

**APPENDIX D: CORRESPONDENCE**

**APPENDIX D-1: CORRESPONDENCE FROM LOCAL AGENCIES**



INDIAN TRAIL IMPROVEMENT DISTRICT  
13476 61<sup>ST</sup> Street North  
West Palm Beach, FL 33412  
(561) 793-0874 / Fax (561) 793-3716

May 24, 2006

Ms. Beatriz Caicedo-Maddison, FDOT Project Manager  
Florida Department of Transportation, District 4  
3400 West Commercial Boulevard  
Fort Lauderdale, Florida 33309

Re: State Road 7 Alignment Meeting

Dear Ms. Beatriz Caicedo-Maddison:

On May 15, 2006, the Indian Trail Improvement District advertised and conducted a public input meeting, for which we are thankful for your attendance. The sole purpose of this meeting was to solicit comments and opinions from local citizens whose property and/or quality of life would be directly affected by the three remaining proposed alignments of the State Road 7 extension between Okeechobee and Northlake Boulevards. This meeting is one of many we have held over the past several years, the outcome of which has not wavered throughout these years.

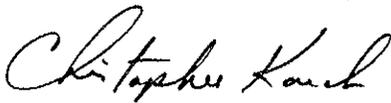
At this recent meeting, there were 243 residents in attendance, including representatives from Bay Hill Estates, Rustic Lakes, Osprey Isles, Carlton Oaks, Menorah Gardens, Ibis, the Acreage, and Loxahatchee. District staff presented the three remaining alignment options and the residents were then asked to vote as to which alignment they favored. All but one resident voted for our (state of Florida's) range-line alignment (Corridor #4). Based on this proceeding, it is very clear that the most directly impacted residents and property-owners believe that any State Road 7 alignment other than the range-line will have a detrimental effect on their lives and will not serve as an efficient state road or an effective Hurricane Evacuation Route as intended since the corridor was procured in 1942. Additionally, it was clear that the persons in attendance felt that the range-line alignment posed the least threat to the environment and was least costly. The one resident who voted Corridor 4 as his second choice, voted for Corridor 3 as his first choice. No one in attendance voted for Corridor 1, which requires the use of eminent domain for land acquisition. It was also interesting to note that the representative for the IBIS community explained that they are now in agreement with the concept that State Road 7 should connect to Northlake Blvd on the east side of their development as originally planned.

In 2003, at our sole expense and at the request of Palm Beach County, the Indian Trail Improvement District, conducted an "engineering study and analysis" of the range-line (Corridor #4) alignment and found that the range-line alignment was not cost prohibitive, and was the least intrusive on private property with all environmental impacts mitigated. Hence, the District has maintained the position that the range-line alignment is the preferred alignment. The position of the District when taken in tandem with that of the overwhelming majority of affected residents and property owners is clearly the preferred choice of the most directly impacted parties. Moreover, it must be documented that there are

environmental mitigation measures required for all of the alignments, the range-line (Corridor 4) alignment is not opposed and is referenced with attainable measures from the regulatory agencies in your files.

Ms. Caicedo, it is incumbent of the Department to take this position most seriously when determining which alignment is best for not only the state, but for the taxpayers and citizens of the state. Please do not allow our state departments to become entrenched in local politics over such an important decision as this. This road, under emergency conditions, will see residents from as far south as Monroe County and must be designed accordingly.

Sincerely and with Greatest Respect,



Christopher Karch, PE  
Vice-President

- c: Denver Stutler, Jr, Secretary of the Florida Department of Transportation  
Honorable Florida Governor Jeb Bush  
Honorable Congressman E. Clay Shaw Jr.  
Honorable Congressman Mark Foley  
Honorable Carl Domino, Representative  
Honorable Shelly Vana, Representative  
Honorable Richard Macheck, Representative  
Honorable Susan Bucher, Representative  
Honorable Priscilla Taylor, Representative  
Honorable Ken Pruitt, Senator  
Honorable Dave Aronberg, Senator  
Honorable Jeff Atwater, Senator  
Honorable Ron Klein, Senator



CITY COMMISSION  
P.O. Box 3366  
West Palm Beach, Florida 33402  
Telephone: 561/822-1390  
Fax: 561/822-1399

GERRY

RECEIVED  
MAR 15 2009  
DIV DISTRICT SECRETARY

March 8, 2010

James A. Wolfe  
District Secretary, District Four  
Florida Department of Transportation  
3400 West Commercial Boulevard  
Ft. Lauderdale, FL 33309-3421

Re: SR7 Corridor Extension from Okeechobee Blvd to Northlake Blvd  
FM No. 229664-2-22-01

Dear Mr. Wolfe:

Your letter of January 12, 2010 to S. J. Rudy on the referenced subject states that "coordination has begun with the City of West Palm Beach to minimize any potential impacts on the [Grassy Waters] Preserve." I am writing to tell you that in fact there has been very little interaction between the PD&E team and City officials and what interaction has occurred has been in the nature of information exchange, not coordination.

According to the list of contacts provided by the SR7 PD&E team, the most recent meeting on the proposed extension of SR7 with City officers was on June 21, 2006, three and one-half years ago. Since that date, the only interaction with the City listed by the PD&E team occurred on April 16, 2009, but that event involved a citizen's advisory committee and was at the invitation of that committee, not at the initiative of FDOT; this event comprised an airboat tour of Grassy Waters arranged by the committee and a briefing of the committee by FDOT. An objective observer would not describe this event as "coordination."

The PD&E process has also not been sufficiently open to the public. The last Public Workshop was in spring, 2008. The Public Workshop originally scheduled for June, 2009, has yet to be held.

*"Equal Opportunity Employer"*

This record clearly shows that FDOT has not been proactive in engaging City personnel in the development of conceptual designs or in any of the sequence of needs analyses, both of which are critical elements of any PD&E study. Further, FDOT has failed adequately to engage the public in a timely manner.

I look forward to an open and transparent process in which real coordination occurs with the City of West Palm Beach and its residents. If you have any questions, please contact me at 561 822 1396.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeri Muoio". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Jeri Muoio, Ph.D.  
Commissioner  
City of West Palm Beach

## FDOT List of Coordination Events with City of West Palm Beach

- Public Officials/Agency Kickoff Meeting – July 26, 2005 (Ken Rearden in attendance)
- Agency Workshop – March 29, 2006 (Ken Rearden, Brian Collins, Erik Padron in attendance)
- Meeting with the City of West Palm Beach – June 21, 2006 (Ken Rearden, Charles Wu, Alex Hansen, Brian Collins in attendance)
- Review of the WCA restoration project with Patrick Painter/City of West Palm Beach – April 16, 2009
- Meeting with the Water Catchment Area Advisory Committee – April 16, 2009

*Source: E-mail from Michael J. Garau (Jacobs Engineering) to Myron F. Uman (citizen), dated February 10, 2010 at 8:12 a.m., with cc to Beatriz Caicedo-Maddison (FDOT)*

INDIAN TRAIL IMPROVEMENT DISTRICT  
13476 61<sup>ST</sup> STREET NORTH  
WEST PALM BEACH, FL 33412-1915  
Office: 561-793-0874  
Fax: 561-793-3716

Established 1957

[www.indiantrail.com](http://www.indiantrail.com)

December 14, 2010

Beatriz Caicedo-Maddison, P.E.  
Project Manager, District Four  
Florida Department of Transportation  
3400 West Commercial Blvd.  
Fort Lauderdale, FL 33309

**Re: Support for Extension of State Road 7 from 60<sup>th</sup> Road North to Northlake Boulevard**

Dear Ms. Caicedo-Maddison:

At its Regular Meeting of December 8, 2010, the Board of Supervisors of Indian Trail Improvement District discussed the need for continuing favorable support for the extension of State Road 7 from 60<sup>th</sup> Road North to Northlake Boulevard. Part of the continuing support includes the re-submittal of the Resolution originally approved by Indian Trail Improvement District in 2008 (copy attached). Also included is a December 11, 2010 Letter to the Editor written and submitted by Jaene Miranda, Chief Executive Officer of the Palm West Chamber of Commerce.

On behalf of the Indian Trail Improvement District Board, I express our sincere appreciation for your help in this matter. If you have any questions, please feel free to call me.

Sincerely yours,

FOR THE BOARD OF SUPERVISORS



Michelle Damone  
President

cc. Palm Beach County Board of Commissioners  
Palm Beach County Legislative Delegation  
Stephanie C. Kopelousos, Secretary of the FDOT  
Board, Indian Trail Improvement District  
Tanya Quickel, District Administrator, ITID  
Mary Viator, District Attorney, Caldwell Pacetti Edwards Schoech & Viator  
Lisa Tropepe, P.E., District Engineer, Engenuity Group, Inc.

Indian Trail Improvement District Board of Supervisors  
Michelle Damone • Carlos Enriquez • Ralph Bair • Jennifer N. Hager • Carol Jacobs

**RESOLUTION OF THE BOARD OF SUPERVISORS OF  
INDIAN TRAIL IMPROVEMENT DISTRICT  
RELATING TO STATE ROAD 7 EXTENSION/  
"RELIEVER ROAD" (OKEECHOBEE BOULEVARD  
TO NORTHLAKE BOULEVARD)**

**WHEREAS**, Indian Trail Improvement District (the "District") is an independent special district of the State of Florida, established by special act of the Legislature of Florida, Chapter 57-646, as codified by Chapter 2002-330, Laws of Florida, and operating pursuant to the applicable provisions of Chapter 298, F.S. and located at 13476 61<sup>st</sup> Street North, West Palm Beach, Florida 33412; and

**WHEREAS**, there is a need for a North-South Reliever Roads as follows:

1. The Southeast Florida Transportation Council, formed to evaluate the need for SE Florida roadways, concluded that the State Road 7 Extension/"Reliever" Road is necessary as apart of the regional road network that extends from Miami-Dade to Palm Beach County.

2. The MPO has supported this road through the 2030 Long Range Transportation Plan and the Transportation Improvement Program, and Palm Beach County has endorsed the Department of Transportation ("DOT") proposed State Road 7 Extension through the Comprehensive Plan, Thoroughfare Identification Map, by public endorsement and has identified it on the 2008 Legislative Agenda.

3. The State Road 7 Extension is a critical "daily" transportation component for the Western Communities of Palm Beach County.

4. Due to Palm Beach County's environmental land reserves such as Grassy Waters Preserve, JW Corbett Wildlife Area, Moss Property, Dupuis Reserve, Loxahatchee Slough, Loxahatchee River, and PAL-MAR, linkage to State roadways in Palm Beach County is lacking and choices are limited.

5. A "No Build" alternative will not reduce the growing traffic congestion but will instead, result in increased traffic, safety risks, and a general reduction in the quality of life to the Western Palm Beach County Communities; and

**WHEREAS**, DOT proposed State Road 7 Extension increases safety as follows:

1. Fire and emergency services will be more available and citizens will be better served

with completion of the road.

2. Emergency access through the western Palm Beach County area is needed for natural disasters and in that regard the DOT proposed State Road 7 Extension is vital to citizens in both the coastal areas and the western communities; and

**WHEREAS**, there are problems with routing State Road 7 Extension through the Acreage residential community as follows:

1. The heavy State Road 7 traffic through the Acreage, using the roads of the residential community is a health, safety, and welfare risk to the residents.

2. Truck and other utility transports need routes around residential areas.

3. Potential for groundwater contamination of the thousands of private domestic water wells is increased.

4. The overall quality of life issues (noise, air pollution and the safety of the residents) is compromised.

5. People's land is taken for right-of-way purposes making their land less valuable.

6. Wildlife is diminished through road kill and is much less likely to frequent homes near major roads; and

**WHEREAS**, the Board of Supervisors urge funding of the State Road 7 Extension as follows:

1. There is always competition for funding of necessary projects, however, there are opportunities for State funding.

2. The DOT State Road 7 Extension is vital to the lives and the safety of the residents of the Western Communities, serves more people than does mass transit in the coastal areas, and should be equally considered with funding availability; and

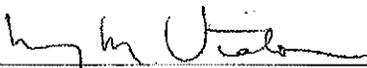
**WHEREAS**, there is a buildable alternative if the two lane section is promoted. It will create an immediate compromise at much less cost and much less environmental encroachment is possible if two lanes are constructed that tie into the existing Ibis roadway or utilize the original State Road 7 right-of-way to connect with Northlake Boulevard.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF INDIAN TRAIL IMPROVEMENT DISTRICT** as follows:

1. The Board of Supervisors of Indian Trail Improvement District supports the State Road 7 Extension/"Reliever" Road from Okeechobee Boulevard to Northlake Boulevard.
2. EFFECTIVE DATE. This Resolution shall become effective upon its adoption.
3. PASSED AND ADOPTED this 26<sup>th</sup> day of March 2008.

