Appendix A

Financial mechanisms – *to fast-track acquisition and restoration of the wetland storage and conveyance areas and develop the regional infrastructure for managing water though direct negotiation with landowners*

The financial mechanisms that follow are designed to encourage and reward landowners and developers for restoring and protecting water resources. The mechanisms are separated into two categories:

- **Acquisition and restoration** – *nine mechanisms for purchasing and restoring the wetland storage and conveyance areas*
- **Restoration** – *an additional 14 mechanisms for restoring the wetland storage and conveyance areas*

Guidance and actions for using each of the financial mechanisms are provided in italicized text after the description of each mechanism.

A. Acquisition and Restoration – *purchase and restoration of wetland storage and conveyance areas*

The nine mechanisms described in this section could be used to purchase land and/or permanent conservation easements from private landowners and restore some or all of the wetland storage and conveyance areas. An additional 15 mechanisms and incentives for restoring the areas are presented in the next section—the restoration section.

1. State Conservation Land Programs – for the purchase of land or conservation easements and the management of land and water resources

Over 10 million acres, or about 30% of Florida's total land area, are managed for natural resource protection and resource-based recreation (this includes substantial federal conservation lands and large military bases, and holdings by local governments). From 1990-2007, Florida's land acquisition budget of $300 million per year exceeded that of any other state, or even that of the federal government in all 50 states. During this time more than 2.5 million acres were purchased under *Preservation 2000* (*P2000*) and its successor, *Florida Forever*. Since 2008, the State's acquisition budget for conservation lands has declined significantly, with only $20 million budgeted for *Florida Forever* in 2013. For their part, local governments have raised more than $2 billion through local referendums and purchased about 479,000 acres of conservation and resource-based recreation lands in the state (see ***2. Local Conservation Referendums*** that follows).

The *Florida Water and Land Conservation* constitutional amendment, if approved by voters in 2014, will guarantee annual conservation land funding by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years. If passed, this would generate an estimated $648 million in state conservation land funding in 2015.

When *Florida Forever* funding is appropriated by the legislature it is distributed by the Florida Department of Environmental Protection (FDEP) to a number of state agencies and programs to purchase public lands in the form of parks, trails, forests, wildlife management areas, and more. All of these lands are held in trust for the citizens of Florida. The funding breakdown by state agency is:

- 35% Division of State Lands, FDEP
- 30% Water Management Districts

- 21% Florida Communities Trust (FCT)
- 3.5% Rural & Family Lands Program (RLFP), Florida Department of Agriculture and Consumer Services (FDACS)
- 2.5% Stan Mayfield Working Waterfront
- 2.0% Florida Recreation Development Assistance Program (FRDAP), FDEP
- 1.5% Division of Recreation and Parks, FDEP
- 1.5% Office of Greenways and Trails, FDEP
- 1.5% Florida Fish and Wildlife Conservation Commission (FFWCC)
- 1.5% Florida Forest Service, FDACS

Florida's conservation land programs can be used to purchase fee-simple title or conservation easements from willing sellers. They can also be used to fund environmental restoration and maintenance, including wetland restoration and maintenance.

The City of Winter Haven, the other municipalities, and Polk County—individually or collectively—and in cooperation with willing sellers, could nominate the purchase of fee-simple title or conservation easements for one or more wetland storage areas and request funding for restoration of the wetlands.

2. ***Local Conservation Referendums*** *– for the purchase of land or conservation easements and the management of land and water resources*

Voters in communities throughout the state have approved property tax increases by local referendums to fund conservation land programs for preserving land and water resources. The conservation programs in Polk, Volusia, and Lee counties are notable for their focus and success in protecting surface and ground water resources. Through their example, they are demonstrating that it is never too late to protect the resources that sustain communities.

Polk County Environmental Lands Program

The *Polk County Environmental Lands Program* was approved by voters in 1994. The program—which is funded by a 0.2 mil increase in property tax for 20 years—is responsible for acquiring, preserving, protecting, managing, and restoring endangered and environmentally sensitive lands, water resources, and important wildlife habitat. Over the last 20 years, the program has acquired more than 25,000 acres, including the Circle Bar B Reserve, a former cattle ranch located south of Lakeland on the northwest shore of Lake Hancock. The 1267 acre reserve includes oak hammocks, freshwater marshes, hardwood swamps, and a lake shoreline that is home to one of the State's largest and most diverse bird populations, including a wide variety of wading birds, waterfowl, ospreys and bald eagles. It is a key part of the Upper Peace River restoration efforts of the SWFWMD. Although it was opened to the public just a few years ago, it has quickly become one of the most popular destinations in the state and county for birding, hiking, and nature photography. Funding for the *Polk County Environmental Lands Program* expires this year. It is not known if the County will renew the funding.

Conservation 20/20

In 1996, Lee County voters approved an increase in their property taxes by up to 0.5 mils to fund the purchase and protection of environmentally critical lands. The program, known as the *Conservation 20/20* (*C20/20*) Program, is named after the grass roots committee that fought for its creation with the goal of having 20 percent of Lee County in conservation in 20 years—hence its name. The County exceeded that goal in 2012 with 21.5 percent of all county land now in conservation.

The objectives of *C20/20* are to:

- Protect and preserve natural wildlife habitat;
- Protect and preserve water quality and supply;
- Protect developed lands from flooding; and
- Provide resource-based recreation

To date 117 parcels totaling 24,872 acres have been acquired at a cost of approximately $300 million. Groundwater recharge areas that protect the aquifer are probably the most critical piece of the 20/20 program. Approximately 31 percent of all 20/20 lands are critical recharge areas. Other important 20/20 benefits and statistics include: 88 percent of the lands are used for flood and storm protection; 41 percent of the lands are in coastal high hazard areas; 100 miles of protected coastline, tidal inlets, creeks, and rivers. Although the property tax increase was initially set to run for ten years, it has consistently been renewed by the County and continues to this day.

Volusia Forever

Since 1986, Volusia County has been involved in acquiring more than 55,000 acres of conservation, environmentally sensitive, and important water resource lands. More than 38,000 of those acres were acquired since 2000, under the award-winning *Volusia Forever* program which is funded at the rate of 0.2 mills over 20 years. The County is responsible for the management, enhancement, and restoration of those lands. To leverage their investment to the greatest extent possible, *Volusia Forever* has entered into partnerships with federal, state, the water management district, local and other conservation entities to acquire conservation lands. A key goal of the program is to preserve water recharge and storage to meet the long-term water resource needs of the community and environment.

Local conservation land programs can be used to purchase fee-simple title or conservation easements from willing sellers. They can also be used to fund environmental restoration, including wetland restoration.

Winter Haven, individually or in partnership with Polk County and the other communities in the Peace Creek watershed, could initiate a "water resource sustainability referendum," to acquire, restore, and maintain some or all of the wetland storage areas in the watershed. A 0.2 mil increase in property tax in Winter Haven would raise about $3.6 million per year (based on a tax base of about $1.8 billion today). Following the Volusia Forever example, they could leverage their investment further by entering into partnerships with federal, state, water management district, local, and other conservation entities to acquire and restore the wetland storage areas.

3. ***FDACS Rural and Family Lands Protection (RFLP) Program*** *– for the purchase of permanent agricultural land conservation easements*

The *Rural and Family Lands Protection* (*RFLP*) *Program* is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of *permanent agricultural land conservation easements*. The *Program* is designed to meet three needs:

- Protect valuable agricultural lands;
- Create easement documents that work together with agricultural production to ensure sustainable agricultural practices and reasonable protection of the environment without interfering with agricultural operations in such a way that could put the continued economic viability of these operations at risk; and

- Protect natural resources, not as the primary purpose, but in conjunction with the economically viable agricultural operations.

Eligible projects are those that protect the integrity and function of working landscapes, ensure opportunities for viable agricultural activities on working lands threatened by conversion to other uses, and meet at least one of the following public purposes:

- Perpetuate open space on working lands that contain significant natural areas;
- Protect, restore or enhance water bodies, and aquifer recharge areas, including uplands and springsheds, wetlands or watersheds;
- Promote a more complete pattern of protection, including buffers to natural areas, ecological greenways, functioning ecosystems, and military installations; and
- Promote the restoration, enhancement or management of species habitat, consistent with the purposes for which the easement is acquired.

