



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

September 28, 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' proposal 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 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 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 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 jamaicense*), 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*). 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 U.S. Environmental Protection Agency, Region 4 has completed its review of this project from information contained in the public notice (PN) and numerous site inspections conducted over the past several years. This letter summarizes the EPA's position on the project based on the Clean Water Act (CWA) Section 404(b)(1) Guidelines; which prohibit avoidable or significant adverse impacts to the aquatic environment.

The proposed wetland impacts will occur within 25.2 acres of hydric pine flatwoods. The EPA 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 order to fully review the proposed project, the EPA requests that the applicants provide alternatives for review which would have less adverse impacts on the aquatic environment. The CWA Section 404(b)(1) Guidelines, 40 CFR § 230.10(a) states that no discharge of dredge and/or fill material (into waters of the United States, including wetlands) shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment, provided the alternative does not have other significant adverse environmental consequences. This regulation further states that for non-water dependent projects, practicable alternatives that do not involve special aquatic sites are presumed to be available. Practicable alternatives are those that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." The EPA requests that the applicants consider other alternatives for the road alignment west of the Ibis Residential Development (IRD), which would have less impacts to freshwater wetlands. In addition, it would appear that alternatives west of IRD would lessen the possibility for an adverse impact to the drinking water supply for the City of West Palm Beach and the towns of South Palm Beach and Palm Beach Island should a toxic spill occur along the proposed State Road 7 extension route.

The EPA requests that the applicant provide information on measures that have been taken to avoid and minimize onsite, freshwater wetland impacts. According to the CWA Section 404(b)(1) Guidelines, 40 CFR § 230.91(c), and the February 6, 1990, Memorandum of Agreement between the U.S. Army Corps of Engineers and the EPA regarding the Determination of Mitigation under the CWA Section 404(b)(1) Guidelines, an applicant must demonstrate avoidance and minimization of wetland impacts before compensatory mitigation can be considered. Subpart H of the CWA Section 404(b)(1) Guidelines describes several (but not all) means of minimizing impacts of an activity. For example, the applicants should consider reducing the width of the 22-foot median by constructing a jersey barrier similar to the one used on US 1 from Florida City to Key Largo in order to avoid and minimize impacts.

The applicants' proposed mitigation to offset project impacts consists of the creation, restoration and enhancement of 54 acres of onsite wetlands and the purchase of credits from the Pine Glades and Dupuis Reserve Permittee-Responsible Offsite Mitigation Areas. The EPA preference for mitigation is the use of a federally approved mitigation bank or in-lieu fee program, if available, rather than permittee-responsible mitigation. Since avoidance and minimization have not been adequately demonstrated, it is premature for the EPA to consider any type of mitigation plan. In the event that onsite wetland impacts are reduced and avoidance and minimization are demonstrated in the future, the EPA requests that the applicant provide the following information regarding any proposed mitigation. This information is necessary in order to ensure the proposed mitigation for impacts associated with the project are in compliance with the Federal Compensatory Mitigation Rule, dated April 2008.

- Detailed mitigation and maintenance plan
- The responsible party for the long-term management of the mitigation area
- Assurance for the long-term protection of the mitigation area (such as a perpetual conservation easement)
- Detailed performance standards to achieve mitigation success
- Detailed monitoring requirements
- Detailed long-term management plan
- Detailed adaptive management plan
- Documented financial assurance to ensure the mitigation site is maintained in perpetuity
- Detailed description of the net benefit the proposed mitigation will provide to the environment
- Objectives
- Site selection criteria
- Baseline information
- Credit determination methodology

The EPA requests that the applicant provide Uniform Mitigation Assessment Method scores for the proposed impact and mitigation sites. Technical rationale for each score should also be included.

In addition, the EPA reviewed the Federal Highway Administration's (FHWA) December 2014 Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) dated February 19, 2015, as part of the administrative record for the proposed U.S. Army Corps of Engineers permitting action. For purposes of compliance with the National Environmental Policy Act (NEPA) with respect to the activities regulated under CWA Section 404, the EPA believes that the EA/FONSI was not

comprehensive and did not include any indirect and cumulative impact analysis. The EPA believes that it is likely that there will be substantial or potentially significant long-term impacts to the Grassy Waters Preserve from roadway contaminants including heavy metals and other hazardous substances. In addition to the direct impacts related to the placement of fill within the Grassy Waters Preserve, and the Pond Cypress Natural Area, the project as proposed may also have an adverse impact on the drinking water supply for the City of West Palm Beach and the towns of South Palm Beach and Palm Beach Island from roadway runoff or, for example, should a toxic spill occur along the proposed road extension alignment. Should the U.S. Army Corps of Engineers choose to adopt the FHWA's National Environmental Policy Act (NEPA) documents for the purposes of compliance with the proposed permitting action, the EPA believes that to meet the requirements of NEPA a supplemental analysis should be conducted which should also include an analysis of what additional development will be spurred by the new roadway in the project study area that could further impact waters of the U.S.

In conclusion, the EPA believes that the permit for the project should not be approved as currently proposed, because it does not comply with the CWA Section 404(b)(1) Guidelines. We believe that the proposed project may result in 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. This letter follows the field level procedures outlined in the 1992 404(q) Memorandum of Agreement Part IV, Paragraph 3(a) between our agencies.

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 contact Mr. Ron Miedema at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 or by telephone at (561) 616-8741.

Sincerely,



James D. Giattina
Director
Water Protection Division

cc: Ms. Victoria Foster, FWS, Vero Beach, Florida

Ms. Barbara Conmy, SFWMD, West Palm Beach, Florida

Ms. Jocelyn Karazsia, NMFS, West Palm Beach, Florida

References

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