**INDIAN TRAIL IMPROVEMENT DISTRICT**

ATTEST:

By:   
Secretary

By:   
President

(DISTRICT SEAL)

# The Palm Beach Post

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## Letters: State Road 7 extension a needed link for county

By **LETTERS TO THE EDITOR FOR SATURDAY, DEC. 11**

Posted: 9:17 p.m. Friday, Dec. 10, 2010

Joel Engelhardt's Sunday story on the extension of State Road 7 to Northlake Boulevard pointed out the conflicts between the city of West Palm Beach and the state of Florida, but Mr. Engelhardt omitted important points regarding the extension itself.

Because the central-western communities of Palm Beach County have limited north-south and east-west connectivity available for their more than 150,000 residents, the extension will be vital for public safety and economic development. The incomplete connection of S.R. 7 to Persimmon Boulevard is not just a problem for The Acreage; it is a regional problem. As a virtual cul-de-sac ending in a residential Acreage neighborhood, State Road 7 misses its potential to provide a necessary link for the benefit of the entire county.

Twenty years ago, the original plan was known as the Range Line Corridor, because State Road 7's path cut directly across the Water Catchment Area on the state's right-of-way at the range line. The Florida Department of Transportation hosted multiple public hearings seeking input to improve the plan. Through these sessions, the planned corridor was altered to address and reduce potential environmental impacts. FDOT's informational website on the S.R. 7 extension is at <http://www.sr7extension.com>. Central-western community governments and organizations supporting the completion of the needed State Road 7 extension include: Royal Palm Beach, Wellington, Loxahatchee Groves, Greenacres, Indian Trails Improvement District, Palms West Chamber of Commerce, the Economic Development Task Force and the Western Communities Council.

**JAENE MIRANDA**

Loxahatchee

Editor's note: Jaene Miranda is chief executive officer of the Palms West Chamber of Commerce.



# TOWN OF PALM BEACH

Office of Mayor and Town Council

LOG TO  
WEBB/CAICCO

July 19, 2011

James Wolfe, Secretary  
Florida Department of Transportation  
District IV  
3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309

RECEIVED

JUL 25 2011

DIV DISTRICT SECRETARY

MAYOR GAIL L. CONIGLIO

COUNCIL

DAVID A. ROSOW, PRESIDENT  
ROBERT N. WILDRICK, PRESIDENT PRO TEM  
WILLIAM J. DIAMOND  
RICHARD M. KLEID  
MICHAEL J. PUCILLO

RE: Proposed Extension of State Road 7 From Okeechobee Boulevard to North Lake Boulevard

Dear Secretary Wolfe:

On behalf of the Town Council of the Town of Palm Beach I am writing to inform you of the official position of the Town of Palm Beach relative to the proposed extension of State Road 7 from Okeechobee Boulevard to North Lake Boulevard. This extension poses an unacceptable threat to the water supply that serves the Town of Palm Beach and, therefore, is opposed.

The Water Catchment Area (WCA) of the City of West Palm Beach serves as the primary water supply for both the City and the Town of Palm Beach. The WCA is a wetland prairie, a remnant of the Everglades eco-system. The proposed extension of SR 7 is likely to have a deleterious effect on the integrity of the water supply. Approximately 4.5 miles of the proposed road would border the western side of the WCA, which is commonly called Grassy Waters Preserve. At the southern end of this segment the road would take a ninety-degree turn to the west, the ninety-degree turn would occur over the M Canal. Any accident at this point that deposits hazardous substances in the M Canal could have a ruinous effect on the wetland and its ability to serve as a water supply.

Based upon the forgoing, the Town of Palm Beach respectfully requests that FDOT reconsider any plans to extend SR 7 adjacent to the WCA.

Your time and efforts in regard to this request are greatly appreciated.

Sincerely,

Gail L. Coniglio  
Mayor

cc: Town Council  
Peter B. Elwell, Town Manager  
John Page, Director of Planning, Zoning, and Building  
John Lindgren, Planning Administrator  
Water Catchment Area Advisory Committee Members  
Jeri Muoio, Mayor, City of West Palm Beach  
City of West Palm Beach Commissioners

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**INDIAN TRAIL IMPROVEMENT DISTRICT**  
**13476 61<sup>ST</sup> STREET NORTH**  
**WEST PALM BEACH, FL 33412-1915**  
**Office: 561-793-0874**  
**Fax: 561-793-3716**

**Established 1957**

**[www.indiantrail.com](http://www.indiantrail.com)**

August 2, 2011

Ananth Prasad, P.E., Secretary  
Department of Transportation  
605 Suwannee Street  
Tallahassee, Florida 32399-0450

**RE: State Road 7 Extension to Northlake Blvd., Palm Beach County, Florida**

Dear Secretary Prasad:

On behalf of the Indian Trail Improvement District ("ITID"), we want to stress our support for the extension of State Road 7 in Palm Beach County to Northlake Blvd. This roadway project is of critical importance to the more than 150,000 Western Palm Beach County residents to provide emergency evacuation access and to improve limited north-south and east-west traffic/roadway connectivity for unincorporated Palm Beach County and multiple local governments – Wellington, Royal Palm Beach, Greenacres, Loxahatchee Groves, and Palm Beach Gardens.

This project began with a Florida Dept. of Transportation Project, Design & Evaluation Study in April 2005. The following timeline shows the lengthy, thorough project history:

PD&E Study	April, 2005
Public Kickoff Meeting	September 27, 2005
Corridor Alternatives Meeting (27 Alternatives were presented)	May 24, 2006
FHWA Conceptual Concurrence (Environmental Assessment as level of documentation)	April 2, 2007
Corridor Selection Meeting (Corridor 3 selected as preferred corridor after coordination with general public and agencies)	June 5, 2007
Public Alternatives Workshop 1	April 16, 2008
Public Alternatives Workshop 2	May 5, 2010
Traffic Analysis Completed (Traffic analysis consistent with the Palm Beach Metropolitan Planning Organization's 2035 LRTP)	October 15, 2010
Finalize Environmental, Noise, and Socio-Economic Impacts	January-March 2011
Evaluate Mitigation Options	January-March 2011
Public Hearing	January 2012

**Indian Trail Improvement District Board of Supervisors**  
**Michelle Damone • Carlos Enriquez • Ralph Bair • Jennifer N. Hager • Carol Jacobs**

The following governments, agencies, and groups have supported the extension of SR7 to Northlake Blvd. from the project's very beginning:

Palm Beach County  
Florida Department of Transportation  
Indian Trail Improvement District  
Wellington  
Royal Palm Beach  
Seminole Improvement District  
Loxahatchee Groves

Palms West Chamber of Commerce  
Western Communities Council  
Acme Improvement District  
Palm Beach Gardens  
Greenacres  
Loxahatchee Groves Water Control District  
Economic Development Task Force

Each of the above has issued Resolutions and/or Letters of Support for the Extension of State Road 7 to Northlake Blvd.

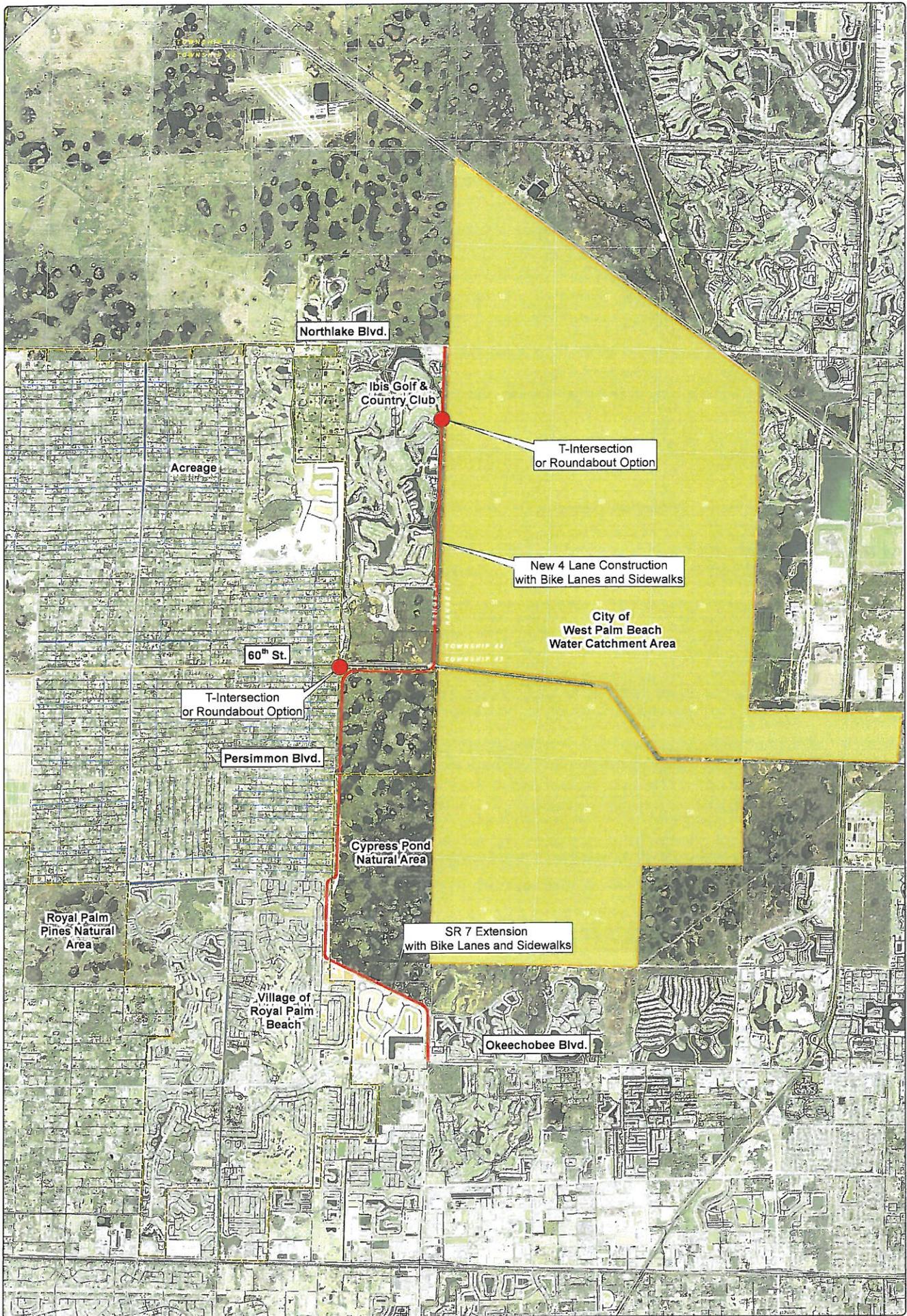
The City of West Palm Beach, represented by Mayor Jerry Muio, a resident of Ibis, the Town of Palm Beach, and the North County Neighborhood Coalition, has stated opposition to this project. Their primary reason appears to be concerns for the protection of the City of West Palm Beach Water Catchment Area. Their concerns are not invalid; however, they are distorting the facts (see attached map).

More than twenty years ago, the original plan was known as the Range Line Corridor because State Road 7's path was directly adjacent to the City of West Palm Beach Water Catchment Area on the State's right-of-way at the range line. As shown by the Project history outline, on the previous page, the FDOT has worked to improve the plan with extensive public input. The current planned corridor was altered to address and reduce significant potential environmental impacts - see the FDOT's informational website on the SR 7 Extension: [www.sr7extension.com](http://www.sr7extension.com).

It is also critical to note that this road has been part of the original development order for Ibis from the mid-1980's. At that time, the multiple communities that now encircle the City of West Palm Beach Water Catchment Area - Ibis, Ironhorse, Andros Isle, Baywinds, Riverwalk, and others - were on developer drawing board's plans. As they came in for approvals, the City of West Palm Beach showed no opposition to the development of these huge communities which helped to greatly expand the City's tax base.

Indian Trail Improvement District has consistently supported the extension of State Road 7 and has acted as a responsible partner during the project history. We thank you for standing up for our Western Community residents in this fight for a desperately needed road and emergency evacuation project. We are deeply concerned the City of West Palm Beach's opposition to the extension of State Road 7 is a direct threat to this area's wellbeing and economy.