Originally created in 2001 with the passage of the Rural and Family Lands Protection Act, the *RFLP* has successfully acquired the development rights of seven active agricultural operations and accepted the donation of an active silvicultural operation. The Florida Forest Service is currently in the process of acquiring easements over additional agricultural operations. In 2013, the Governor signed into law a bill that will increase funding to the *RFLP* ($11.1 million in new money from the General Revenue Fund).

Applications for selling easements are submitted to FDACs on an ongoing basis and evaluated in an annual application cycle. The applications are reviewed and a ranked list of land easements for acquisition is adopted in a public meeting in November of each year.

Agricultural landowners owning land that includes one or more wetland storage areas could sell the development rights for all or a portion of their lands, including the wetland storage areas, to the state via a permanent agricultural conservation easement through the FDACS RLFPP. Notably, conservation of the wetland storage areas meets all of the Program eligibility requirements.

The RFLP funds could be leveraged by FDACS through partnering with the Natural Resources Conservation Service (NRCS) Farm and Ranch Lands Protection Program which provides up to 50 percent of the fair market easement value of the conservation easement (see ***4. NRCS Farm and Ranch Lands Protection Program*** *that follows)****.*** *With proper coordination, it may be possible to restore the wetland storage areas with additional funding from other state and federal programs described in this section and the restoration section.*

4. ***NRCS Farm and Ranch Lands Protection (FRLP) Program*** *– for the purchase of permanent agricultural land conservation easements*

The *Farm and Ranch Lands Protection* (*FRLP*) *Program* provides matching funds to help purchase development rights to keep productive farm and ranchland in agricultural uses. Working through existing programs, the US Department of Agriculture (USDA) partners with state, tribal, local government or non-governmental organizations to acquire conservation easements or other interests in land from landowners. USDA provides up to 50 percent of the fair market easement value of the conservation easement.

USDA partners that become certified have more flexibility and a shorter process to acquire easements. Certified organizations may also enter into longer term cooperative agreements and conduct the program's closings without prior submission of individual appraisals, deeds or title documents.

Entities may apply for certification at anytime by submitting a letter of request and application materials to the NRCS State Conservationist where they're seeking certification. Although it is a continuous process, applications must be received by January of each year to be considered at the annual certification meeting.

FDACS could partner with USDA to leverage their respective programs for purchasing permanent agricultural land conservation easements. This would double the dollar amount of the state's investments. If not already certified by USDA, FDACS could get certified to shorten the acquisition process.

5. ***USFWS North American Wetlands Conservation Act (NAWCA) Grant Program*** *– private and public, local, state, and federal partnerships for acquiring and restoring wetlands*

The North American Wetlands Conservation Act (NAWCA) grant program provides grants throughout North America for conserving habitat for waterfowl and other wetland-associated migratory birds. For the past 22 years, NAWCA has provided the funds for the Service, state wildlife agencies and sportsmen and conservation organizations to purchase, protect and restore more than 26 million acres for waterfowl and other wetland-associated fish and wildlife. NAWCA has been the primary federal program contributing to the conservation of waterfowl nesting, migrating and wintering habitat across North America, funding efforts to return waterfowl populations to 1970s levels and helping maintain cultural ties to hunting and other outdoor activities. NAWCA funds have been invested in North America's most vital wetland ecosystems. Projects are selected for funding based on the significance of the wetland ecosystems and wildlife habitat to be conserved, migratory bird species benefitted, partner diversity and non-federal contributions leveraged, as well as the long-term value of the conservation work proposed.

By partnering with non-federal cooperators such as private landowners, states, local governments, conservation organizations, national and local sportsmen groups, tribes, trusts, and corporations, NAWCA funds have effectively leveraged twice the legally required 1:1 match-to-grant ratio. NAWCA grants are the catalysts for partnerships and projects that:

- Generate migratory bird conservation, flood control, erosion control, and water quality improvement;
- Sustain cultural traditions, such as hunting and fishing;
- Help implement the tri-national North American Waterfowl Management Plan and other national and international bird conservation plans;
- Assist in the recovery of endangered and threatened species; and
- Achieve the Service's long-term outcome goal of healthy and sustainable migratory bird populations, including waterfowl.

NAWCA administers Standard and Small Grants programs. The Standard Grants Program is open to applicants in the U.S., Canada, and Mexico. Standard grant amounts in the U.S. are generally $750,000 to $1,000,000, and eligible grantees must provide matching funds at least equal to the award amount. Usually, the non-federal match amount exceeds the requested grant amount by more than 2:1. The Small Grants Program, available only in the U.S. and limited to $75,000 per project, is intended to assist smaller partners and projects to successfully compete for NAWCA funds. This program attracts new partners for wetland conservation and helps diversify the types and locations of projects funded by NAWCA.

The Peace Creek watershed is located on the western edge of the area of greatest continental significance to North American ducks, geese, and swans in peninsular Florida. Much like the Circle Bar B Reserve, the wetland storage areas will provide habitat for a large and diverse population of wading birds and waterfowl. With proper coordination, NAWCA grant funds could be used to further leverage other

state and federal funds to acquire (fee-simple or conservation easement) and restore the wetland storage areas.

6. FDACS Water Resource Protection Projects – for agriculture

In 2013, the Governor signed into law Senate Bill 948 giving FDACS a formal role in developing water management district regional water supply plans. The changes to Part VII of Chapter 373 make FDACS responsible for assisting Florida's water management districts in estimating the future water needs of agriculture and helping develop policies and programs to meet those projected needs.

For 2014, FDACS is requesting $26 million in new funding from the legislature for water resource protection projects. Fifteen million dollars is intended for use in the Lake Okeechobee and Caloosahatchee River and St. Lucie River and estuaries watersheds. A portion of the money will be used to implement best management practices (BMPs) through a cost share program for fencing cattle out of waterways and giving or enhancing a farmer's ability to manage storm water by building water control structures such as swales. FDACS will also use some of the money to support the Istokpoga Marsh Watershed Improvement District, just south of Lake Istokpoga, an area of intense agricultural activity. FDACS is working with the landowners and water management officials to put in additional water storage and storm water management features that will allow them to recycle more water and reduce their discharges, thereby reducing nutrient loads to Lake Okeechobee. A total of $5 million will be focused specifically on programs in areas located north of the I-4 corridor, west of the St. John's River, through the Big Bend and into regional springsheds.

Agricultural lands are a large percentage of the lands to be developed, placed in conservation, or actively farmed in the Peace Creek watershed. Regardless of how the lands will be used, their fate is critical to restoring and reconnecting the natural hydrology of the watershed. The City of Winter Haven, the other municipalities, and Polk County can work with FDACS, the state legislature, and other state and federal partners to provide agricultural landowners financial and other incentives to restore the wetland storage areas.

7. State Legislative Appropriations – for water infrastructure projects

Polk County is seeking state legislative appropriations in 2014 for a county-wide water-distribution system that would involve construction of new wellfields, treatment plants, and a 25-mile pipeline system. The projected cost is $332.5 million. About half of the cost of the 40-year project is expected to be funded from state and regional agencies, with the rest coming from municipal bonds.

Florida Governor Scott has developed the following review criteria to guide him in approving funding for water infrastructure projects, such as the projects proposed by Polk County:

- Protects public health or the environment;
- Implements a plan for water quality improvement and water restoration;
- Completed all planning, design, permitting, and local zoning and land use requirements;
- Pursuing funding from other sources;
- Equal match to the requested state appropriation;
- Metrics that demonstrate beneficial return on investment;
- Sustainable revenue source for funding operating expenses;
- Legislative sponsor with support from majority of local delegation members; and
- Priority for projects that have received state appropriations in prior years.

Strict adherence to the review criteria is required and all project requests must be heard in a legislative committee meeting prior to the legislative budget conference. The eligible recipients of state legislative appropriations for water infrastructure projects include counties, municipalities, water management districts, and special districts that are statutorily responsible for water quality improvement, stormwater management, wastewater management, water restoration, and other water projects specifically appropriated by the Legislature.

