UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 16 2015

Colonel Jason A. Kirk
District Engineer
Department of the Army
Jacksonville District Corps of Engineers
Attn: Randy Turner
P.O. Box 4970
Jacksonville, Florida 32232

SUBJECT: Florida Department of Transportation and Palm Beach County; 2015-01094 (SP-RLT)

Dear Colonel Kirk:

This letter is in response to permit application number 2015-01094 (SP-RLT) submitted by the Florida Department of Transportation and Palm Beach County. The applicants propose to fill 57.2 acres of freshwater wetlands with clean fill material. The proposed project consists of: (1) widening 4.4 miles of State Road 7 from Okeechobee Boulevard to 60th Street from 2 to 4 lanes; and (2) extending State Road 7 an additional 4.1 miles from 60th Street to Northlake Boulevard. The stated purpose of the project is roadway widening and new alignment expansion. The proposed project would impact freshwater wetlands within the Pond Cypress Natural Area and the Grassy Waters Preserve, which is part of the drinking water supply system for the City of West Palm Beach and the towns of South Palm Beach and Palm Beach Island. The project is located along State Road 7 between Okeechobee Boulevard and Northlake Boulevard, in Sections 1, 12, 13, and 24, Township 43 South, Range 41 East; Sections 18, 30, and 31, Township 42 South, Range 42 East; and Section 6, Township 43 South, Range 42 East, Palm Beach County, Florida.

The Pond Cypress Natural Area is 1,700 acres in size and is owned and operated by Palm Beach County. The land was acquired for the purpose of preserving remnant wetland vegetative communities and their associated wildlife populations. The Grassy Waters Preserve is 23 square miles in size and is owned and operated by the City of West Palm Beach. The land was acquired to meet the city's demand for drinking water and protect, preserve, and restore the ecological integrity of this ecosystem. The project as proposed would impact 57.2 acres of freshwater wetlands which include 25.2 acres of hydric pine flatwoods dominated by slash pine (*Pinus elliottii*) and dahoon holly (*Ilex cassine*); 17.6 acres of marsh wetlands dominated by sawgrass (*Cladium jamaicnense*), soft rush (*Juncus effuses*), and maidencane (*Panicum hemitomon*) with varying degrees of nuisance/exotic vegetation present; and 14.4 acres of mixed wetland shrub dominated by Carolina willow (*Salix caroliniana*) and Brazilian pepper (*Schinus terebinthifolius*).

Proposed wetland impacts will occur to 25.2 acres of hydric pine flatwoods. The U.S. Environmental Protection Agency considers hydric pine flatwood systems to be aquatic resources of national importance (ARNI), because they are threatened habitats that provide nesting, resting, and feeding sites for a wide variety of wildlife species. Hydric pine flatwoods of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), red-

cockaded woodpecker (*Picoides borealis*), eastern indigo snake (*Drymarchon corais*), gopher tortoise (*Gopherus polyphemus*), bald eagle (*Haliaeetus leucocephalus*), bobcat (*Lynx rufus*), Florida sandhill crane (*Grus canadensis pratensis*), and 900 native plant species including 80 rare and endemic species. Additional benefits include filtering upland runoff, stabilizing sediments, and up taking nutrients which help to improve water quality in nearby waters. Hydric pine flatwoods are rare outside south Florida, but are of critical, regional importance as one of the dominant forest cover types in south Florida. This geographically limited, subtropical habitat type has seasonal hydrologic variation, which results in a habitat with the highest plant diversity of any in south Florida. Despite the importance of this habitat type, south Florida hydric pine flatwoods are among the least protected lands in Florida, with only 9 percent in public ownership. Regionally, the loss of hydric pine flatwood habitats of south Florida will critically affect the biodiversity and endemic flora and fauna of south Florida (FWS, 1999). The EPA also considers the large tracts of freshwater wetlands that remain in Palm Beach County to be ARNI. The urban watersheds in this area have already experienced significant wetlands loss. We believe that the remaining wetlands located in developing areas are essential to the region, because they provide important water quality and wildlife benefits.

In addition, the project proposes to impact 17.6 acres of freshwater marsh, which consists of sawgrass, soft rush, and maidencane. Sawgrass provides principal environmental values related to water quality and quantity. They serve as filter systems for water and protect natural bodies of water from eutrophication. Numerous birds can be found in this community year-round or for over-wintering. They also provide habitat for frogs, snails, and crayfish, which serve as food source for larger protected animals that are found in this region. Protected animals that can be found in and around sawgrass marsh systems include the Everglades mink (*Mustela vison evergladensis*), Florida panther (*Felis concolor coryi*), snail kite (*Rostrhamus sociabilis*), wood stork (*Mycteria americana*), and American alligator (*Alligator mississippiensis*). Therefore, the EPA considers sawgrass wetlands also to be ARNI.

In our letter dated September 28, 2015, the EPA requested that the applicant provide information on measures that are planned to avoid and minimize onsite freshwater wetland impacts. The project as proposed will impact 57.2 acres of freshwater wetlands which include ARNI. The EPA can consider compensatory mitigation to these wetlands only after the applicant provides information which clearly demonstrates avoidance and minimization requirements have been satisfied. The EPA also requested that the applicant provide alternative and cumulative impact analyses for the project. To date, we have not received a response to our letter.

In conclusion, the EPA believes that the permit for the project is not approvable as proposed, because it does not comply with the Clean Water Act (CWA) Section 404(b)(1) Guidelines. We believe that the proposed project will have substantial and unacceptable impacts to hydric pine flatwoods, sawgrass, and large tracts of the remaining freshwater wetlands in Palm Beach County, which we consider to be ARNI. In addition, the project as proposed may have an adverse impact on a drinking water source for the City of West Palm Beach should a toxic spill occur along the proposed road extension alignment. Therefore, because the EPA has not been provided sufficient additional information to allow us to determine that the proposed project complies with the CWA Section 404(b)(1) Guidelines, we must conclude that it does not, and we therefore believe that a permit for the project is not approvable, as proposed. This letter follows the procedures outlined in the 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, Elevation of Individual Permits, Paragraph 3(b), regarding Section 404(q) of the CWA.

Thank you for providing an opportunity for the EPA to comment on this authorization. At this time, the EPA requests additional information to facilitate our evaluation of this project. We look forward to receiving more information from you. If you have any questions, please feel free to contact me, or have someone from your staff contact my technical staff person, Mr. Ron Miedema at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 or by telephone at (561) 616-8741.

Sincerely,

V. Anne Heard

for Heather McTeer Toney
Regional Administrator

cc: Ms. Victoria Foster, Fish and Wildlife Service

Ms. Jocelyn Karazsia, National Marine Fisheries Service

Ms. Barbara Conmy, South Florida Water Management District

References

U.S. Fish and Wildlife Service (FWS), 1999, *South Florida Multi-Species Recovery Plan*. Southeast Region, Atlanta, Georgia.