The extensive studies required for this project support the extension as repeatedly stated by Mr. George Webb, P.E., County Engineer, Palm Beach County Government, as well as by Ms. Beatriz Caicedo-Maddison, P.E., Project Manager, District Four, FDOT. Funding for this project in the amount of approximately \$69 million is included in the 2015 Approved Work Program. Failing to complete the extension of State Road 7 will ultimately be an unnecessary, dangerous burden to the Florida citizens



Scale	1" = 100'
	1" = 200'
North Arrow	True North
	Magnetic North

STATE ROAD 7  
 PROPOSED ALIGNMENT  
 INDIAN TRAIL IMPROVEMENT DISTRICT

State Road 7  
 Proposed Alignment  
 Indian Trail Improvement District

Legend	
	Legislative Boundary
	Water Catchment Area
	Impoundment Area
	Indian Trail Corridor
	West Palm Beach Corridor
	Alignment Retriever Road

**engenuity**  
 GROUP, INC.  
 Engineers • Surveyors • GIS Mappers




# Western Communities Council, Inc.

David Lodwick, Chairperson

14000 Greenbriar Boulevard, Wellington, FL 33414 Fax 561-753-2461

E-mail: jbonde@ci.wellington.fl.us

Charles Walsey, Chairman  
Cypress Groves Community  
Development District

## RESOLUTION NO. 2007-0100

Wadie Atallah, City Manager  
City of Greenacres

**A RESOLUTION OF THE WESTERN COMMUNITIES COUNCIL, INC. OF FLORIDA EXPRESSING ITS' SUPPORT OF THE FLORIDA DEPARTMENT OF TRANSPORTATION STATE ROAD 7 EXTENSION CORRIDOR 3 AND APPROPRIATION OF FUNDS BY ALL AVAILABLE GOVERNMENTAL AGENCIES.**

Myra Orlando, President  
Indian Trail Improvement  
District

*WHEREAS*, the Western Communities Council, Inc. was formed to represent local governments on matters of common concerns and provide a forum for discussion of issues impacting the membership, and;

Clete Saunier, Dist. Administrator  
Loxahatchee Groves Water Control  
District

*WHEREAS*, our residents and businesses in the Western Communities rely on the ability to travel throughout the area, and;

Bryan LaMott P.E.  
Northern PBC Improvement District

*WHEREAS*, traffic conditions in the Western Communities of Palm Beach County are continually worsening, and;

David Lodwick, Mayor  
Village of Royal Palm Beach

*WHEREAS*, the Council further recognizes that the FDOT has narrowed the alternatives for the extension of SR7 to Corridor 3 or "No Build";

Nat Roberts, General Manager  
Seeminole Improvement District

Now therefore, be it resolved by the Western Communities Council, Inc. that:

Robert Margolis, Councilman  
Village of Wellington

**The Western Communities Council, Inc. resolves to support the Florida Department of Transportation State Road 7 Corridor Study selection of the Corridor 3 option, and furthermore to expedite funding and construction at the earliest possible time.**

Steve Wilson, Mayor  
City of Belle Glade

Passed and Adopted This 15<sup>th</sup> Day of June, 2007.

John W. Bonde, Secretary  
Western Communities Council, Inc.



## INDIAN TRAIL IMPROVEMENT DISTRICT

13476 61st Street North  
West Palm Beach, FL 33412-1915  
www.indiantrail.com

**JOHN W. BONDE**  
District Administrator

December 23, 2002

The Honorable County Commissioner Karen Marcus, Chair  
and Members, Palm Beach County Commission  
c/o Palm Beach County Governmental Center  
301 North Olive Avenue, 12<sup>th</sup> Floor  
West Palm Beach, FL 33401

**RE: Resolution of the Board of Supervisors, Indian Trail Improvement District**

Dear Commissioner Marcus and Members:

At their December 16<sup>th</sup> Board meeting, the Indian Trail Improvement District Board of Supervisors approved the attached resolution regarding the Proposed State Road 7 Extension (aka "Acreage Reliever Road"), north of Okeechobee Boulevard.

To this end, the Board requests your review and thoughtful consideration in this matter and asks that you "Receive and File" this document at the next Board of County Commissioner meeting.

Thank you for your consideration.

Sincerely,

John W. Bonde  
District Administrator

cc: Chris Karch, P.E., President, and Members, ITID BOS  
Charles Schoech, Esq.  
Bob Weisman, P.E., County Administrator  
Denise Detrich, County Attorney  
George Webb, P.E., County Engineer

3. The District does not support the connection of Persimmon Boulevard to State Road 7/Acreage Reliever Road.

4. The District supports only one east/west connection to the original range line alignment of State Road 7/Acreage Reliever Road, properly sized as a rural parkway, and aligned with 60<sup>th</sup> Street North and only after State Road 7 is extended to the north to connect with Northlake Boulevard.

5. The District desires to impact the least number of residents with the construction of this new east/west rural parkway by aligning it with 60<sup>th</sup> Street North, allowing for the north side of the road to be adjacent to the M-Canal with little or no residential impacts foreseen.

6. The District requests that the Palm Beach County Commissioners remove Persimmon Boulevard from the County's thoroughfare map, thus leaving 60<sup>th</sup> Street North as the only east/west thoroughfare road.

7. The District supports the purchase of the majority of the lands known as "Section 1", by the County, for conservation purposes, thereby eliminating the possible development of the Section 1 property and extending the spatial expanse of the West Palm Beach Water Catchment Area and further eliminating negative impacts on the community.

8. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** this 16<sup>th</sup> day of December, 2002.

**INDIAN TRAIL IMPROVEMENT DISTRICT**

ATTEST:

*Myra Orlando*  
Myra Orlando, Secretary

By: *Christopher Karch*  
Christopher Karch, President

(DISTRICT SEAL)

Without the oversight and involvement of Congressmen like you, we are concerned that powerful, well-funded, coordinated political opposition from the City of West Palm Beach, the Town of Palm Beach, and the North County Neighborhood Coalition actions could result in the further delays or worse for the extension of State Road 7.

Again, we thank you for your consistent support of the extension of State Road 7 which is an issue of vital concern to Indian Trail Improvement District and the residents throughout Western Palm Beach County that we all protect and serve.

On behalf of the Indian Trail Improvement District Board, I express our sincere appreciation for your help in this matter. If you have any questions, please feel free to call me.

Sincerely yours,

FOR THE BOARD OF SUPERVISORS



Michelle Damone  
President, Indian Trail Improvement District

CC: Carlos Enriquez, Vice-President, Indian Trail Improvement District  
Ralph Bair, Treasurer, Indian Trail Improvement District  
Carol Jacobs, Board Member, Indian Trail Improvement District  
Jennifer N. Hager, Assistant Secretary, Indian Trail Improvement District  
Tanya Quickel, District Administrator, Indian Trail Improvement District  
George Webb, P.E., County Engineer, Palm Beach County  
Palm Beach County Board of Commissioners  
Palm Beach County Legislative Delegation  
Beatriz Caicedo-Maddison, P.E., Project Manager, District Four, FDOT  
James Dubois, Western Communities Council  
Jeanne Miranda, Palms West Chamber of Commerce  
Martha Webster, Council Member, Royal Palm Beach  
John Bonde, Deputy City Manager, Wellington

SANTIAGO ECHEMENDIA  
WRITER'S DIRECT LINE: 305.536.8420  
E-Mail: [sde@tevlaw.com](mailto:sde@tevlaw.com)

BOB DE LA FUENTE  
WRITER'S DIRECT LINE: 305.536.8460  
E-Mail: [bdf@tevlaw.com](mailto:bdf@tevlaw.com)

CLAUDIO RIEDI  
WRITER'S DIRECT LINE: 305.539.2118  
E-Mail: [criedi@tevlaw.com](mailto:criedi@tevlaw.com)

March 21, 2012

VIA FIRST CLASS MAIL and/or HAND DELIVERY

Ms. Beatriz Caicedo-Maddison, P.E.  
FDOT Project Manager  
3400 West Commercial Blvd.  
Fort Lauderdale, FL 33309

Mr. Martin C. Knopp  
Federal Highway Administration, Florida Division  
545 John Knox Road, Suite 200  
Tallahassee, FL 32303

***Re: City of West Palm Beach Comments and Objections to State Road 7 Project  
Development and Environment ("PD&E") Study / Environmental Assessment  
("EA")***

Dear Ms. Caicedo-Maddison, dear Mr. Knopp:

This firm represents the City of West Palm Beach ("City") in connection with the State Road 7 Road Expansion Project in Palm Beach County (the "Project"). As an interested and impacted party, the City has monitored and commented on the Project. We have reviewed the PD&E Study as approved by the Federal Highway Administration – Florida Division on January 25, 2012, and we are hereby providing our comments and objections.

Submitted together with this letter are more detailed comments of consultants for the City in many of the fields of concern. This letter, together with the consultants' comments and the

supporting documentations, are to be added to the administrative record in this matter – both for the administrative actions of the Florida Department of Transportation (“FDOT”) and the Federal Highway Administration (“FHWA”).

The State Environmental Policy, as announced by the Governor’s Office of Environmental Management on October 14, 2008, is for FDOT to preserve and enhance Florida’s natural, physical, cultural and social environment as it develops and implements transportation facilities. Clearly, nothing in the proposed preferred alternative enhances Florida’s natural environment. The chosen alternative is not compatible with the surrounding area, the safety and security of public spaces and with aesthetics in accordance with the appropriate standards in Section 4-2.5.2.1 of the PD&E Manual.

The Project is to be constructed immediately adjacent to the City’s Water Catchment Area, also referred to as Grassy Waters Preserve (the “Preserve”) and to sensitive mitigation lands. The Preserve consists of 12,800 acres of pristine but sensitive wetlands, all of which will be impacted as a result of emissions from the expected traffic on the SR 7 extension. The City – as well as the Towns of Palm Beach and South Palm Beach – rely on the Preserve and the adjacent wetlands as their source of potable water. In addition, the Preserve is a state designated natural preserve providing regional ecological and environmental benefits, including water recharge, water quality and wetland habitat for numerous listed species, including the critically endangered Everglade Snail Kite and the Wood Stork. The Preserve is an integral and critical component of the South Florida Water Management District’s restoration of the Loxahatchee River. The Project will adversely impact both the water resources within the Preserve and on adjacent wetlands, resulting in direct, secondary and cumulative impacts to the City’s potable water supply and wetland habitats. The City has opposed this Project as proposed since the alternatives were first proposed more than five years ago. *See* City of West Palm Beach Resolution No. 38-07.

**The U.S. Fish & Wildlife Service’s (the “Service”) letter of February 29, 2012 to FDOT demonstrates in the clearest of terms that *this road should not be built in the currently proposed corridor.*** The Service finds that the Project will likely adversely affect the Everglade Snail Kite, and that disturbance will result both from construction and operation of the road, so that FHWA is urged to initiate consultation. Furthermore, the Service notes the inadequate mitigation discussion, and requests that FDOT provide a detailed habitat compensation plan for the Snail Kite. Under the circumstances, a Finding of No Significant Impact (“FONSI”) is obviously inappropriate. Moreover the PD&E Study as drafted is inadequate, as found by the Service with respect to mitigation discussions for both the Everglade Snail Kite and the endangered Wood Stork. For the Department to continue on its current path is to invite perfectly founded legal challenges.

Moreover, the City has found that project managers are secretly discussing a six-lane highway in this location, while presenting to the public, and ostensibly analyzing in the PD&E Study, only a four-lane road. That is simply unacceptable, both as a matter of public policy and

as a matter of state and federal law. In his e-mail of February 13, 2012, FDOT employee Joseph Sullivan writes to FDOT project manager Beatriz Caicedo: "Beatriz, the only comment I have is the response to my comment #17. My comment was with respect to whether a 4 lane roadway using a roundabout intersection (4 lanes) can accommodate, or be expanded to utilize a future 6 lane improvement, or would a standard "T" finalized intersection be needed for 6 lanes? I haven't seen many 6-lane roundabouts so I wanted to see if this could be discussed further . . . ." It is thus clear that the Project is being designed *at this time* to accommodate a six-lane highway, a fact never disclosed to the public. That FDOT is secretly planning for a six-lane highway in this location was not pointed out in the analysis, and is entirely absent from the cumulative impact analysis related to future impacts, which renders the analysis fatally flawed.

The City submits that the Project as currently proposed should not be built, as also urged by the U.S. Fish & Wildlife Service. There is no need for this Project at this location. The environmental impacts of the Project are too far-ranging and significant, and have not been adequately considered in the PD&E Study/EA. The risks this Project represents to the sole fresh water source of the City of West Palm Beach and other communities have not been adequately considered. The PD&E Study/EA discusses the true impacts of the Project – the operation of the road once constructed – only as "secondary impacts," and fails to analyze the impacts of such operation on the water supply and specific endangered species in any reasonable detail.