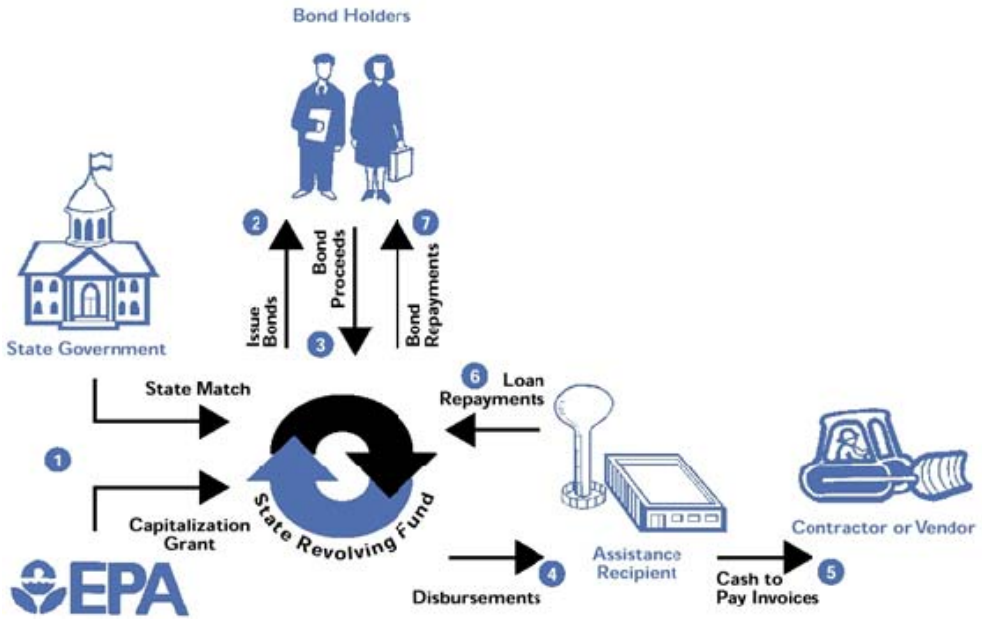
The City of Winter, the other municipalities, and the Lake Region Lakes Management District could follow Polk County's example and submit project proposals for restoring all or some of the wetland storage areas as alternative water supply projects. To reduce costs and maximize the water resource benefits of such projects, the City is evaluating opportunities to combine the restoration of wetland storage areas with reuse projects designed to increase lake levels and wetland storage, and increase aquifer recharge, using rapid infiltration basins (RIBs). A multi-use project of this sort would also create opportunities for parks and recreation.

The City could request a legislative appropriation in 2014 to assist in 1) quantifying the flood storage needs of the watershed under different development scenarios, and 2) coordinating with local, regional, state, and federal restoration partners to overcome financial, regulatory, and institutional roadblocks to implementing the Sapphire Necklace.

8. ***Clean Water State Revolving Fund*** *–to fund all or part of the wetland storage areas identified in the Sustainability Plan/Sapphire Necklace*

The Clean Water Act provides grant funds to states to help them establish state revolving fund (CWSRF) programs. States, in turn, offer loans and other types of financial assistance from their CWSRFs to municipalities, individuals, and others for high-priority water quality activities that protect public health and conserve local watersheds (see **Figure 1-A**). While traditionally used to build or improve wastewater treatment plants, including water reuse and conservation, loans are also used increasingly for: agricultural, rural, and urban runoff control; wetland and estuary improvement projects; wet weather flow control (including stormwater and sewer overflows); alternative treatment technologies; and watershed restoration and protection.

Figure 1-A. *The Clean Water State Revolving Fund functions like an infrastructure bank (Source: EPA)*



Funds to establish or capitalize the CWSRF programs are provided through federal government grants and state matching funds that are equal to 20 percent of federal government grants. CWSRF monies are loaned to communities at lower than market rate interest-rates, and loan repayments are recycled back into the program to fund additional water quality protection projects. The revolving nature of these programs provides for an ongoing funding source that will last far into the future.

Nationally, interest rates for CWSRF loans average 2.2 percent compared to market rates that average 4.5 percent. For a CWSRF program offering this rate, a CWSRF funded project would cost 19 percent less than projects funded at the market rate. CWSRFs can fund 100 percent of the project cost and provide flexible repayment terms up to 20 years.

The Green Project Reserve (GPR)[1] requires all CWSRF programs to direct a portion (currently 10%) of their capitalization grant toward projects that address green infrastructure, water efficiency, energy efficiency, or other environmentally innovative activities. Innovative environmental activities are those that demonstrate new and/or innovative approaches to managing water resources to prevent or remove water pollution in an economically and environmentally sustainable way, such as: decentralized wastewater treatment solutions, projects that facilitate adaptation of clean water facilities to climate change, and projects that identify and quantify the benefits of using integrated water resources management approaches, to name a few.

In Florida, the SRF program is administered by FDEP. It is by far DEP's largest funding program, making $200-300 million in loans annually to local governments. Funds are currently available for Clean Water and Drinking Water SRF projects.

The City of Winter Haven, Polk County, and the other municipalities—individually or collectively—could fund the restoration of some or all of the wetland storage areas as an alternative water supply project using low interest loans from the CWSRF. Repayment of the loans could be made from utility fees currently paid by customers for water and sewer service in each community or a "sustainable infrastructure" utility fee applied to the entire watershed or the monies collected through a local conservation referendum.

The Sapphire Necklace project meets all of the green infrastructure requirements for the GPR, as follows:

- *Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits including: permeable pavement[2], bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.*
- *Wet weather management systems for parking areas including: permeable pavement, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.*
- *Implementation of comprehensive street tree or urban forestry programs, including expansion of tree boxes to manage additional stormwater and enhance tree health.*

[1] Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund. EPA memorandum dated March 2, 2012 from James A. Hanlon, Director, Office of Wastewater Management and Cynthia C. Dougherty, Director, Office of Groundwater and Drinking Water to Water Management Division Directors, Regions I – X.

[2] The total capital cost of permeable pavement is eligible, not just the incremental additional cost when compared to impervious pavement.

- *Stormwater harvesting and reuse projects, such as cisterns and the systems that allow for utilization of harvested stormwater, including pipes to distribute stormwater for reuse.*
- *Downspout disconnection to remove stormwater from sanitary, combined sewers and separate storm sewers and manage runoff onsite.*
- *Comprehensive retrofit programs designed to keep wet weather discharges out of all types of sewer systems using green infrastructure technologies and approaches such as green roofs, green walls, trees and urban reforestation, permeable pavements and bioretention cells, and turf removal and replacement with native vegetation or trees that improve permeability.*
- *Establishment or restoration of permanent riparian buffers, floodplains, wetlands and other natural features, including vegetated buffers or soft bioengineered stream banks. This includes stream day lighting that removes natural streams from artificial pipes and restores a natural stream morphology that is capable of accommodating a range of hydrologic conditions while also providing biological integrity. In highly urbanized watersheds this may not be the original hydrology.*
- *Projects that involve the management of wetlands to improve water quality and/or support green infrastructure efforts (e.g., flood attenuation).*
- *Includes constructed wetlands.*
- *May include natural or restored wetlands if the wetland and its multiple functions are not degraded and all permit requirements are met.*
- *The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design.*
- *Fee simple purchase of land or easements on land that has a direct benefit to water quality, such as riparian and wetland protection or restoration.*

The project also meets all of the GPR decision criteria for successfully making a business case for funding, as follows:

- *Green infrastructure projects are designed to mimic the natural hydrologic conditions of the site or watershed.*
- *Projects that capture, treat, infiltrate, or evapotranspire water on the parcels where it falls and does not result in interbasin transfers of water.*
- *Project is in lieu of or to supplement municipal hard/gray infrastructure.*
- *Projects considering both landscape and site scale will be most successful at protecting water quality.*

9. ***Public-Private Partnership (PPP)** – for building and maintaining the regional wetland storage system*[3]

Public-Private Partnerships (*P3s*) are a contractual arrangement between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects. Through these arrangements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards in the delivery of the service or facility. The fiscal challenges faced by Florida in recent years have made the political climate more favorable for the use of P3s.

