of verdicts between 10% and 117% over appraised value for a weighted average of 42% above appraised value. Significantly, in 2003, two condemnation juries have returned verdicts of 220% and 242% above the Government appraisal. In addition to the uncertainties regarding jury verdicts, the costs of condemnation litigation, even if the District is the prevailing party, can increase costs significantly. For example, in a condemnation case where the District received a very favorable verdict (10% over appraised value), the landowner's attorney was awarded costs that are 3% of the verdict (\$340,000 on an \$11 million verdict). Based on this, staff believes this acquisition is in the District's best interest.

(5) The lands being acquired have been reviewed for the presence of State Sovereignty submerged lands and the District has taken reasonable measures to avoid paying for sovereignty lands.

(6) This request for funds is consistent with the District's Five Year Plan of acquisition or the Florida Forever Water Management District Work Plan as contained in Chapter 8, Volume II of the South Florida Environmental Report, the last update of the Plan dated December 8, 2004, as applicable, filed with the Legislature and the Department, and is consistent with Sections 373.139, 373.470 and 373.59, Florida Statutes, as applicable.

(7) Acquisition of this land furthers the Florida Forever goals set forth in (1) Section 259.105 (4)(a) Florida Statutes (i.e. enhance the coordination and completion of land acquisition projects as measured by the number of shared acquisition projects among Florida Forever funding partners and partners with other funding sources, including local governments and the Federal Government) and (2) Section 259.105 (4)(d) Florida Statutes (i.e. ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state, as measured by the quantity of water made available through the water resource development component of a district water supply plan for which a water management district is responsible).

(8) The funds requested shall be used only for the acquisition costs and pre-acquisition/

associated costs of the described land interests.

(9) To the extent possible, the lands being acquired shall be maintained in an environmentally acceptable manner.

(10) Should the District dispose of any or all of the interests acquired hereunder, all revenues derived therefrom will be used to acquire other lands for water management, water supply and the conservation and protection of water resources.

(11) An environmental assessment has been completed and no evidence of environmental concerns exists.

(12) The fee acquired lands shall be managed for multiple-use purposes where compatible with the resource values of and management objectives for such lands as set forth in Section 259.105(5), Florida Statutes.

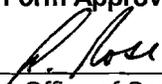
(13) The District will utilize funds from the Florida Forever Trust Fund.

(14) The Executive Director or his designee is hereby authorized to request reimbursement of all expenses for lands and associated costs identified in this Resolution.

(15) This Resolution shall take effect immediately upon adoption.

PASSED and **ADOPTED** this ____ day of _____, 2006.

Legal Form Approved:

By: 
Office of Counsel

(Corporate Seal)

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD**

By: _____
Chair

ATTEST:

By: _____
District Clerk/Secretary

Exhibit "A"
Tract No. 19-103-804

A portion of Section 17, Township 36 South, Range 33 East, Highlands County, Florida, being more particularly described as follows:

Begin at the Southeast corner of Lot 4 of Faraway Subdivision as per plat recorded in Plat Book 14, Page 76, Public Records of Highlands County, Florida;
Thence run North 00°00'03" West and along the East line of said lot a distance of 204.99 feet;
Thence North 89°57'57" East a distance of 385 feet more or less to a point on the bank of the Kissimmee River;
Thence in a Southerly direction along the bank of the Kissimmee River a distance of 225 feet more or less (tie line being South 10°19'34" West a distance of 223.64 feet);
Thence South 89°57'58" West a distance of 344.91 feet to Point of Beginning.

And

Easement Description

A easement being 31.20 feet in width being a Portion of Section 17, Township 36 South, Range 33 East, Highlands County, Florida and lying 31.20 feet left of the following line;
Commence at the Southeast Corner of Lot 4 of Faraway Subdivision as per Plat recorded in Plat Book 14, Page 76 of the Public Records of Highlands County, Florida;
Thence run North 00°00'03" West and along the East line of said Lot 4 a distance of 204.99 feet for Point of Beginning;
Thence North 89°57'57" East a distance of 385 feet more or less to a point on the bank of the Kissimmee river and End of Description.

This description was copied from Official Records Book 1301, Page 1360 Public Records of Highlands County, Florida

Kissimmee River\ Leadingham, John and Nancy
p/o Folio: C173633A0000110000
p/o PB 14, P 76
p/o ORB 1301, P 1360
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June 08, 2006