The City therefore urges all parties to cancel or defer this Project until the environmental impacts of the Project – including both construction and operation -- can be properly evaluated. Because there is no need for the road, no prejudice will result to the Service by cancellation or deferment. The City submits these comments and objections, together with the attached reports and supporting materials, and requests that the FDOT and the FHWA make them part of the administrative record and take them into consideration when determining how to proceed in this matter. Given the serious and far-reaching impacts of the proposed Project, at a minimum an Environmental Impact Statement ("EIS") is required, and the agencies are warned against the issuance of baseless Findings of No Significant Impacts (FONSIs). The following sections discuss some of the most obvious inadequacies of the PD&E Study/EA.

## **1. THE PD&E STUDY MISREPRESENTS THE NEED FOR THIS PROJECT**

The need analysis in the PD&E Study is conclusory, illogical and circular. The need for the project is summarized as follows: (1) there is a necessity to improve system linkage between Okeechobee Boulevard and Northlake Boulevard; (2) travel demands within western Palm Beach County will continue to grow; and (3) the Palm Beach Metropolitan Planning Organization (MPO) has identified this project as a critical priority. PD&E Study/EA at p. 3. In essence, the PD&E Study argues that need exists because need exists.

For one, system linkage is an argument for need of road construction anywhere in the world where a project links two other roads. There is nothing to indicate in any of the studies that linkage of Okeechobee Boulevard and North Lake Boulevard is needed at this particular

location. To the extent linkage is necessary, it could occur in many locations far less detrimental to the public interest than the proposed alternative.

Second, as concerns transportation demands, the PD&E Study argues that travel demands within Western Palm Beach County will continue to grow. The PD&E Study states that even though over 14,000 residential units proposed for the areas surrounding the project corridor have been *cancelled* since the start of the study, “the traffic analysis prepared for this study maintains the need for a four lane divided facility even with lower growth and population estimates.” PD&E Study at p. 4. This statement is illogical in itself. If the need for the road arose because of 14,000 planned additional housing units in the area, the cancellation of those units obviates this basis of need. While the County and FDOT do not acknowledge this, SR 7 has transitioned from a “need” to a “want,” – a \$100,000,000 luxury. The lack of logic in this position is further obvious when FDOT asserts in its Endangered Species Biological Assessment (“ESBA”) that the 14,000 units should not be considered in the cumulative impact discussion because they have been cancelled and “additional development in these areas is not reasonably certain to occur.” (p. 66). The Department and the Project proponents cannot have it both ways: either the 14,000 units will no longer be built, such that there is no need for the Project, or they will likely be built, such that they likely constitute a cumulative impact that was not adequately analyzed.

The City hired a traffic consultant to review the need for the road. The analysis indicates that all roads within and adjacent to the study area have shown a decrease in traffic in the last five years, so that travel demands are no longer a valid reason for the Project. *See JMD Engineering, Inc., Comparison of No-Build and Build Scenarios, State Road 7 Extension PD&E Study, Prepared for: City of West Palm Beach, West Palm Beach, Florida, TP-11-01, March 2012 -- Historical 5 Year Traffic Growth, 2006 – 2011.* Moreover, even if traffic were to increase in Western Palm Beach County, there is no indication that there is need for this road in this particular location. This factor becomes meaningless because it would support road construction anywhere in Palm Beach County. A vague prediction that traffic volume will increase in the future is in no way indicative of need for a four to six lane highway in this sensitive wetland area. To make matters worse, this vague notion of increasing traffic is later used to argue against the no-build alternative, because it would offer “no relief to the increasing traffic demands in the area.” PD&E Study at p. 13.

The third basis, that the MPO has identified this project as a critical priority, is also specious and circular. For one, the MPO’s determination that this is a priority project came in October 2004, at a time when rapid growth was predicted for the western reaches of Palm Beach County, prior to cancellation of the 14,000 residential units. Second, the MPO based its decision at least in part on the same vague notion that traffic volumes in Western Palm Beach County will increase in the future, hardly a sophisticated analysis.

Finally, the PD&E Study cites to safety, and the need for hurricane evacuation routes as a basis for need of the road. Again, every road, short of a cul-de sac, can be used for hurricane evacuation. This factor pertains to virtually every road in all of South Florida, and as a result becomes meaningless. There is no explanation as to why this road at this location would be

more conducive to an efficient hurricane evacuation than any other corridor. Indeed – the location of the proposed road is not in a hurricane evacuation area. Which particular route would be useful depends entirely on the path of an approaching hurricane. Clearly, there was no analysis done as to why a north-south route in Palm Beach County is more important than an east-west route to escape an approaching hurricane. This factor is not a proper basis to build this road at this location.

In sum, the need analysis is illogical, circular and flawed. It is simply an exercise to justify construction of a generic road in a generic location, and not adequate for a four- to six-lane highway immediately adjacent to critical water supply and habitat areas for endangered species.

## **2. THE PD&E STUDY ALTERNATIVES ANALYSIS IS FLAWED**

In the PD&E Study/EA and the underlying documents, four possible corridors are shown, concluding with selection of the corridor with the second-highest wetland and habitat impacts. Within the preferred “Corridor 3,” build alternatives are relatively minor versions of the same general alignment. They include various intersection options, whether a T-intersection or a roundabout is used at 60th Street, the curve configuration for the approach on the south side of the M-Canal, and whether storm water treatment areas are swapped east for west with the proposed road alignment. These alternatives are entirely within the same area of impact. Only the “no build” alternative avoids impacts to the Preserve and additional impacts to the Pond Cypress Natural Area. There is no coverage of alternative routes through developed lands to the west or other options to solve alleged traffic needs as requested by the Florida Fish and Wildlife Conservation Commission (*see* FFWCC recommendations of December 2, 1998 and August 10, 2005, recommending for FDOT to “avoid these impacts by expanding and upgrading existing roadways through urban areas.”).

NEPA requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). NEPA “requires that alternatives ... be given full and meaningful consideration.” *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9<sup>th</sup> Cir. 1988). In this case, reasonable alternatives to the selected route exist, but were rejected by FDOT.

In its February 29, 2012 letter to FDOT, the U.S. Fish and Wildlife Service notes that “we do not support any of the “east of Ibis” build alternatives as currently proposed.” *See* Letter at p. 4. The Service points out that it warned as early as July 2006 that it could not support the current project alternatives, and urged FDOT to reconsider its options. For the Department to ignore the warnings of the Service invites lawsuits. It is the role of the Service, with its unique expertise in endangered species and habitat protection matters, to guide the FHWA (and thus FDOT) in its alternative selection process, and that guidance should not be lightly discarded. Yet, this is the path chosen by FDOT.

The proposed project corridor is the only location in Palm Beach County where SR 7 would deviate from a straight alignment. Corridor 3, the build alternative, follows the Acreage Connector Road Alignment, then jogs to the east 90 degrees on the south side of the M-Canal and then turns 90 degrees to the north along the west side of the WCA. This odd course is necessitated by the flawed decision to use State Road 7 as the north-south connection between Okeechobee Boulevard and North Lake Boulevard despite the immovable objects in the way: the Preserve and the Pond Cypress Natural Area.

### 2.1. The Traffic Analysis Is Flawed

The PD&E Study relies on an October 2010 traffic analysis prepared by Kittleson & Associates to reach the conclusion that construction of the four-lane highway at this location is needed. Both the analysis and the conclusions reached on the analysis are flawed.

For one, the FDOT's Design Traffic Technical Memorandum ("DTTM") itself is based on the County's 2007 "SR 7 Extension Corridor Report," which is outdated and no longer reflective of actual traffic conditions in the area. The City has retained the firm JMD Engineering, Inc., which has reviewed the data and conclusions reached, supplemented with 2011 and historical 24-hour, AM and PM peak hour traffic and count data provided by Palm Beach County. The report of JMD Engineering, Inc. (the "JMD Report") is attached and hereby made part of this submission and the administrative record. As the JMD Report points out, the roads within and adjacent to the study area have shown a decrease in traffic volume over the last 5 years:

Road	traffic volume	Road	traffic volume
Beeline Highway	-7%	Coconut Blvd.	-18%
Northlake Blvd.	-17%	Okeechobee Blvd.	-23%
Orange Blvd.	-9%	Persimmon Blvd.	-18%
Royal Palm Beach Blvd.	-41%	Seminole Pratt Whitney Rd.	-22%
SR 7	-18%		

The PD&E Study and underlying documents correctly point out that 14,000 residential units were proposed within the areas surrounding the project corridor, which "have been cancelled since the start of the study due to recent economic conditions." See ESBA at Section 2.2.3. The reduction in traffic volume on all relevant roads in the area is obviously related to the changed economic conditions, and indicative of the necessity to reassess the traffic analysis underlying the PD&E Study. Projected growth rates of 2% to 4% annually are inaccurate. A 1% average growth rate in the area would be more appropriate. See JMD Report. FDOT has acknowledged the drastic change in conditions when compared to the 2007 SR 7 Corridor Report, but has arbitrarily and capriciously chosen to base its decisions assuming these flawed growth rates.

If the build and no-build alternatives are compared using appropriate growth assumptions, the no-build alternative, with some improvements, provides a slightly better Level of Service (“LOS”) for the roadway links and signalized intersections in the project study than the build scenario, and does so at what would be significantly lower cost and impact in the surrounding areas. At worst, the intersection LOS for the project study area is virtually the same for the no-build and build scenarios for each of the three future years analyzed in the DTTM. The DTTM presented forecasted opening (2020), interim (2030) and design year (2040) LOSs. *See* Level of Service Comparison. Given the reduced growth information known now, there are no LOS improvements in the study area from the build scenario when compared to the no-build scenario. To the extent need for the road is based on anticipated LOS improvements, the PD&E Study, as well as the DTTM, the Corridor Report and the Draft Noise Report are all incorrect.

The diversion analysis provided by JMD Engineering, Inc. shows that while some reduction on adjacent roadway links is anticipated under the build scenario, these diversions in most cases are only about 3,000 vehicles per day, and there is approximately the same number of adjacent links with an increase in traffic as a result of the build scenario.

The evacuation routes closest to the SR 7 study area are SR 80 (Southern Boulevard) and Okeechobee Boulevard (SR 704), both of which connect to both I-95 and Florida’s Turnpike and the Beeline Highway, which connects to the Turnpike but not I-95. Northlake Boulevard is NOT an evacuation route and only connects to I-95. The analysis indicates that only a small area would directly benefit from the SR 7 extension for hurricane evacuation.

Finally, it should be noted that without a grade-separated urban interchange at Okeechobee Boulevard and SR 7, the intersection will remain at LOS F under all scenarios. Accordingly, the Long Range Transportation Plan anticipated its construction for 2020 at a projected cost of \$54,800,000 (it is unclear why the PD&E Study estimates only \$30,000,000 for construction of a grade-separated intersection). The 2040 LOS for this intersection is shown as “F” for an at-grade intersection and “E” for a grade-separated intersection, making the grade separation the only proper solution. The dollars committed to Segment 2 of the Project could be re-programmed for the urban interchange. According to the City’s traffic consultant, this alternative provides a better level of service return on investment than the proposed segment of SR 7 from 60th Street to Northlake Boulevard.

In sum, the current traffic analysis is flawed, and a correct analysis mandates against implementation of the build alternative.

## **2.2. The Discussion of Drainage Issues Is Inadequate**

The drainage calculations in the PD&E Study contain several unacceptable shortcomings. See Nicholas, S. Jordan, P.E., Higgins, Robert H., P.E., Higgins Engineering, Inc., *Report Re: State Road No. 7 – Review of Proposed Drainage*, March 1, 2012. The City of West Palm Beach

is still concerned over potential drainage impacts to the Ibis Landing Development and to the Ibis Preserve/Grassy Waters Preserve as a result of the Project. A review of the drainage options, together with the underlying Location Hydraulics Report and the Pond Siting Report, demonstrates problems both for Basin 2 (east-west segment south of M-Canal) and Basin 3 (segment east of Ibis).

Basin 2 – For this reach of the roadway a “treatment train” consisting of dry swales outfalling into a wet pond is proposed. It is not stated where the wet pond will outfall to (options are Grassy Waters Preserve or pipe-back to Basin 1). Although the use of wet ponds is proposed, it does not appear that the pond(s) will be able to satisfy the minimum SFWMD width requirement of 100’. The plans do not show the pond dimensions.

Basin 3 – This reach of the roadway lies adjacent to the Ibis Landing Development and the Preserve and is to drain into the Ibis development. The SFWMD permit issued for Ibis does address 46.9 acres of SR 7 right of way but the actual right of way for the Project is on the order of 116 acres. As such, this portion of the system will need to provide for a significant amount of attenuation in the form of swale/lakes. Although calculations are provided in the Pond Siting Report, the calculations do not address flood stages or discharges within the Ibis development. Again, it is not clear how the SFWMD minimum wet detention pond width of 100’ will be met. Accordingly, the PD&E Study is inadequate.