The Florida Department of Transportation has successfully used P3s to finance, build, and operate roads, bridges, and highways throughout the state. In 2013, the Governor signed into law a bill (Bill C S/C S/HB 85) expanding the Florida P3 statute to allow the finance/build/operate model to be used in a broad range

[3] Source: Berkowitz and Corbella. 2013. Florida Adopts Legislation on Public Private Partnerships Expanding Opportunities for Infrastructure Projects.

of projects outside of transportation. The law is anticipated to open opportunities for the use of the P3 model in a wide range of applications to help address Florida's many and varied infrastructure needs.

The law acknowledges the need for providing, renovating, and upgrading public infrastructure projects on a timely and cost effective basis. Due to the lack of adequate resources to develop such projects the law encourages investment by private entities through the facilitation of various bond financing mechanisms, private capital, and other sources. The law specifically identifies the demonstrated capacity of P3s to improve delivery schedules, lower costs, and provide other benefits to the public. Procurements will qualify if they facilitate timely development or operation of a "qualifying project."

"Qualifying projects" are broadly defined as those serving a public purpose including mass transit, parking, airports, seaports, rail facilities, medical or nursing care facilities, sporting, public education, cultural and recreational facilities, wastewater, surface water management and water management facilities.

The City of Winter Haven, Polk County, and the other municipalities—individually or collectively—could enter into a P3 contract to implement all or part of the water infrastructure, including the restoration and maintenance of the wetland storage areas. As with the CWSRF, the P3 could be funded through the utility fees currently paid by customers for water and sewer service in each community or a "sustainable infrastructure" utility fee applied to the entire watershed or the monies collected through a local conservation referendum.

B. Restoration – *restoration of wetland storage areas*

This section includes 15 additional financial mechanisms that could be used to restore some or all of the wetland storage areas.

1. ***EPA Section 319 grant*** *– for stormwater water quality improvement; used to fund restoration of the first wetland storage area in the Peace Creek watershed (storage area 20)*

All of the proposed wetland storage areas are in private ownership, except lake Gwyn (storage area 20), which is owned by the State of Florida and leased to Polk County under a 50 year lease agreement with the State. Lake Gwyn is being restored by the County using *Section 319 grant* funding from the Environmental Protection Agency (EPA). The project will restore the wetland functions to the western half of the lake. This will improve the water quality of the Wahneta Farms Canal that bisects the lake by providing wetland treatment to a drainage area dominated by agricultural land uses that do not provide stormwater treatment. The restored wetland will treat the stormwater runoff from the entire 3,258 acre drainage basin to reduce fecal coliform bacteria levels, as well as levels of total nitrogen, total phosphorus, and total suspended solids. In addition to the water quality improvements, the project will provide additional storage volume to help attenuate flooding of the Peace Creek Canal and assist in maintaining flows in the upper Peace River. Other benefits include: increasing aquatic habitat for wildlife, providing public education on the use of wetlands for stormwater treatment through kiosks, teaching wetland ecology principles to students in the adjacent elementary school, and providing for passive recreational activities such as hiking, bird watching, and fishing.

The Florida Department of Environmental Protection (FDEP) administers the grant funding received from EPA under Section 319 of the Federal Clean Water Act. The funds are used to implement projects to manage nonpoint sources of pollution and restore waterbodies with impaired water quality. Nonpoint sources include stormwater runoff from urban areas and agricultural operations, failing septic tanks, and erosion. Nonpoint source pollution is the leading cause of water pollution in Florida today. Managing

these sources is critical to meeting the Total Maximum Daily Load (TMDL) limits of pollutants for waters with impaired water quality as required by the Clean Water Act.

Eligible grant recipients include state agencies, local governments, colleges, universities, non-profit organizations, public utilities, and state water management districts. Priority for funding is given to recipients actively engaging in the FDEP Basin Management Action Plan (BMAP, water quality restoration) process. The majority of funding is used to support the construction of stormwater treatment facilities; however, funding has also been used for demonstration projects (for agricultural and urban best management practices), training opportunities, and education programs. In recent years, FDEP has awarded $4-6 million annually under the 319 Program. In 2013, Polk County received $580,000 in matching grant funds for the Lake Gwyn restoration project (total project cost $1,155,800).

The City of Winter, other municipalities, colleges, non-profit organizations, and public utilities in the Peace Creek watershed could follow Polk County's example and apply for EPA Section 319 grant funding to restore wetland storage areas. This would require purchasing the storage area or a conservation easement for flooding the storage area. Applications for funding are due to FDEP in May of each year. The projects are selected by FDEP in September and then forwarded to EPA for funding in the following federal fiscal year. The whole process—from application to start of construction—takes approximately two years to complete.

2. ***Private Local Development Agreements*** *– for protecting and restoring wetlands*

The wetland storage areas are located within the 100 year floodplain and for the most part are undevelopable. Portions of the storage areas are located next to the Peace Creek Drainage Canal are part of a designated federal floodway that prohibits all development to protect human life and property. In Winter Haven the storage areas are identified as conservation areas unsuitable for development in the City's existing and future land use plans.

Developers of land that include wetland storage areas can use the storage areas to meet open space requirements, serve as a site amenity, and/or a restoration site to mitigate the impacts of development. These and other details about the development are part of a site plan and local development agreement authorizing the development.

Storage area 5 which is part of an 18,000 acre private development is identified as a conservation area for preservation in the local development order. There are no requirements in the order to restore the wetlands or incorporate the storage area into the regional system for managing water. Storage area 10 is also part of a local development order for a residential development. As with site 5, there are no requirements in the order to restore the wetlands or incorporate the storage area into the regional system for managing water.

Although local development agreements with private developers can protect wetland storage areas, they do not necessarily provide for the restoration of the wetlands. As such additional incentives may be required. The City of Winter Haven, the other municipalities, and Polk County could assist landowners in obtaining and using some of the other market mechanisms to restore the wetlands.

3. ***Coastal America Corporate Wetlands Restoration Partnership (CWRP)*** *– for restoring wetlands*

The *Coastal America Corporate Wetlands Restoration Partnership* (*CWRP*) is an innovative private-public initiative aimed at preserving, restoring, enhancing and protecting aquatic habitats throughout the United

States. Bringing together corporations, federal and state agencies, non-profit organizations and academia, the *Partnership* allows members to contribute in a fundamental way to crucial projects involving America's coastal and inland aquatic resources and support related education programs.

More than 300 corporate partners have contributed time and money to facilitate selected projects. Since its inception in 1999, *CWRP* has aided in the restoration of more than 64,000 acres and 1,050 stream miles through the monetary donations and in-kind services of its corporate partners.

The structure of the *CWRP* allows corporate contributions to rapidly produce tangible results. It works in cooperation with Coastal America, a unique partnership of federal agencies, state and local governments. It exists as a Standing Committee under the Coastal America Foundation, a public charity recognized by the IRS under Section 501(c)(3) of the Internal Revenue Code. Corporate contributions to *CWRP* are combined with governmental and other funds, often yielding leverages of more than three to one. Contributions are held by the Coastal America Foundation and earmarked for use in specific geographic areas as designated by the donor company.

The availability of *CWRP* funds and in-kind services significantly improves the ability of projects to compete successfully for federal funding and other dollars. This cooperative effort melds the capabilities and expertise of government with the contributions of *CWRP* participants. The result is efficient, cost-effective solutions to many of the challenges facing coastlines and aquatic habitats.

CWRP state chapters form the backbone of wetland restoration efforts by recruiting corporate members and contributors. State chapters also select which projects to support with financial and in-kind contributions and all projects are endorsed by Coastal America. Although Florida does not have an active state chapter, FDEP and the US Fish and Wildlife Service (USFWS) are in discussions with Coastal America to start a chapter in Florida.

The Nature Conservancy (TNC) is a CWRP corporate partner that could assist Winter Haven in securing a CWRP chapter and corporate partners in Florida. Potential partners with operations in the Peace Creek watershed include Coca-Cola, Publix, and Walmart. Each of these companies has a net-zero water use goal that could be met through offsets and water savings achieved through the storage of water in wetland storage areas, lakes, and aquifers in the Peace Creek watershed.