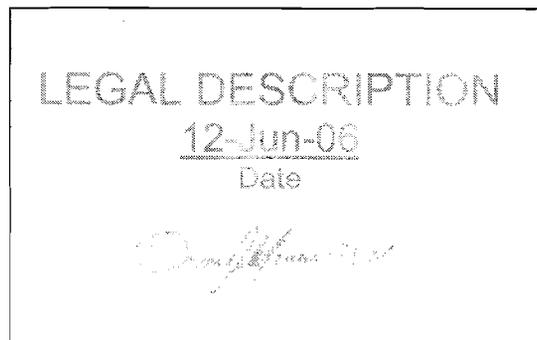
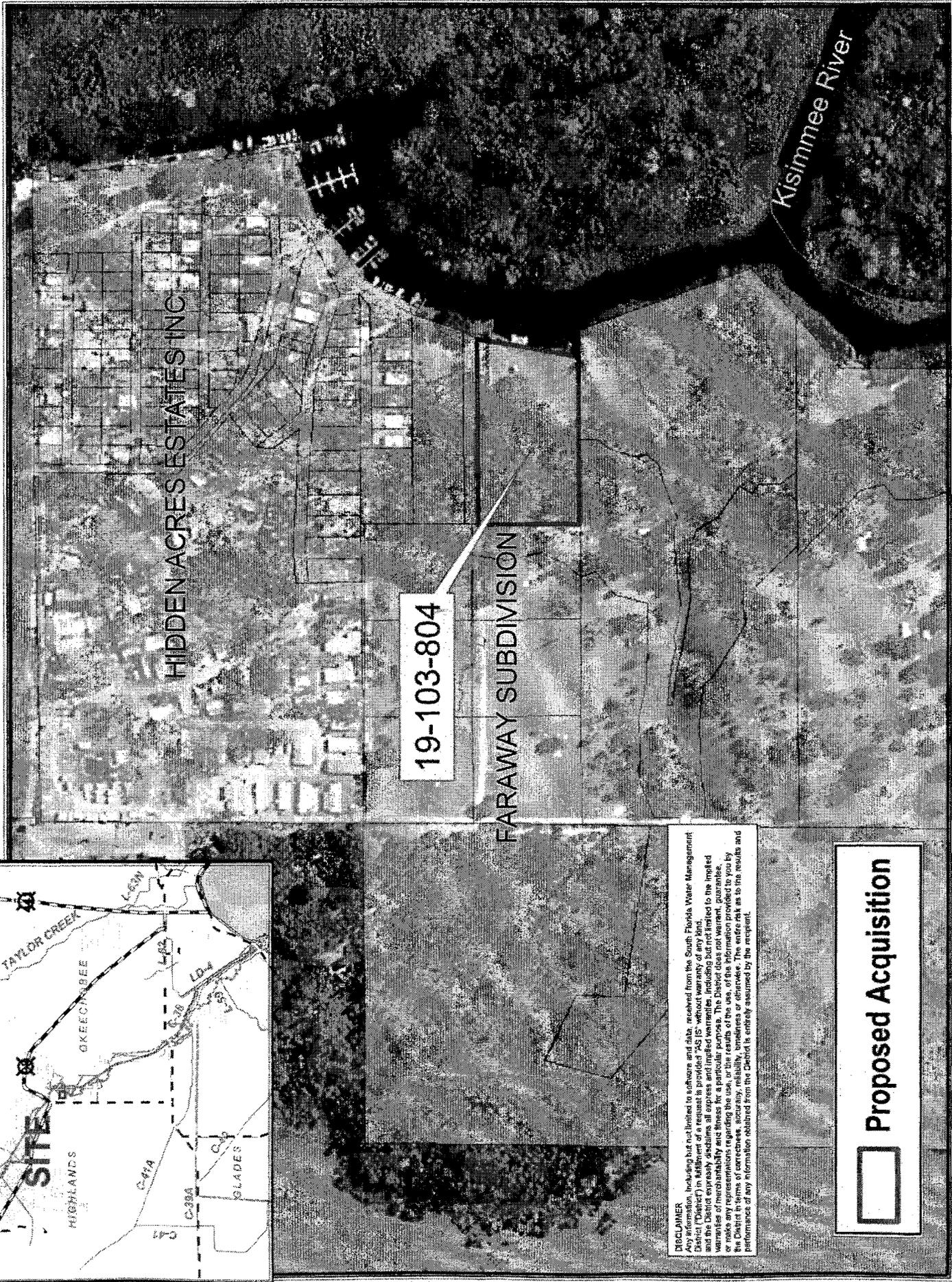
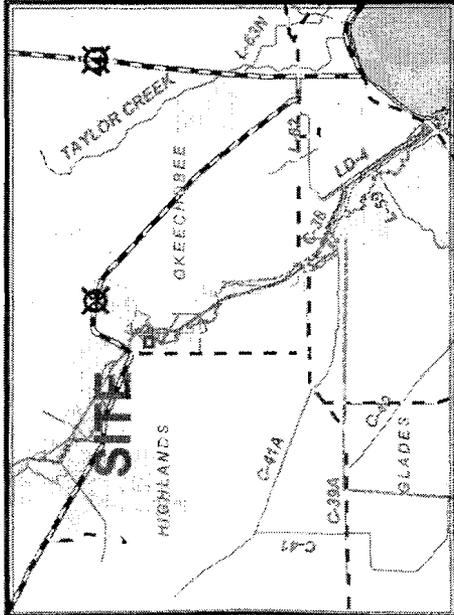


Exhibit "AA"

KISSIMMEE RIVER RESTORATION



19-103-804

Proposed Acquisition

DISCLAIMER Includes but not limited to others and site, received from the South Florida Water Management District ("District") in reliance on a request for proposal ("RFP") issued by the District. The District expressly disclaims all express and implied warranties, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. The District does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the information provided to you by the District in terms of correctness, accuracy, reliability, timeliness or otherwise. The entire risk as to the results and performance of any information obtained from the District is entirely assumed by the recipient.