An additional option for this reach of the roadway is identified as Option 3C. This option calls for the roadway to discharge into the Ibis Preserve. As stated above, the Ibis Preserve was not designed to handle inflows of polluted water from offsite areas, and therefore, a detailed analysis is required to proceed with this proposal. Of even greater concern is that the Ibis Preserve eventually discharges into Grassy Waters Preserve. During storm events, this may lead to unpermitted discharges of pollutants to the Preserve (including without limitation violations of Section 402 of the Clean Water Act), which is entirely unacceptable, as the PD&E Study seems to acknowledge. As the potable water source for West Palm Beach and various other cities, the Preserve cannot become the dumping ground for contaminated run-off from State Road 7, even if it is only on rare occasions. Even one single contamination event would be catastrophic, not only for humans depending on clean water but also for the various threatened and endangered species in the Preserve. This Option 3C is entirely unacceptable.

In addition, the Location Hydraulics Report used FIRMs from 1979 and 1982 to assess flooding. These reports are outdated. The Report contends that the Project location is within Zone B between the 100-year and 500-year flood plain. This is clearly incorrect given the 120 acres of wetlands within the area that will be impacted. In addition, the soils all fall within the poorly drained category.

In summary, the proposed routing of runoff from the northern reach of State Road 7 into the Ibis Landing Development may cause adverse impacts. The PD&E Study discussion will need to be corrected, and a detailed hydrologic analysis, including the Ibis water management

system, will need to be completed in order to assess pre- versus post-Project impacts.

### **2.3 Cost Calculations Are Incomplete**

According to the PD&E Study's cost calculations, Segment 1 (from Okeechobee to 60th Street) of the Project is estimated to cost \$22,462,676. Segment 2 (from 60th Street to North Lake Boulevard) is estimated to cost \$43,433,014. The grade-separated intersection at Okeechobee Boulevard, which is absolutely necessary (*see* traffic analysis, above, at section 2.1), is estimated in the PD&E Study at \$30,000,000 (note that the predicted cost for a grade-separated interchange in the County's Long Range Transportation Plan for 2020 is \$54,800,000, rendering the \$30,000,000 number highly specious), for a total of approximately \$95,900,000 for the entire Project, without cost of the roundabouts and interconnections at North Lake Boulevard. The PD&E Study points out that it also does not include the costs for mitigation, and the additional costs of land acquisition for the straight crossing of the M-canal, which is also an absolute necessity. In sum, the cost will be far in excess of \$100,000,000 for a project of questionable need with the potential to devastate the potable water supply to 130,000 Palm Beach County residents and a pristine habitat for threatened and endangered species.

The cost estimate in the PD&E Study does not include the costs associated with land acquisition for the skewed bridge crossing. Part of the right of way over the M-Canal needed for the skewed bridge crossing is owned by the City and would require an eminent domain proceeding. If the eminent domain proceeding were successful, the additional cost to remove and relocate Control Structure No. 3 would have to be included along with the acquisition cost. The relocation costs for Control Structure 3 alone are expected to be several million dollars.

Of all of the foregoing unaccounted-for costs, perhaps the most overwhelming will be the cost of mitigation for the wetland impacts of the Project. In 2009, Palm Beach County sought environmental permits from the Army Corps of Engineers and South Florida Water Management District for a 3.2 mile four-lane divided extension of Roebuck Road that would have been constructed adjacent to the southern boundary of the Preserve. The mitigation required for the road due to the potential adverse impacts to the water quality and the wetlands was estimated at the time to increase the project cost by approximately \$60,000,000, so that the projected costs for the Roebuck Road extension went from \$40,000,000 to \$100,000,000. The project was subsequently withdrawn. Later, Palm Beach County applied for permits for an extension to Jog Road adjacent to the eastern boundary of the WCA. The permit applications for that project were also withdrawn, albeit prior to a determination of the full cost of mitigation.

The inadequate mitigation analysis and attempted postponement of hard choices is also noted in the Service's February 29, 2012 letter to FDOT. The Service requests that FDOT provide now "a detailed habitat compensation plan indicting how the FDOT intends to minimize the project's adverse effects on the snail kite." It also notes that "[t]he Service does not have enough information to provide concurrence or non-concurrence with the FDOT's determination [concerning impact on the Wood Stork] at this time." For the Wood Stork, too, the Service

requested “a final wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project.” Accordingly, a complete mitigation analysis must be provided now, before the Project proceeds to the next stage and irretrievable commitments of funds are made. A complete mitigation analysis would permit a calculation of the likely costs of mitigation in real terms.

The PD&E Study also fails to account for the cost of noise abatement walls towards the preserve areas, where serenity and quiet is essential for their functioning. The additional costs for noise protection for these areas will be between \$9,500,000 and \$37,000,000 depending on several factors to be discussed.

Finally, projects over \$25,000,000 require a Value Engineering Study (PD&E Manual at 4-2.5.2.5). This is a project of over \$25 million, and no Value Engineering Study has been provided. It is notable, that the requirement for a Value Engineering Study is part of the PD&E manual’s requisites for the PD&E Study, not for some subsequent project stage.

#### **2.4 The Cultural Resource Assessment Survey, the Findings Regarding Consistency With the Comprehensive Plan, the Representations of the Land Use Adjacent to the Proposed Corridor and Representation of Impacts to the Conservation Areas are Inaccurate and Flawed**

The PD&E Study fails to thoroughly evaluate the threats to the conservation areas that will result from this project. It does not ensure protection for the Conservation areas; specifically, there has been insufficient evaluation to show that there will be no adverse impacts to the biological and/or hydrological conditions of the extremely sensitive areas adjacent to the proposed project. This failure is inconsistent with the City of West Palm Beach’s Comprehensive Plan, which requires protection and conservation of the environmentally significant conservation areas and their associated wildlife, including listed species. This specifically requires protection of the Grassy Waters Area Preserve and Ibis Conservation areas as they are environmentally significant ecosystems. The proposed Project will have neighboring direct, secondary and cumulative impacts to these areas that are within the City’s jurisdiction. The proposed use and its impacts are inconsistent with the Conservation Future Land use designation on the Future Land use Map of the City; indeed, any impact to the Conservation area’s uses or purposes of conserving/protecting natural resources or environmental quality is a violation of the City’s Comprehensive Plan.

The PD&E Study’s Cultural Resource Assessment Survey (“Survey”) is flawed and incomplete: (i) It fails to include the “2000 Cultural Resources Assessment Survey of 8 Alternative Routes for SR 7 from Okeechobee Blvd. to the Beeline highway, Palm Beach County, Florida (Survey #6137 or #6173),” which was relied upon to determine that no further subsurface testing is needed; (ii) The Survey fails to attach the detailed original archeological survey from 2000, upon which its findings are based; (iii) The Survey fails to address how the current water levels in the Area of Potential Effect (“APE”) relate to those from 2000 and if there

has been a variation in water levels that could have potential effects on determining the presence of archeological and historic resources. Notably, the County Archeologist, Mr. Chris Davenport, was not contacted by any agency regarding this project. His participation would be essential in the preparation of an adequate Survey.

Particularly misleading is the Survey's false statement that "the land use associated with the corridor consists of both residential and recreational." A large portion of the corridor is *not in recreation use but rather is conservation – and all but the Right-of-Way is protected by Conservation Future Land Use and Zoning designations, and conservation easements* (with limited passive recreation opportunities on a small scale). These areas comprise a portion of the Grassy Waters Preserve and the ibis Preserve Conservation Area south of the IBIS residential community. These misrepresentations exist in several areas of the Survey.

Additionally, the Survey fails to acknowledge that the south of the residential portion of Ibis is a 387 acre, City-owned and managed preserve area with City Conservation Future Land Use and Zoning designations that is part of the same hydrologic system as Grassy Waters. *This conservation area will be bisected by the proposed project – and is inconsistent with the Future Land Map of the City's Comprehensive Plan.* The direct, secondary and cumulative impacts are severely minimized by the Survey and the PD&E Study. This minimization is further demonstrated by the failure to accurately label the 387 acre preserve area as such; indeed – it is mislabeled to be part of the residential community.

The PD&E Study's inaccurate labeling is also found in Section 4.1, Land Use, of the PD&E Study, as it misrepresents the location and amount of land in conservation. The PD&E Study lists the Grassy Waters Preserve and the Ibis Preserve as municipal/institutional – however, these should be reflected as conservation use. This fundamentally flawed assumption by the PD&E results in a necessarily deficient evaluation and assessment of the impact of the proposed road. Indeed, the PD&E Study fails to provide any assessment of the roadway impacts on the conservation lands. While it mentions local government Comprehensive Plan requirements, it does not provide an analysis of the roadway impacts on consistency with all of the affected local government comprehensive plans – including a failure to analyze impacts on the conservation areas.

### **3. THE PD&E STUDY INADEQUATELY ANALYZES THE IMPACTS OF THE PROJECT**

#### **3.1 Land Acquisition And Displacement Impacts**

The PD&E Study is incomplete in its discussion of land acquisition impacts. For one, the Study states "[t]he skewed bridge over the M-Canal would result in 0.5 acres from a portion of the M-Canal owned by the City of West Palm Beach." PD&E Study at p. 84. Not only is this statement nonsensical as stated, but it omits mention that Florida law does not permit the City to grant rights to this land as doing so would be inconsistent with water supply, environmental,

educational or conservation purposes. *See* Chapter 67-2169, Laws of Florida, Section 2.<sup>1</sup> Moreover, the PD&E Study completely disregards the necessary relocation of Control Structure No. 3, which is located at the location the skewed M Canal crossing would occupy. This failure to address this important issue and additional cost is a serious flaw in the PD&E Study.

The PD&E Study mentions in similarly ungrammatical language that “[t]he straight bridge crossing would result in 7.3 acres from the Pond Cypress Natural Area owned by Palm Beach County.” *See* PD&E Study at p. 84. There is no explanation as to how the authority contained in “Right of Way and Relocation Program in accordance with Florida Statute 339.09 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” could be used in contravention of Chapter 67-2169, Laws of Florida. Further, the PD&E Study seems to suggest that these same 7.3 acres already serve as mitigation for the County’s two-lane extension of SR 7, *see* PD&E at p. 55, so that it is unclear how those same 7.3 acres could now be paved over for the Project.

### 3.2 Recreational/Parkland

FHWA has determined that the straight bridge crossing would constitute a Section 4(f) use of the Pond Cypress Natural Area, a preserve and wildlife refuge owned by Palm Beach County. *See* PD&E Study at pp. 55, 91. With the legal and financial obstacles to acquiring the necessary rights of way to build the skewed bridge alternatives, the straight bridge approach is the only viable alternative.

Section 4(f) of the Federal Transportation Act allows the Secretary of Transportation to approve a federal highway project using the land of a public park, recreation area, wildlife refuge, or historic site *only if* “(1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” 49 U.S.C. § 303(c). Section 4(f)(1) requires that the Secretary must make a finding that no feasible or prudent alternatives to the use of Section 4(f) lands exist. If the Secretary determines that there are no feasible or prudent alternatives to using Section 4(f) property for the Project, the Secretary must then comply with the mandate of Section 4(f)(2) to minimize harm to parks and historic sites. This requires “a simple balancing process which totals the harm caused by each alternate route to section 4(f) areas and selects the option which does the least harm.” *Druid Hills Civic Ass’n, Inc. v. Fed. Highway Admin.*, 772 F.2d 700, 716 (11th Cir. 1985).

In this case, the use of Pond Cypress Natural Area land will be necessary to build the straight bridge crossing over the M-Canal, thus triggering the requirement for a Section 4(f) review by the Secretary. Given the discussion of several feasible and prudent alternatives (other corridors to the west), the Secretary will not be legally able to conclude that there are no other feasible and prudent alternatives. Any efforts to declare this park land use as *de minimis* use would contravene established law and would be met with immediate legal action.

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<sup>1</sup> Uses.—It shall be mandatory that the City of West Palm Beach retain in perpetuity full ownership and control and shall not lease or grant any license for any part of the water catchment area which is inconsistent with water supply, environmental, educational or conservation purposes, including, but not limited to, environmental mitigation.

Accordingly, the mandates of Section 4(f) of the Federal Transportation Act render the preferred alternative impracticable.

### **3.3 Visual/Aesthetic**

The PD&E Study concludes that visual and aesthetic impacts would be minimal along the Project corridor north of Persimmon Blvd. “as existing visual barriers along residential borders would remain in place.” PD&E Study at 93. The visual and aesthetic impact of the Project on the Preserve is completely ignored. At page 4 of the ESBA, FDOT states its plan to remove exotics within the Project right of way. However, those exotics are the primary visual and aesthetic barrier that would exist between the Project and Grassy Waters Preserve. The conclusion that visual and aesthetic impacts would be minimal is specious as it concerns the Preserve.