4. USFWS Partners for Fish and Wildlife Program

The USFWS Partners for Fish & Wildlife Program restores, improves, and protects fish and wildlife habitat on private lands through alliances between the U.S. Fish and Wildlife Service, other organizations, and individuals, while leaving the land in private ownership. Although the primary partners are private landowners, anyone interested in restoring and protecting wildlife habitat on private or tribal lands can get involved in the Partners for Fish and Wildlife Program, including other federal, state and local agencies, private organizations, corporations, and educational institutions. Examples of voluntary habitat restoration projects include: restoring wetland hydrology, planting native trees and shrubs, planting native grasslands, installing fencing and off-stream livestock watering facilities, removal of exotic plants and animals, prescribed burning, reconstruction of instream aquatic habitat. Since the Partners Program began in Southeast Region in 1987, it has assisted over 4,000 landowners in habitat improvement projects on over 568,000 acres of private lands, including restoring over 272,000 acres of wetlands.

Landowners may perform the restoration and be reimbursed directly for some or all of their expenses, the Service may hire a contractor to complete the work, or the Service may complete the work itself. While not a program requirement, a dollar-for-dollar cost share is sought on a project-by-project basis. Partners

for Fish and Wildlife funds are not used to purchase or lease real property interest or to make rental or other incentive payments to landowners. The minimum contract is for 10-years.

Private landowners could enter into a minimum of a ten year contract with the USFWS to restore their wetland storage areas on a 50/50 cost share basis. With proper coordination, it may be possible to restore the wetland storage areas with additional funding from other state and federal restoration programs.

5. ***USDA Farm Service Agency Conservation Reserve Program*** *– for promoting environmentally sensitive agricultural practices*

USDA Farm Service Agency's (FSA) Conservation Reserve Program (CRP) is a voluntary program available to agricultural producers to help them use environmentally sensitive land for conservation benefits. Producers enrolled in CRP plant long-term, resource-conserving covers to improve the quality of water, control soil erosion, and develop wildlife habitat. In return, FSA provides participants with rental payments and cost-share assistance. There are three options for assistance: 1) annual rental payments of up to $50,000 per year; 2) payment of up to 50% of the cost to establish cover; and 3) payment of up to 25% of the cost for wetland hydrology restoration. The duration of CRP contracts is between 10 and 15 years. Eligible participants include: individuals, states, local governments, tribes, or any other entity who owns private land for at least 1 year that is either cropland planted with a crop in 2 of the last 5 crop years or marginal cropland that is enrolled in the Water Bank program or suitable to be used as a riparian buffer. Also, the land must be either highly erodible land, a cropped wetland, devoted to highly beneficial environmental practices, subject to scour erosion, located in a CRP priority area, or be a cropland associated with or surrounding non-cropped wetlands.

The City of Winter Haven, the other municipalities, Polk County, the state, private landowners, or any other entity that is in cropland could use the CRP to enhance management practices and restore wetlands. With proper coordination, it may be possible to restore the wetland storage areas with additional funding from other state and federal restoration programs.

Rick Dantzler, former state representative from Polk County, is the new State Executive Director for FSA. The state office for FSA is located in Gainesville, Florida.

6. ***NRCS Wetlands Reserve Program (WRP)*** *– for restoring wetlands altered for agricultural purposes*

The NRCS Wetlands Reserve Program (*WRP*) is a voluntary cost share program aimed at restoring wetlands, riparian areas, and buffer zones that have been altered for agricultural purposes. The primary objective of WRP is to restore natural hydrology, to the extent practical, of degraded wetlands for the benefit of wildlife including waterfowl, wading birds and endangered and threatened species. On non-federal public land, where the property is already in conservation or planned to be, NRCS typically utilizes Citizen Support Organization (CSO) restoration agreements to assist state and local governments in restoring wetland habitats.

Under the program, landowners may sell a conservation easement or enter into a cost-share restoration agreement, while maintaining private ownership. There are three options for assistance:

- **Permanent easement and restoration** – USDA purchases easement (payment will be the lesser of the agricultural value of the land, an established payment cap, or an amount offered by the landowner) and pays 100% of restoration costs;

- **30-year easement** - USDA pays 75% of what would be paid for permanent easement and 75% of restoration costs; and
- **Restoration cost share agreement** – 10-year minimum agreement to restore degraded habitat where USDA pays 75% of the restoration costs.

Under the easement options the USDA will pay all costs associated with recording the easement in the local land records office, including recording fees, charges for abstracts, survey and appraisal fees, and title insurance. Under the easement the landowner retains the rights to: 1) control of access, 2) title and right to convey title, 3) quiet enjoyment, 4) undeveloped recreational uses, 5) subsurface resources, and 6) water rights.

Eligible participants include Individuals, states, local governments, tribes, or any other entity that owns private land, as long as the land has been owned for at least 1 year and is restorable and suitable for wildlife. Eligible lands for the *WRP* include:

- Wetlands farmed under natural conditions;
- Farmed wetlands;
- Prior converted cropland;
- Farmed wetland pasture;
- Certain lands that have the potential to become a wetland as a result of flooding;
- Rangeland, pasture, or forest production lands where the hydrology has been significantly degraded and can be restored;
- Riparian areas that link protected wetlands;
- Lands adjacent to protected wetlands that contribute significantly to wetland functions and values; and
- Wetlands previously restored under a local, state, or federal program that need long-term protection.

Lands established to trees through the *Conservation Reserve Program* (*CRP*) are *ineligible* for *WRP* enrollment. In addition, *WRP cannot* be used in combination with any state programs for the same piece of land.

The enrollment authority for the *WRP* expired on September 30, 2013, and as such, the NRCS is not authorized to take applications or enter into any new contracts, agreements, or enrollments at this time. The *WRP* program will not accept new enrollments until either the current legislation is extended or a new Farm Bill is enacted. The NRCS will continue to service prior-year enrollments in the program.

Once funding authority is restored to WRP, any public or private landowner of the wetland storage areas could sell a permanent conservation easement to USDA and secure 100% funding to restore the wetlands.

***7. NRCS Grassland Reserve Program (GRP)** – for protecting grasslands and water quality*

The *NRCS Grassland Reserve Program* (*GRP*) is a voluntary conservation program that emphasizes support for working grazing operations, enhancement of plant and animal biodiversity, and protection of grassland under threat of conversion to other uses. *GRP* helps to maintain grasslands used for grazing, pasture, or seed production to ensure the future availability of feed and to maintain diversity within and across plant species. These grasslands are also critical habitat for many protected bird species. Participants voluntarily limit future development and cropping uses of the land while retaining the right to conduct common grazing practices and operations related to the production of forage and seeding,

subject to certain restrictions during nesting seasons of bird species that are in significant decline or are protected under Federal or State law.

Landowners who want to participate in *GRP* may enroll through a permanent conservation easement or 10, 15, or 20 year rental contract. Rental Contracts pay a flat rate per acre for the grassland value for each year of the agreement. Permanent Conservation Easement value is determined by the lowest of an appraisal, geographic area rate cap, or landowner offer. Under all options the landowner agrees to implement a grazing management plan on all enrolled land. The program provides 50 percent cost-share for any needed grazing improvements such as fencing and grass plantings. *GRP cannot* be used in combination with any state programs for the same piece of land.

The enrollment authority for the *GRP* expired on September 30, 2013, and as such, the NRCS is not authorized to take applications or enter into any new contracts, agreements, or enrollments at this time. The *GRP* program will not accept new enrollments until either the current legislation is extended or a new Farm Bill is enacted. The NRCS will continue to service prior-year enrollments in the program.

Once funding authority is restored, any landowner seeking to maintain grazing on their property, either permanently or for the next 10-20 years could receive GRP funding. The required grazing management plan in combination with cost-share funding for fencing and grass plantings could significantly reduce nutrient loading to the Peace Creek Drainage Canal and the wetland storage areas.

8. NRCS Wildlife Habitat Incentives Program (WHIP) *– for improving wildlife habitat*

The *NRCS Wildlife Habitat Incentives Program* (*WHIP*) is a voluntary USDA program for improving or developing fish and wildlife habitat on private lands. The program provides both technical and financial assistance to establish and enhance habitat for priority species and habitat types. Eligible applicants work with their local NRCS staff to prepare and implement a wildlife plan of operations. The plan becomes the basis for a contract which, if funded through a competitive ranking process, provides payments for completed practices that create or improve the approved wildlife habitat. NRCS provides technical assistance and funds up to 75% of the cost of installing wildlife practices under a 5-10 year contract. Eligible participants must own or have control of the land and cannot have it enrolled in other programs with a wildlife focus, such as the Wetlands Reserve Program, or use the land for mitigation. WHIP may not be used in combination with any state programs for the same piece of land.