The Service, in its February 29, 2012 letter to the Department noted the obvious: “Constant noise from motor vehicles using the new road will also reduce the aesthetic value of the Pond Cypress Natural Area and Grassy Waters Preserve.” *See* Letter at p. 4. It is unclear why the PD&E Study did not reach that conclusion.

### **3.4 Air**

Air quality analysis was conducted exclusively for the intersection of SR 7 and Okeechobee Blvd, as it was identified as the intersection with the highest vehicle traffic. It was found that the expected carbon monoxide emissions at that intersection will not exceed National Ambient Air Quality Standard. However, no analysis was undertaken of the impact of vehicular emissions on the pristine Water Catchment Area. It cannot be disputed that increasing exhaust levels will have an impact on the threatened and endangered species in the Preserve, and that some of the additional emissions will find their way in the City’s potable water supply. The PD&E Study is flawed because it fails to consider the Project impacts on air quality and eventual water quality in the Preserve.

### **3.5 Noise**

The noise analysis of the PD&E Study and its underlying Draft Noise Study Report (“DNSR”) is particularly inadequate. As the U.S. Fish & Wildlife Service noted in its February 29, 2012 letter: “Constant noise from motor vehicles using the new road will also reduce the aesthetic value of the Pond Cypress Natural Area and Grassy Waters Preserve.” *See* Letter at p. 4. Yet, the DNSR identifies exclusively residential areas in the southernmost portions of the Project as being impacted by noise. The Study and the DNSR completely ignore the fact that the Project will run along one of the most serene preservation areas, where quietness is essential to the preservation of endangered species. Moreover, visitors to the Preserve enjoy and expect the natural quiet and serenity in the Preserve, and additional road noise would adversely affect the quality of the experience of visitors to the Preserve.

23 C.F.R. 772 states that “[n]oise impacts occur when the predicted traffic noise levels approach or exceed the noise abatement criteria levels, or when the traffic noise levels substantially exceed the existing noise levels.” The PD&E Study concedes that the noise levels for this Project range between 46.2 and 62.7 dBA.

### **3.5.1. Applicable noise criteria**

FDOT and FHWA have established a criterion for what they identify as Category A land, which includes exterior spaces “on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of these qualities is essential if the area is to continue to serve its intended purpose.” See PD&E Manual, Part 2, 17-5.5.1. The Preserve fits that definition, so that Category A noise levels apply to it. See Siebein Associates, Inc. – *Environmental Acoustic Assessment for the Expansion of SR 7 at the Grassy Waters Preserve, West Palm Beach, Florida*, March 6, 2012. The PD&E Study and DNSR only apply Category B and C levels. However, FDOT acknowledges that 56 dBA is the sound level limit that applies to Category A lands.

FDOT has a criterion level that future noise impacts from road construction cannot exceed 15 dBA above existing ambient sound levels. A study conducted by the City found sound levels from 28 to 48 dBA in areas of Grassy waters removed from current roads, such as Northlake Boulevard. Levels measured at 150 feet from Northlake Boulevard throughout the day varied from 48 to 68 dBA. See Siebein Report. This 20 dBA increase is well beyond the 15 dBQA limit provided by FDOT regulations.

A substantive body of literature regarding the effects of traffic noise on wildlife, particularly birds, indicates that wildlife refugia such as Grassy Waters Preserve are particularly sensitive to noise impacts. Research sponsored by major transportation authorities has suggested that a criterion level of 50 dBA be applied to minimize interference with communication among birds of all types. See Siebein Report. Noise levels in excess of 50 dBA can mask or interfere with the detection of biologically relevant sounds, such as mating calls. Moreover, excessive noises have behavioral and psychological effects in birds as they sense that due to the noise, they may not be able to detect approaching predators. *Id.*

The U.S. Environmental Protection Agency (EPA), the World Health Organization (WHO) and other standards bodies and government agencies provide noise criteria for residential and natural preserve areas. The World Health Organization (WHO) includes a land use category of outdoors in parkland and conservation areas where the critical health effect is the disruption of tranquility. WHO assigns a criterion level that states “existing quiet outdoor areas should be preserved and the ratio of intruding noise to natural background sound should be kept low.” WHO also assigns criteria to outdoor living areas with critical health effects described as serious annoyance, day time and evening with a maximum level of 55 dBA over 16 hours; and moderate annoyance, daytime and evening with a maximum level of 50 dBA over 16 hours.

**3.5.2. Expected noise levels as applied to criteria**

Pursuant to the DNRR, sound levels under the build alternative are expected at 53.2 to 66.8 dBA, well beyond the 56 dBA permitted for Category A lands. However, the DNSR and the PD&E Study do not address noise impacts for any of the build or no-build options for the Project on the Preserve. A review of the DNSR (Section 4.2) shows that not a single noise reading was conducted in the Grassy Waters Preserve.

However, the study conducted for the City by Siebein Associates, Inc. did conduct noise studies in the Preserve. See Figure 1 of Siebein Report. The study conducted by Siebein Associates found sound levels as high as 74 dBA near Northlake Boulevard. Siebein & Associates determined that noise levels in portions of the preserve will increase to levels beyond the 56 dBA acceptable for Category A lands on approximately 358 acres, and beyond the 50 dBA threshold on about 605 acres. The expected increase as a result of the additional traffic levels on the road will exceed the acceptable 15 dBA on approximately 307 acres, exceeding EPA and WHO criteria as well.

**3.5.3 Noise mitigation measures**

The inclusion of an 8'-0" to 12'-0" tall noise barrier along the eastern side of the Project would reduce traffic noise levels to the FDOT Category A criterion of LAeq 56 dBA. To reduce traffic noise levels to the recommended LAeq 50 dBA criterion, the proposed noise barrier height would have to be increased to approximately 16'-0" to 25'-0" tall as shown in Table 7 of the Siebein Report. Because the PD&E Study and the DNSR did not address noise barriers protecting the sensitive environmental areas, the City has conducted its own analysis of such measures. Below is a cost calculation for eight possible scenarios depending upon speed, barrier placement and noise level to be met. The PD&E Study assumes construction of only 1600 linear feet of noise walls. In order to protect the serenity and quiet of the sensitive habitat for the endangered species discussed below, several additional miles of noise walls will be necessary.

<b>TOTAL PROJECTED NOISE BARRIER WALL COSTS</b>						
<b>SCENARIO</b>	<b>SPEED</b>	<b>BARRIER LOCATION</b>	<b>CRITERIA LEVEL</b>	<b>SIEBEIN COST</b>	<b>FDOT COST</b>	<b>TOTAL COST</b>
1	45	100' FROM EDGE	56 dBA	\$11,940,000	\$738,720	\$12,678,720
2	45	10' FROM EDGE	56 dBA	\$9,552,000	\$738,720	\$10,290,720
3	55	100' FROM EDGE	56 dBA	\$14,328,000	\$738,720	\$15,066,720
4	55	10' FROM EDGE	56 dBA	\$11,940,000	\$738,720	\$12,678,720
5	45	100' FROM EDGE	50 dBA	\$23,880,000	\$738,720	\$24,618,720
6	45	10' FROM EDGE	50 dBA	\$19,104,000	\$738,720	\$19,842,720
7	55	100' FROM EDGE	50 dBA	\$29,850,000	\$738,720	\$30,588,720
8	55	10' FROM EDGE	50 dBA	\$23,880,000	\$738,720	\$24,618,720

See John M. Donaldson, P.E., PTOE Report. As is readily apparent, the additional cost of noise mitigation toward the Preserve areas adjacent to the currently proposed alignment for the Project will be between \$9 million and \$30 million, none of which is accounted for in the PD&E Study. Because the Study fails to address and account for the cost of noise mitigation toward the Preserve and the Pond Cypress Natural Area, the analysis undertaken is incomplete and inadequate.

The berm or barrier wall height required to achieve traffic noise levels similar to the existing condition at areas of the site that currently have no existing roadway would be impractical if even possible to achieve. Accordingly, if the build alternative is selected, at the very least, a 8' to 12' tall noise barrier must be included along the eastern side of the Project area, and preferably a 15' to 16' barrier. The PD&E Study as drafted completely ignores these impacts and the need for noise abatement, and is therefore inadequate.

### **3.6 Impact On City Water Supply**

#### **3.6.1 Impacts from potential contaminations**

The Project is proposed to be constructed immediately adjacent to the Preserve, also referred to as the City's Water Catchment Area. The Water Catchment Area functions as the City's (and several other communities') drinking water supply. It is classified as a Class 1 water body, which is the highest and most stringent water quality standard for surface waters of the state. According to the Florida Department of Environmental Protection, Southeast District Surface Water Quality Section (FDEP), the Water Catchment Area "is a 'pristine' (i.e., 'belonging to the earliest period or state, uncorrupted by civilization, innocent, free from decay, fresh and clean' – Webster's Collegiate) remnant of the original Everglades." See FDEP *Ecosummary*, June 2004.

The M-Canal, also a Class 1 water body, provides a connection between the Water Catchment Area/Preserve and Lake Okeechobee by means of the L-8 tieback and L-8 canals. Water from the L-8 canal is pumped upward to the M-Canal (a higher elevation), which then flows through the Preserve and then east to Lake Mangonia and Clear Lake, concluding at the City's water treatment plant. FDEP initiated monthly sampling in the Preserve beginning in January 2004. FDEP's preliminary findings indicate that "the water quality within the interior of the marsh is clean, clear, and extremely low in nutrients, i.e., the scientific data so far collected shows that the interior of Grassy Waters is in fact characteristic of a pristine Everglades remnant." Significantly, water from the Preserve can also flow north by gravity to the Loxahatchee Slough and C18 Canal (and from there to the Loxahatchee River). See FDEP *Ecosummary*, June 2004. Contamination of the M-Canal would mean contamination of the Preserve, and vice versa.

The PD&E Study and corresponding documentation in no way address the impact the

Project will have on the Water Catchment Area/Preserve as a source of potable water for over 130,000 Palm Beach County citizens. *See* PD&E Study at p. 91. Choosing instead to focus on primary impacts of construction activities, the PD&E Study is silent on the impact of additional vehicular traffic attracted by a new four to six lane highway next to this pristine area. Not only will vehicular emissions, in the form of fallout bound by rain and runoff from road-tops through swales into the Ibis Preserve, find their way into the Water Catchment Area and from there into the City's drinking water supply during normal operation of the road, but with the increased truck traffic crossing the M Canal and proceeding along the very edge of the Preserve, there will be the potential for a calamity of cataclysmic proportions under certain conditions.

Studies commissioned by the City indicate that if an oil tanker were to crash and spill its load on the bridge, oil seeping through the bridge structure into the M-Canal would rapidly and permanently poison the water well for a good part of Palm Beach County. The contamination with carcinogenic and otherwise toxic substances in such a case could be expected to completely eliminate the M-canal water as potable water source for the City for a long time. *See* Cardno Entrix Study, to be provided separately. That eventuality might seem to be remote until one considers that the road is making an approximate 200-degree turn at this most exposed point where the Water Catchment Area, the Pond Cypress Natural Area and the M-Canal meet, and that the bridge, regardless of the strength of its railings, could not contain a major liquid spill. The calamity represented by such an accident is comparable, if not in scale in severity, to the BP New Horizons Gulf of Mexico disaster, which nobody thought possible. Indeed, the PD&E Study seems to acknowledge this concern in passing when it recommends use of stronger than normal bridge railings, which should be "considered when a vehicle penetrating or overtopping the traffic railing would cause a high risk to the public or surrounding facilities." PD&E Study at p. 25. Of course, no matter how strong railings are, they could not prevent in the case of an accidental spill the flow of contaminants through cracks and fissures into the Preserve or the M-Canal.

The City has commissioned a study that demonstrates what would happen if an accidental discharge occurred. The poisoning of the City's potable water supply under those circumstances would be accompanied by the permanent destruction of part or all of 12,800 acres of pristine habitat of some highly endangered species. Yet, the PD&E Study does not contain any discussion or consideration of how it would effectively respond to such an accidental spill. Moreover, it does not appear that the agencies have conducted any analysis of the nature of truckloads likely to be transported in the immediate vicinity of the Water Catchment Area, and whether a spill could be directly or indirectly be discharged into the sensitive water courses abutting the project area. Nor is there any indication in the PD&E Study of how surface run-off and exhaust discharges will impact the water quality in the Water Catchment Area. Accordingly, the PD&E Study is fatally flawed.