WHIP could be used by any landowner to improve wildlife habitat as long as it is not used on lands enrolled in other federal programs with a wildlife focus or land used for mitigation, or lands enrolled in state programs. Notwithstanding these restrictions, WHIP could help compliment the conservation activities on other portions of land owned or controlled by the landowner.

9. NRCS Watershed Protection and Flood Prevention Program – *Program Discontinued*

The *NRCS Watershed Protection and Flood Prevention Program* which has been discontinued and is being phased-out *w*orks through local government sponsors to help participants voluntarily plan and install watershed-based projects on private lands. The projects include watershed protection, flood prevention, erosion and sediment control, water supply, water quality, fish and wildlife habitat enhancement, wetlands creation and restoration, and public recreation in watersheds of 250,000 or fewer acres. NRCS provides technical and financial assistance, including 100% of flood prevention construction costs and 50% of costs associated with agricultural water management, recreation, and fish and wildlife. It does not cover any of the costs for other municipal and industrial water management. Eligible participants include local or state agency, county, municipality, town or township, soil and water

conservation district, flood prevention or flood control district, tribe or tribal organization, or nonprofit agency with authority to carry out, maintain, and operate watershed improvement works.

This program has been discontinued and can no longer be used.

10. Payments to Landowners *– for ecological services, including water storage and treatment*

Since 2005, the South Florida Water Management District (SFWMD) has been working with a coalition of agencies, environmental organizations, ranchers, and researchers to enhance opportunities for storing excess surface water on private and public lands. Also known as "water farming," these partnerships have made thousands of acre-feet of water retention and storage available throughout the greater Everglades system.

With Lake Okeechobee's water levels high from months of above-average rainfall during the 2013 rainy season, the District utilized this storage while taking further actions to capture and store water throughout the regional water management system. Holding water on these lands was one tool to help reduce the amount of water and nutrients flowing into Lake Okeechobee and/or discharged to the Caloosahatchee and St. Lucie estuaries during the high water conditions throughout South Florida. Excess nutrients and flows are contributing to algal blooms and ecological imbalances in the lake and estuaries.

The SFWMD has spent $17.6 million between 2006 and 2013 on its Dispersed Water Management Program, which includes water storage projects on public and private lands. Another $28.8 million is allocated to be spent between 2014 and 2018. In November, the Select Committee on Indian River Lagoon and the Lake Okeechobee Basin recommended $220 million in projects to store water and reduce discharges to the rivers. The Committee noted that these projects provide further evidence that Florida doesn't have a water shortage problem—it has a water storage problem.

A bill that would exempt public water projects on farmlands from being considered as income-producing ventures for landowners is moving through the Senate. Senate Bill 312 (SB 312) would allow farmers with water storage projects to maintain their agricultural greenbelt tax classifications (tax advantages). The bill also would provide a sales tax exemption for farm irrigation equipment to encourage farmers to install water-saving improvements.

Winter Haven, the other municipalities, Polk County, and/or the SWFWMD could pay private landowners for water storage and treatment to meet local and regional water resource needs. This could follow the SFWMD example with funding from the SWFWMD or it could be done through pay-for-service contracts with local public utilities. Unlike the SFWMD example, payments to landowners should be on a permanent basis and paid regardless of whether or not it rains. The SFWMD payments are not permanent and based on the amount of water stored and/or the nutrients removed which are controlled by the amount of rainfall—which is beyond the control of the landowner.

11. Mitigation Banking *– for mitigating environmental impacts due to development*

All human land uses—such as agricultural, industrial, commercial, and residential development—affect the movement and storage of water. Federal and state regulations seek to minimize or compensate for the impacts of those land uses through a process called mitigation. Mitigation means that the amount and type of lost hydrologic function must be calculated and then re-created somewhere else. Examples include mitigation for wetland losses, losses of habitat essential to threatened and endangered species, and impacts to riverine systems.

Historically, mitigation has occurred on site; however, isolated mitigation projects have resulted in the fragmentation of the hydrologic system. The cumulative impact of many individual projects reduces the resilience of the natural system to act as a buffer against droughts and other environmental stresses, and often leads to flooding. The U.S. Army Corps of Engineers (Corps) and state and local governments are now encouraging mitigation at a watershed scale, to ensure that water resources are preserved as part of a larger hydrologic system and to retain that system's essential hydrologic function. The *Sustainability Plan* is consistent with current rules that encourage the use of watershed-scale mitigation instead of on-site mitigation.

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a *public agency* or *private entity* ("banker") to provide mitigation. The mitigation bank is the restoration site, and the currency sold by the banker to the permittee causing an impact is a mitigation banking credit. A credit represents the wetland ecological value equivalent to the complete restoration of one acre. The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by the permitting agencies using the Uniform Mitigation Assessment Method (UMAM).

The Florida mitigation bank statute (Section 373.4136 *Florida Statutes*) and mitigation bank rule (Chapter 62-342 *Florida Administrative Code*) provide the framework for permitting banks. Mitigation banks are authorized by a State permit, issued by either a Water Management District or the FDEP, and by the Corps as a mitigation bank instrument (MBI).

All mitigation banks—public or private—must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrologic functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success;
- Be located adjacent to lands that will not adversely affect the perpetual viability of the mitigation bank due to unsuitable land uses or conditions;
- Meet regulatory requirements for any constructed, operated, or abandoned surface water management system;
- Have sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land;
- Meet the financial responsibility requirements prescribed for mitigation banks.

See guidance for mitigation banking that follows the description for ROMAs that follows.

12. ***Regional Offsite Mitigation Areas (ROMAs)*** *– for mitigating environmental impacts due to development*

Regional offsite mitigation areas (ROMAs) are environmental enhancement projects conducted by the department, a water management district, or a local government that serve as mitigation for multiple impact projects. Impact permit applicants pay money to the ROMA sponsor, and the collected funds are used toward the implementation of the larger mitigation project. ROMAs that serve as mitigation for more than 5 permits or 35 acres of impact are operated under a memorandum of agreement (MOA), similar to a mitigation bank permit.

Chapter 373.4135, F.S. establishes the criteria for ROMAs. ROMA MOAs must identify the mitigation site(s); describe the work that will be conducted on the site(s); including a timeline for completing the work; define a geographic service area; provide environmental success criteria, monitoring and long-term management plans; and assess credit potential. In addition, ROMA instruments must ensure that mitigation costs provide for the full cost accounting of the project, including the project activities, land costs, and administration. However, ROMAs designated for mitigation use by private, single-family residential construction (not incorporated residential development) only, the full cost accounting provision is not required. In either case, moneys received for a ROMA project may only be used for that project, and no other purpose.

A governmental entity may not create or provide mitigation for a project other than its own unless it uses land that was not previously purchased for conservation and unless it provides the same financial assurances as required for mitigation banks (Chapter 373.4135(1)(b) Florida Statutes). These restrictions do not apply for regional off-site mitigation for single-family lots.

The financial assurances for construction and implementation include a surety or performance bond; irrevocable letter of credit; standby trust fund; and trust fund. The financial assurances for perpetual management include a trust fund.

One of more of the wetland storage areas could be restored as a public or private mitigation bank or a local government ROMA. Financial, ecological, and mitigation service area considerations in establishing a mitigation bank or ROMA include:

Financial considerations:

- *Complexity of permitting often requires substantial up-front investment for design and permitting; these costs should be estimated and budgeted accordingly;*
- *The length of the permitting process, plus the pre-permit preparation and discussions, may mean a waiting period of several years between the time of initial concept and the sale of the first credit;*
- *UMAM credits currently sell for about $125,000 to $145,000 in central Florida;*
- *Sale of credits depends on development;*
- *Upcoming development includes CSX project: should include this and other known/anticipated development in market demand projections; and*
- *FDOT may or may not elect to mitigate the impacts of the Polk Parkway extension in the wetland storage areas.*

Ecological considerations:

- *The proposed restorations will meet the regulatory requirements by improving the hydrology, water quality, connectivity, vegetation, and habitat of the wetlands;*
- *Anticipate UMAM credits equivalent to approximately 0.4 to 0.6 UMAM credits per acre, based on similar mitigation bank projects (e.g., 1,000 acres would generate 400 to 600 credits);*
- *Local mitigation of wetlands could mitigate secondary impacts to Wood Storks;*
- *Presenting this as a single, cohesive mitigation bank would improve the regulatory feasibility (rather than as several individual parcels, each permitted separately); and*
- *Improvements will be geared towards self-sustaining wetland systems (e.g., not requiring pumps, operable weirs, etc.).*

Mitigation service area considerations:

- *Peace River Basin is one of the largest watersheds in SWFWMD—this is good for a broad market area, but also represents large areas where competing mitigation banks can be established*

(including an existing Peace River Mitigation Bank, Boron Ranch, operated by EarthBalance that has both wetland and Wood Stork credits).

- *A nested regional watershed as defined by SJRWMD establishes a potential precedent for SWFWMD to establish a nested regional watershed for the Peace Creek watershed; this would add value to mitigation credits sold for projects within this smaller watershed.*

The City of Winter Haven could hire a consultant to conduct a feasibility study to advise the City on applying for a mitigation bank or ROMA permit. The study would evaluate the suitability of the mitigation sites from a number of perspectives, including:

- *The degree of ecological improvement that can be reasonably expected;*
- *Technical issues such as engineering, construction, and hydrology;*
- *Financial issues, such as the amount, value, and timing of credits to be sold versus the cost of the restoration plan and other reasonable and beneficial land uses; and*
- *Regulatory issues, such as the compatibility of the restoration plan with state and federal regulatory criteria.*

The City of Winter Haven could hire a consultant to:

- *Solicit interest from private mitigation banking entities to determine interest level and potential incentives for establishing a mitigation bank(s) in the Peace Creek subbasin. Incentives could include reservation of credits for mitigating wetland impacts resulting from public sector infrastructure projects (City, County, FDOT) and private development in the subbasin; and*
- *Engage private mitigation banking entity(s) to facilitate restoration of the open water and wetland restoration sites identified in the Sustainability Plan consistent with City-defined conceptual designs and/or design standards. The mitigation banking entity would work with the private landowners at each site, eliminating the need for property acquisition by the City.*

13. ***Conceptual Approval Permit*** *– for mitigating environmental impacts required under a State-Wide Environmental Resource Permit (SWERP)*

A *State-Wide Environmental Resource Permit (SWERP)* is required for development or construction activities to prevent flooding, protect the water quality of Florida's lakes and streams from stormwater pollution, and protect wetlands and other surface waters, including establishing and operating a mitigation bank or ROMA. The water management districts regulate residential and commercial developments, roadway construction and agriculture; while the FDEP oversees power plants, ports, wastewater treatment plants, and single-family home projects. A SWERP permit is needed for:

- Dredging and filling in wetlands or surface waters
- Constructing flood protection facilities
- Providing storm water containment and treatment
- Site grading
- Building dams or reservoirs
- Other activities affecting state waters

There are three types of SWERP permits: general, individual, and conceptual approval permits. General permits are granted for broad classes of activities that range from installing boat ramps, fences, and riprap to maintaining bridges and roads and installing underwater cables. Individual permits are required for all activities that do not qualify for a general permit.

Conceptual approval permits are available for applicants who desire approval of design concepts for a master or future plan for activities that require an individual permit. This includes activities that are to be developed in phases, such as phased development master plans and projects for which an application for development approval has been made, and whenever an applicant has not yet developed detailed design or construction plans for a future activity.

The conceptual approval permit does not authorize any construction, alteration, operation, maintenance, removal, or abandonment, or the establishment and operation of a mitigation bank. Issuance of a conceptual approval permit does not relieve the holder of such a permit of any requirements to obtain a permit to construct, alter, operate, maintain, remove, or abandon projects that require a permit under 62.330, or to establish and operate a mitigation bank.

The City of Winter Haven could apply for a conceptual approval permit identifying the wetland storage and conveyance areas in the Sapphire Necklace as project specific mitigation for a series of development projects in the watershed that would occur in phases over the course of several years. The conceptual permit would provide regulatory agencies the master plan and design concepts for mitigation, and specify where mitigation for future projects will occur. Individual permits for each development project as they occur would reference and be in accordance with the master plan, and provide the project specific details of the mitigation. The project specific mitigation would be established through contract agreements for mitigation with the City (see ***14. Contract Agreement for Mitigation*** *that follows). This approach will direct mitigation to where it is needed as opposed to where it is available.*

For example, mitigation for the Polk Parkway extension or the CSX ILC could be directed to specific restoration sites in the Sapphire Necklace. In the same way, mitigation for future development, located in specific parts of the watershed and that has yet to be defined, could be assigned to specific restoration sites elsewhere in the Sapphire Necklace. This would allow most, if not all, of the development impacts in the Peace Creek watershed to be mitigated in the Peace Creek watershed which is necessary to restore and protect the water resources.

Because the City would be providing project specific mitigation it is important for the City to be mindful of an important restriction in the statutes limiting the mitigation activities that a governmental entity can undertake. The restriction, including the statutory citation, is as follows:

> *Notwithstanding the provisions of this section, a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. (Chapter 373.4135(1)(b) Florida Statutes)*

To avoid this restriction on the City's mitigation activities, it is important that the City not acquire title or an easement to the site that is to be mitigated prior to receiving provisional approval of the mitigation permit. That said the City must show that it has sufficient legal interest in the land where the mitigation will occur at the time of permit application. The legal interest can be in the form of a contract or a recorded option to purchase the land or easement showing that the City has sufficient interest in, or control over, the property to construct, alter, operate, and maintain the project (see methods for evidencing sufficient legal interest in ***14. Contract Agreement for Mitigation*** *that follows). As such, the permit will contain a provision that work cannot begin until proof of ownership is provided to the permitting Agency. For consistency and to avoid any confusion, the contract agreement for mitigation should specify that the City will acquire the land for the required mitigation.*

*The conceptual approval permit would facilitate and accelerate the individual permitting process for FDOT and developers, as the mitigation sites would be identified up front. This is very important, especially for FDOT, as the timeliness of permitting would be a major consideration for FDOT in electing to opt out of the water management district's mitigation plan and instead electing to mitigate the impacts in the Peace Creek watershed (see **15. FDOT Mitigation** that follows).*

Note: There are at least six nesting colonies of Wood Storks located within an 18 mile foraging radius of the wetland storage areas. Wood Storks are listed by the State of Florida as a federally-designated endangered species. As such, local mitigation for secondary impacts to Wood Storks may be required. Since portions of one or more of the wetland restoration sites could be used to mitigate the secondary impacts to Wood Storks, this opportunity should be referenced in the conceptual approval permit.

14. ***Contract Agreement for Mitigation*** *– for mitigating environmental impacts required under a State-Wide Environmental Resource Permit (SWERP)*

The steps for mitigating environment impacts through a contract agreement for mitigation are as follows:

1. Developer with a site plan requiring mitigation contracts with a Second party (city, county, other governmental entity, private landowner) for mitigation on land that is *or* will be controlled by the Second party (fee-simple ownership or easement for flooding, restoring, maintaining, managing, and conserving the site); [As noted above: to avoid any restrictions on the City's mitigation activities, it is important that the City (or any other governmental entity) not acquire title or an easement to the site that is to be mitigated prior to receiving provisional approval of the mitigation permit];
2. Second party secures a construction permit for mitigation, including provisions for construction, maintenance, and monitoring of mitigation, and subject to demonstrating sufficient legal interest in the land on which the mitigation will occur (see *Evidence of sufficient legal interest*, below);
3. Developer pays second party as per the terms of their contract for the cost of mitigation, including construction, monitoring, and maintenance;
4. Developer secures all other permits for the development project; the Developer's permits should reference the Second party's construction permit for mitigation and vice versa; and
5. If not already held, Second party acquires legal interest to the land on which mitigation will occur.