### **3.6.2 Impacts from loss of water storage capacity**

While the Project is proposed to be constructed on existing rights of way along the west

side of the Water Catchment Area and not inside the WCA, these areas are hydrologically connected to the WCA and represent approximately 1% of the WCA's water storage capacity. Redirecting storm water westward away from the catchment represents a loss of 488,777 gallons of water storage. As water shortage years such as 2011 demonstrate, the health and capacity of the WCA is essential to water supply for the entire region. At the most dire times in 2011, which can be expected to recur more frequently as alternative water sources dwindle, the Water Catchment Area was one of the last remaining reservoirs of fresh water for humans, flora, and fauna in the region. Any project that reduces the water storage capacity of the WCA is detrimental to the public interest and should not be built.

### **3.7 Wetland Impacts**

The PD&E Study calculates that the proposed SR 7 extension will have both direct and secondary impacts on approximately 114.5 acres of wetlands. An additional, approximately 8 acres will be impacted with the straight bridge crossing over the City's M-Canal, which is a virtual necessity since the rights of way do not exist for the skewed bridge crossing. Note that the land use of a skewed bridge crossing would be incompatible with the legislative purpose of the Grassy Waters Preserve, so that the City could not agree to requests for easements even if it were in favor of the Project. *See* discussion above at Section 3.1. FHWA has determined that the straight bridge crossing would constitute a Section 4(f) use of the Pond Cypress Natural Area, a preserve and wildlife refuge owned by Palm Beach County. *See* PD&E Study at pp. 55, 91. The proposed M-Canal skewed crossing requires acquisition of land over the M-Canal from the City, as well as removal and reconstruction of Control Structure No. 3, a major utility that is not identified in FDOT's environmental assessment or its budget. The Water Catchment Area is protected by special act of the Florida legislature, which requires the City to retain the Water Catchment Area in perpetuity and prohibits the transfer of any WCA lands for purposes inconsistent with public water supply, education, environmental and conservation purposes. Clearly, construction of a road threatening the very functions of the land to be protected is not one of the purposes for which easements may be granted.

#### **3.7.1. Mitigation options**

The PD&E Study's discussion concerning mitigation is insufficiently detailed, and the mitigation information contained in the Wetland Evaluation Report ("WER") is inadequate. *See* Letter from USFWS to FDOT of February 29, 2012. The Letter makes it clear that "[t]he Service does not have enough information to provide concurrence or non-concurrence with the FDOT's determination [concerning mitigation for loss of Wood Stork habitat] at this time." Letter at p. 4. The Letter also challenges FDOT to "provide a detailed habitat compensation plan indicating how the FDOT intends to minimize the project's adverse impacts on the snail kite," and "to provide a detailed wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project." It is inexcusable that such plans are not contained in the PD&E Study and its supporting documentation. Clearly, the PD&E Study as presented does not permit informed decisions by the public or the agencies as to whether mitigation is even an

option – not to mention an affordable option for this Project.

Wetlands adjacent to the Project are considered “moderate to high” quality per the Uniform Mitigation Assessment Method (UMAM). Grassy Waters has a Class I Outstanding Florida Waters designation. Additionally, the FWC provided Environmental Screening Tool (EST) comments stating that the effects to wildlife and habitat under the proposed work plan would be “moderate”. During the ETDM process, the USACE and FDEP both ranked wetland involvement for this corridor as “substantial,” and expressed concerns about habitat fragmentation, isolation of the Ibis Preserve, and providing adequate mitigation for impacts to forested wetlands.

Primary proposed direct wetland and surface water impacts within the proposed ROW are estimated in the PD&E Study to be 112.46 acres: 111.82 acres of wetland impact and 0.64 acres of surface water impact. The wetland impacts will result in 86.24 units of UMAM Functional Loss. Additional direct wetland impacts associated with construction of the straight bridge crossing of the M Canal equal 8.02 acres, or 6.54 units of UMAM Functional Loss. Secondary direct impacts associated with the alignment and intersection alternatives will result in 8.54 units of UMAM Functional Loss. Additional secondary wetland impacts associated with construction of the straight bridge crossing of the M Canal equal 0.28 units of UMAM Functional Loss. It is indisputable that these wetlands, particularly in the Pond Cypress Area and the Preserve, provide a high level of ecological services and are extremely important foraging habitats for wading birds and Snail Kites. Wood Storks and Snail Kites have documented, active nesting colonies and locations, respectively, in the immediate ROW project area. There is no indication in the PD&E Study that anticipated wetland mitigation resulting from construction *and operation* of this project will satisfy all mitigation requirements of Part IV, Chapter 373, F.S. and 33 U.S.C. §1344. Yet, the PD&E Study proposes to deal with all “secondary impacts” – i.e., the real impacts from operation of the four to six lane highway – with as yet undefined mitigation.

Of the 14 tabulated mitigation options provided (WER at p. 56), only the first entry, called “Rangeline,” represents mitigation directly within the wetlands potentially affected by the SR 7 extension. However, mitigation in Rangeline provides insufficient ecological lift to be significant. All of the other options would essentially represent an unacceptable fragmentation of wetland values. Mitigated wetlands are required to be located in a manner as to maintain continuity to Grassy Waters. Mitigated wetlands are required to match the habitat type, plant community assemblages, and hydrology of the impacted wetlands, which is not the case for any of the proposed options other than Rangeline. More importantly, all options (except Rangeline) are either too far away or are inappropriate to compensate for specific impacted wetland values. The Pond Cypress Natural Area has already been used for mitigation for other projects, and will not be available to provide the entire mitigation necessary to compensate for the loss of wetlands and habitat for the Snail Kite, Wood Stork and other species. This general flaw also applies to consideration of the possible use of Corbett Wildlife Management Area for mitigation, recently proposed as an additional option.

At least the most promising mitigation options should have more detailed information, including their ecological relationship to the impact site, intervening distances and land uses, and appropriate maps that show the geographic relationships of the impacted land and potential mitigation areas. The tabulated information and related report text are vague and too abbreviated for reasonable, or even general, evaluation. Moreover, some of the preliminary work necessary for an adequate mitigation analysis, such as a referenced wood-stork prey biomass analysis, have not even been conducted, yet. The current FDOT mitigation plan for this requirement is shown as ‘NOT DETERMINED,’ and this despite the fact that such mitigation will be absolutely required if the Project proceeds as proposed. The PD&E Study proposes to deal with all impacts of operation of the Project with mitigation, but much of the mitigation discussion has been postponed until after the public hearing, which prevents an informed public discourse or checks and balances on the mitigation process.

Because of the exceptional ecological values of the remaining parts of the Loxahatchee Slough, impact and mitigation requirements measured by the Uniform Mitigation Assessment Method (UMAM), as proposed for this Project, may not even be adequate. *See* T.E. Lodge Ecological Advisors, Inc., analysis of March 15, 2012, P. 5 of 11. While UMAM is a useful tool for many projects, it does not recognize and capture the importance of contiguous spatial extent and the potential loss of value that may be caused by approaching lower-limit habitat thresholds that have been recognized for many species such as the Snail Kite (Martin et al. 2006). In this regard, even the potential use of enhancement within the Pond Cypress Natural Area (the ‘‘Rangeline’’ option), while beneficial to wetland integrity, would still result in a net loss of spatial extent. In addition, the wetland value of Pond Cypress Natural Area is already so high that it provides insufficient lift to provide adequate mitigation in this case. *See* PD&E Study at p. 98.

The Project alignment next to productive wetlands where high-speed traffic will be in proximity to species vulnerable to vehicular collision makes mitigation nearly impossible. *See* T.E. Lodge Ecological Advisors, Inc., analysis of March 3, 2012, P. 5 of 11. From the existing north end of SR 7 at Persimmon Blvd., the proposed new alignment of SR 7 going eastward along the M Canal and then northward to North Lake Blvd. will expose wildlife to vehicular traffic at higher speeds and closer distances than exist now. Particularly avian, mammalian, reptilian and amphibian species cannot be excluded from the Project area, and vehicular deaths are unavoidable. This problem is especially significant along the corridor segment bordering the M-Canal and continuing north to and along the Ibis Golf and Country Club where no road currently exists, and then along Ibis where significant intervening barriers now lie between existing vehicular traffic and the Grassy Waters Preserve. The value of the existing protective barriers for wildlife species such as the Wood Stork, Snail Kite, Florida Sand Hill Crane and the Eastern Indigo Snake will be compromised. The proposed mitigation options, to the extent they are even capable of intelligent analysis as represented in the WER, are entirely inadequate to account for the severe secondary impacts (i.e., impacts from operation of the new highway) of this Project.

In general, analyses of the success of wetland mitigation in offsetting wetland impacts have found that most projects are not providing the goal of “no net loss of wetlands” as required under the Clean Water Act. Numerous mitigation examples involve freshwater marsh and swamp communities (National Research Council 2001, Pittman and Waite 2009). As such, mitigation should be avoided whenever possible if a highly valued wetland resource is involved, such as here. Moreover, mitigation is of doubtful effectiveness if some of the mitigation land is later used for development, anyway, as the PD&E Study seems to indicate for the 7.3 acres of Pond Cypress land needed to build the straight bridge approach to the M Canal crossing. *See* PD&E Study at p. 55: “This section of the Pond Cypress Natural Area also serves as mitigation for the County’s two-lane extension of SR-7.”

As indicated above, the mitigation costs for the proposed Roebuck Road extension more than doubled the estimated cost of that project. Yet, the PD&E Study does not even attempt to quantify the cost of mitigation prior to the public hearing on the selection of Corridor 3. It would seem impossible for any observer to make an informed decision as to whether the currently proposed preferred alternative is the best and most cost effective alternative.

In sum, the mitigation section of the PD&E Study is not sufficiently detailed, and flawed at that. The fact that FDOT has been unable to advance any plan that properly mitigates the high quality wetland losses and services expected in the Project (i.e., foraging habitat loss, continuity, plant community assemblage, prey biomass) mandates against Project implementation. The Department is urged to heed the warnings of the U.S. Fish & Wildlife Service, who opposes any project corridors along Grassy Waters Preserve. Clearly, the Service has the expertise to determine whether federally endangered species are adversely impacted by the Project, and its determinations are to be afforded great deference. The Service’s warnings against construction of the Project in this location provides a backstop that will be used by all those opposing the project to seek redress if this Project is approved without proper mitigation analysis.

### **3.8 Water Quality**

Water Quality consultants Environmental Research and Design have warned the City against the impacts of the Project on water quality. *See* ERD Technical Memorandum dated March 19, 2012. Initially, ERD found that the PD&E and supporting documents do not reflect design criteria or calculations to assess the adequacy of the proposed stormwater management system under SFWMD design criteria. ERD found that while the proposed alignments are not expected to discharge directly into the Preserve, lateral ground water discharges from the Project area to the Preserve could not be eliminated considering the highly permeable nature of the subsurface strata in this area, if there is a pressure gradient between the proposed swales and the Preserve itself.

According to FDEP (June 2005), water within the Grassy Waters Preserve is oligotrophic, i.e. characterized by extremely low levels of total phosphorus, with mean concentrations at seven

water quality monitoring sites ranging from 0.007-0.026 mg/l (Parts per billion, ppb) over the period from January 2004-March 2005 (excluding measurements which were collected directly from the M-Canal). The Preserve also has low to moderate total nitrogen levels. The foregoing indicates that water in the Preserve is highly phosphorus-limited, so that inputs of phosphorus into the system can rapidly stimulate additional algal productivity. Potential seepage from the swales to the Preserve could contain higher phosphorus levels, with additional phosphorus being added to the Preserve over time. As a result, the Grassy Waters Preserve appears to be highly susceptible to additional phosphorus loadings which could potentially cause additional algal production and even a change in species to cyanobacteria which would significantly impact the suitability of the preserve for its intended use as a potable water supply. Higher phosphorus concentration over time would also lead to a change in periphyton communities, and eventually could completely change the floral communities in the Preserve to favor such invasive species as cattail, which has created devastating mats of monoculture in large swaths of Everglades lands, such as the area west of the S-9 pump in suburban Broward County.

A further potential is for airborne contaminants from the new four-to six-lane highway being added to the Preserve. The proposed SR 7 extension is a designated trucking route which will be used to transport a wide range of cargo, including cargo which could contain elevated phosphorus (such as fertilizers, soils, cement mixes, and other similar materials). Deposition of these materials into the Preserve over time could further increase phosphorus concentrations and stimulate algal growth.

The PD&E Study fails to adequately articulate such threats, and thus does not properly assess the impacts of the Project on Water Quality in the Project area and in the Preserve.