Evidence of sufficient legal interest

Section 4.2.3(d) of the SWERP Applicant's Handbook, Volume 1, requires evidence of the applicant's (second party's) real property interest over the land upon which the mitigation activities will be conducted by one of the following methods:

1. The applicant being the record title holder.
2. The applicant being the holder of a recorded easement conveying the right to utilize the property for a purpose consistent with the authorization requested in the permit application.
3. An entity having the right to exercise the power of eminent domain and condemnation authority, in which case the permit shall contain a provision that work cannot begin until proof of ownership is provided to the Agency.
4. An entity having a contract to purchase the real property included in the application, in which case the permit shall contain a provision that work cannot begin until proof of ownership is provided to the Agency.
5. A lessee of the property included in the application, provided at least one of the following exists:
   a. The record title owner is a co-applicant on the application.

b. The applicant provides a copy of a written agreement with a governmental entity that states that the governmental entity agrees to accept the transfer of the permit if the lease is revoked, terminated, or expires and that the governmental entity will accept the operation and maintenance phase of the permit. Documentation must be provided that the governmental entity has a recorded right of entry agreement or access easement to enter upon the property for these purposes.
c. The applicant provides a recorded restrictive covenant or other recorded instrument demonstrating that the record title holder agrees to be responsible for the lease upon its revocation, termination or expiration. The record title holder must agree to be responsible for the permanent operation and maintenance of the system.
d. Where the lease is on lands owned by the United States Government, the lessee shall:
    1) Provide a bond made payable to the Agency in an amount sufficient to construct the stormwater management system, or provide other measures suitable for ensuring that the stormwater management system can be completed, removed, or abandoned in the event the lessee, at any time, fails to or cannot complete construction of the system;
    2) Provide an agreement from a person in accordance with Part V of this Volume who agrees to be responsible for operation and maintenance of the system in the event the lessee, at any time, fails to or can no longer operate and maintain the system; or
    3) Provide an easement or other legally-binding document from the landowner or other person with sufficient real property interest in the lands subject to the application giving the Agency and other persons who require right of entry for purposes of inspecting for compliance, monitoring, operating and maintaining, and completing construction as needed to comply with the permit, if issued.

6. Alternatives such as a recorded option agreement, a judgment of the court, or a certificate of title issued by a clerk of the court, that show that the person or entity has sufficient interest in, or control over, the property to construct, alter, operate, and maintain the project in accordance with Chapter 62-330, F.A.C. Except when it cannot reasonably be provided (such as when there is a court determination, or an inability to locate the record title holder), the recorded documentation shall indicate that the record title holder agrees to accept responsibility for the permit, is agreeable to accept the transfer of the permit, and that the Agency has third party enforcement rights to enforce the terms and conditions of the permit on the property.
7. Additional persons may be included as co-applicants, provided that one of the persons listed in 1 through 6 above is included as an applicant.

15. FDOT Mitigation *– for mitigating environmental impacts due to development*

FDOT and other transportation authorities are allowed to make financial payments to the State in lieu of mitigation as follows:

- FDOT and other transportation authorities annually submit a three-year work plan to the water management districts, indicating estimated wetland impacts and mitigation needs;
- FDOT and other authorities each fund an escrow account to pay for the estimated mitigation needs, updated quarterly;
- The water management districts each annually update a plan to provide mitigation for FDOT's mitigation needs within their jurisdictional boundaries, in consultation with FDEP, Corps, and other agencies;
- Surface water improvement and management (SWIM) projects and other projects defined by the water management districts via their annual workplan are implemented using the escrowed funds from FDOT;
- FDOT cost for this is currently over $100,000 per acre of impact;

Specific FDOT projects may be excluded from the mitigation plan, in whole or in part, upon the election of FDOT or transportation authority, if applicable, or the appropriate water management district. This would allow FDOT to enter into a contract agreement with a public or private landowner for mitigation (see description of previous mechanism). When determining which projects to include in or exclude from the mitigation plan, the FDOT must first investigate using credits from a permitted mitigation bank. The investigation takes into consideration the cost-effectiveness of mitigation bank credits, including, but not limited to, factors such as time saved, transfer of liability for success of the mitigation, and long-term maintenance.

*The City of Winter Haven could enter into a contract agreement for mitigation with FDOT to mitigate the impacts of the Polk Parkway Extension. As previously noted, the timeliness for permitting the mitigation would be a major consideration for FDOT in electing to opt out of the water management district's mitigation plan and mitigating the impacts in the Peace Creek watershed (see **13. Conceptual Approval Permit**, above). The State has a vested interest in helping the City of Winter Haven, Polk County, and the other communities in the watershed prepare for the water resource impacts associated with the CSX ILC development and facilitated by the extension of the Parkway.*

Summary

Table 1-A provides a summary of the potential financial and regulatory mechanisms for acquiring and restoring the wetland storage areas by restoration site. The map of the Sapphire Necklace, showing the wetland storage areas by number, is repeated here for convenient reference (see **Figure 2-A**).

Table 1. *Summary of potential mechanisms for acquiring and restoring the wetland storage areas by restoration site*

Financial Mechanisms	Wetland Storage Areas by Site Number																		
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
A. Acquisition and Restoration (9 mechanisms)																			
1. State and conservation lands programs	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
2. Local conservation referendums	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
3. FDACS Rural and Family Lands Protection Program					•	•	•	•		•	•	•	•		•				
4. NRCS Farms and Ranch Lands Protection Program					•	•	•	•		•	•	•	•		•				
5. North American Wetlands Conservation Act Grant Program	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
6. State legislative appropriations	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
7. FDACS water resource protection projects					•	•	•	•		•	•	•	•		•				
8. Clean Water State Revolving Fund	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
9. Public private partnership (P3)	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	

B. Restoration (15 mechanisms)																			
1. EPA Section 319 grant																			★
2. Private local development agreement	•	•	•	☆	•	•	•	•	☆	•	☆	•	•	•	•	•	•	•	
3. Coastal America Corporate Wetlands Restoration Partnership	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
4. USFWS Partners for Fish and Wildlife Program	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
5. USDA Farm Service Agency Conservation Reserve Program					•	•	•	•		•	•	•	•		•				
6. NRCS Wetlands Reserve Program (WRP)					•	•	•	•		•	•	•	•		•				
7. NRCS Grassland Reserve Program					•	•	•	•		•	•	•	•		•				
8. NRCS Wildlife Habitat Incentives Program					•	•	•	•		•	•	•	•		•				
9. NRCS Watershed Protection and Flood Prevention Program	Program discontinued																		
10. Payment for ecological services	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
11. Mitigation banking	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
12. Regional offsite mitigation areas	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
13. Conceptual approval permit	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
14. Contract agreement for mitigation	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
15. FDOT mitigation	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	

Note: storage area 1, located on the southern end of Lake Hancock, is not included in the summary, as it is not located in the Peace Creek watershed. This storage area, known as the Old Florida Plantation site, is owned and being restored by the SWFWMD as a treatment marsh to improve water quality of surface water discharges from Lake Hancock to the Peace River.

Legend:

★ *Restoration funded and underway*

☆ *Development agreement preserving wetland, but restoration not funded*

• *Potential market mechanism*

As shown in the table, some mechanisms are open to all landowners, whereas others are restricted to landowners with active agricultural operations. Eighteen of the 19 wetland storage areas are owned by private landowners; nine of the 18 are in agriculture. Storage Area 20 which is owned by the State and

leased to Polk County is currently being restored by the county for water quality and storage benefits. Storage Area 5 which is part of an 18,000-acre private development is identified as a conservation area for preservation in the local development order. However, there are no requirements in the order to restore the wetlands or incorporate the storage area into the regional system for managing water. Storage Area 10 is also part of a local development order for a residential development. As with site 5, there are no requirements in the order to restore the wetlands or incorporate the storage area into the regional system for managing water.

Figure 2-A. *Regional Infrastructure for Managing Water (aka "Sapphire Necklace")*. *Conceptual hydrologic restoration plan for the Peace Creek watershed. Lighter blue areas are restored wetland storage features; darker blue areas are enhanced conveyance features. Not shown are improved lake levels and water storage in lakes and more infiltration of rainwater in the sandy soils along the Winter Haven and Lake Wales Ridge areas. The numbers 2-20 identify19 wetland storage features evaluated for restoration by the Southwest Florida Water Management District (SWFWMD).*