### **3.9 Contamination**

As indicted above, the City has commissioned a study to determine the potential impacts from a major gasoline tanker spill on the City's Water Supply. See Cardno Entrix Study of March 20, 2012. One of the concerns raised by both residents and regulatory agencies early during the evaluation process for the SR 7 extension is the potential for contamination of the Grassy Waters Preserve by a spill of material on the roadway as a result of an accident or equipment failure. Even the FDOT acknowledges this concern to the drinking water in a Powerpoint presentation. However, FDOT's analysis of the impact of a spill in that presentation is entirely superficial, and concludes that spills on the roadway will simply be collected in the curb and gutter system and directed into the dry retention and wet detention treatment areas and eventually cleaned up by state and local responders. This type of cursory analysis and subsequent dismissal of the issue as insignificant is clearly inappropriate given the level of significance of the Grassy Waters Preserve and its importance as a potable water supply for over 130,000 residents in Palm Beach County. No alternative long-term solution is available to replace the Preserve as the water source for 130,000 Palm Beach County citizens. The Cardno Entrix study indicates that a major oil tanker accident with a gasoline spill at the M-Canal bridge would

poison the drinking water supply with carcinogen levels of up to 19 times above background, with toxins at levels far exceeding EPA limits. For practical purposes, an accidental discharge of pollutants from the road into the M-Canal could mean the loss of drinking water for more than one hundred thousand Palm Beach County residents.

Moreover, spills along the SR 7 segment along the Preserve may not be entirely contained in the swale, as the PD&E Study seems to suggest. While minor spills may remain within the dry and wet detention ponds, spills from major accidents onto the edge of the Preserve could have a devastating impact. *See* ERD Report. The opportunity for this type of incident appears to be greatest with the eastern and center alignments, which for this reason alone should be eliminated from consideration. It should also be noted that the drainage system discussed in the PD&E Study includes the possibility of discharges from the swales to wet detention ponds, the Ibis Preserve, and from there during major storm events to the Grassy Waters Preserve. *See* discussion of drainage issues, above. The consequences of contamination via the surface drainage system would be devastating to the Preserve. The ERD analysis found that water quality standards in the Preserve would be violated with the addition of as little as 53 kg of ammonia or 26 kg of arsenic. The addition of as little as 20.3 grams of beryllium, or approximately one pound of cadmium or carbon tetrachloride would eliminate the Preserve as a water source. *See* ERD Report. Based on the possibility of water quality violations in the Preserve as a result of the addition of relatively minor quantities of pollutants, the potential and the effects of contamination should have been analyzed in a far more comprehensive manner than the cursory FDOT Powerpoint presentation.

With the benefit of hindsight to such events as the Gulf of Mexico New Horizons oil spill, there is no excuse for the cavalier treatment contamination risks receive from FDOT in the PD&E Study. As we have learned in the recent past, our natural resources must be protected with greatest care, and any projects that give additional access to the nation's water and food supply should be viewed with great skepticism. The PD&E Study fails in this regard.

### **3.10 Wildlife & Habitat**

All projects that have a significant impact on the human environment require an Environmental Impact Statement ("EIS") pursuant to 23 CFR 771. While the PD&E Study contains statements, contrary to all evidence, that this project is not expected to cause primary impacts, it is only clever word-use – the designation of construction-related impacts as "primary" and road-operation related impacts as "secondary" – that lets the FDOT make these claims. It is patently obvious that this Project will be located adjacent to perhaps the most sensitive wetlands area in the entire region, and will have extensive adverse impacts on those wetlands. The conclusory statements that the project may, but is not likely to affect endangered species, violates the requirements of the National Environmental Policy Act ("NEPA"). According to the Department's own PD&E Manual, projects that do have a significant environmental impact should address all environmental issues identified during the PD&E Study phases. (Manual at 4-

2.9.2). In this case, the analysis does not adequately consider the likely impacts of road construction and road operation on endangered species, and thus does not comply with the legal requirements.

Because the PD&E Study considers only construction-related impacts to be primary or direct impacts, it states that “[n]o direct impact is expected within Grassy Waters Preserve.” PD&E Study at p. 91. However, it is obvious that the real impacts of concern here are the impacts resulting from the operation of the four to six lane highway immediately adjacent to the Preserve. Thus, calling those impacts “secondary,” and reviewing them minimally or not at all, renders the PD&E Study fatally flawed. The primary concern should have been the impact of the Project once constructed, yet the PD&E Study deals with those effects as an afterthought. Its determination that “no direct impact is expected within Grassy Waters Preserve” is nearly meaningless, and merely designed to sway public opinion, rather than to make a bona-fide determination of how the highway to be built will impact the wetland areas. This clever limitation of detailed review to primary – i.e. construction-related impacts – lets FDOT avoid consideration of the impact of highway traffic proceeding through no-entry buffer zones of Everglade Snail Kite nests, but it makes the entire analysis virtually meaningless. This practice represents an example of improper segmentation of project analysis, which is prohibited by law. *See, e.g., Florida Wildlife Federation v. U.S. Army Corps of Engineers*, 401 F.Supp.2d 1298, 1316 (S.D.Fla. 2005).

The U.S. Fish & Wildlife Service clearly rejects this notion of designating impacts from the operation of the road as secondary. In its February 29, 2012 Letter it notes that “disturbance will result from construction-related activities *and* motor vehicles and human activity on the roadway following construction.” Letter at p. 3 (emphasis added). The Service acknowledges that the impacts of this Project once built will substantially impair the ecological function and integrity of the wetlands along the proposed corridor both temporarily (during construction) and permanently (during operation of the new four to six lane road). In truth, permanent direct impacts are the unacceptable loss of contiguous habitat by the proposed SR7 extension. They include habitat fragmentation (the separation of the Ibis Preserve from the Pond Cypress/Grassy Waters areas). *See* Analysis of Thomas E. Lodge Ecological Advisors, Inc., attached hereto. Permanent secondary impacts of high-speed traffic include increased vehicular impact fatalities as a result of the new 5.1 miles of four- to six-lane roads immediately adjacent to sensitive wetlands, as well as degradation of wetland values throughout the Preserve and the Pond Cypress Natural Area as a result of emissions of all kinds from vehicular traffic (noise, exhaust, lights, etc.).

The PD&E Study’s analysis of Wildlife and Habitat issues are based upon an ESBA, which itself is deeply flawed and apparently biased. Particularly the analysis and conclusions related to the endangered Everglade Snail Kite are incomplete, unscientific and incorrect. Besides containing the specific flaws and shortcomings discussed below, many of which by themselves render the analysis legally inadequate, the ESBA demonstrates an overarching tendency to brush off all potential impacts as insignificant, with the obvious goal of seeing the

Project built at any cost. It accomplishes that goal by focusing primarily on construction-related impacts, rather than the more severe operations-related impacts.

### **3.10.1. The impacts on the Everglade Snail Kite are not adequately analyzed**

The Everglade Snail Kite (*Rostrhamus sociabilis plumbeus*) is a critically endangered species. The presence of such large numbers of these endangered birds as are found at Grassy Waters Preserve is remarkable. Snail Kite numbers have declined precipitously in recent years, and population counts have dropped to as few as 700 birds throughout the range in recent years, rendering the survival of the species questionable. Given that this species is in decline, and Grassy Waters supports breeding snail kites, it is essential that we preserve Grassy Waters in support of the snail kite recovery.

U.S. Fish and Wildlife Service (USFWS), in its Everglade Snail Kite Quick Facts, notes that snail kites “regularly occur in the expansive marshes of southern Florida such as Water Conservation Areas 1, 2 and 3, Everglades National Park, the upper St. John’s River marshes, and Grassy Waters Preserve.” USFWS also notes that “kites will generally stay in one area as long as they can find food (apple snails), but will seek another wetland that has food available if foraging conditions decline.” The key to managing Everglade snail kites, according to USFWS, is “maintaining suitable habitat. This includes both nesting and foraging habitat.” See USFWS Quick Facts. In its February 29, 2012 letter to FDOT, the Service stresses that the Snail Kite Population is “precariously small,” and finds that “the project will likely adversely impact the snail kite.” The Service out and out rejects the FDOT’s determination of no likely impact. Instead, the Service recommends that FHWA initiate formal consultation with the Service concerning the Everglade Snail Kite in accordance with 50 C.F.R. 402.14. Given that such consultation is to be initiated “at the earliest possible time,” FDOT should not wait to see whether FHWA heeds the Service’s request. As part of that consultation, the agency has the obligation to provide the best scientific data, which did not happen in this case. See comments in Darby Report, that FDOT did not rely on any peer-reviewed publications, and limited itself to three publications out of some 80 existing publications on the Everglade Snail Kite.

In its February 29, 2012 Letter, the Service states: “Please provide a detailed habitat compensation plan indicating how FDOT intends to minimize the project’s adverse effects to the snail kite.” The lack of such a plan at this time is an insurmountable roadblock for this Project to proceed. If FDOT does not stop the Project, it proceeds at its own peril to waste taxpayer funds without adequate environmental review.

FDOT acknowledges for the Preserve that “ample suitable habitat and potential prey (native apple snails) have been observed.” PD&E Study at p. 105. While FDOT observed four nesting sites in the immediate proximity of the Project area during its field survey, the annual survey conducted by USFWS and the University of Florida in January 2011 actually observed numerous additional snail kite nesting sites in the Preserve. See Snail Kite nesting map. The number of Snail Kites in the Preserve is especially important to note given the declining numbers

of Snail Kites over the entire range.

As the PD&E Study properly recognizes, the entire Project is located in the Consultation Area for the Everglade Snail Kite. In fact, the Project will run straight through the No Entry buffer zone and Limited Activity Buffer Zone for one nest, and the Limited Activity Buffer Zone of three additional nests. *See* Figure 6-4. While the ESBA and the PD&E Study brush aside that fact with the argument that construction would not take place during nesting season and that Snail Kites tend to build their nests in different locations from one season to the next, there is an acknowledgment that the four nests have been in this location for several years (p. 53). Moreover, it is ludicrous to suggest that a four-lane highway built within 162 feet of the preferred habitat of one of the most direly endangered foraging birds is not likely to impact the bird, before, during, or after nesting season. This is a textbook situation where NEPA requires an Environmental Impact Statement, and the Endangered Species Act (“ESA”) requires initiation of consultation.

The PD&E Study and the ESBA completely ignore the impact of expected four- to six-lane highway traffic in a No Entry Buffer Zone for the Snail Kite by focusing exclusively on construction activity. Quite simply: if construction activities are not permitted during the nesting season, vehicle driving activities are not permitted, either. This means that the road, once built, would have to be later closed for significant portions of the year. The PD&E Study and ESBA seem to presume that the Snail Kites will nest elsewhere in future seasons. While that may be true, those other locations may again be within the No-Entry Buffer Zone or the Limited Activity Buffer Zone. Moreover, the PD&E Study and the ESBA completely ignore any significance of the Limited Activity Buffer Zone, and seem to assume that vehicular traffic through these zones will not have any adverse impact of the Snail Kites nesting there. The ESA under the circumstances prohibits any adverse impacts on endangered species, such as the Snail Kite, and adverse impacts on habitat are within the ambit of the ESA prohibitions.

The ESBA’s analysis of the Snail Kite issues is flawed in many additional ways (*see* report of Phil Darby, Ph.D., plus supporting documentation):

- The ESBA does not address the critical importance of Grassy Waters Preserve as a refuge for Everglade Snail Kites when other critical wetlands (e.g., Water Conservation Areas – WCAs – in the Everglades) run dry. Under such conditions, Grassy Waters Preserve, with its carefully regulated water depths, becomes a Noah’s Ark for the survival of this endangered species. Any negative impact on the Snail Kite population in Grassy Waters is therefore magnified within the context of the struggle for survival of this species as a whole. *See* Darby Report at p. 5.
- The ESBA does not address the cumulative impacts of the Project on Grassy Waters as part of a regional network of wetlands necessary for the survival of the species. As is more fully explained in the attached report of Phil Darby, Snail Kite

ecology and the impact on habitat change cannot be understood at an individual wetland unit level, nor on a seasonal or even annual time scale. Instead, potential impacts of a project must be evaluated cumulatively as part of a network of habitats that, over multi-year-timeframes, are critical to the Snail Kite population. In other words, any impact by the Project on Grassy Waters will reverberate throughout the entire range of the Snail Kite, and will have cumulative adverse effects on the survival of the species. None of this is acknowledged in the ESBA.

- The ESBA does not address the potential impacts of the Project on Snail Kite foraging. As is more fully explained in Professor Darby's report, Snail Kites have been observed foraging miles from their nests. It is undisputed that the Project will cut deeply through the foraging areas of these birds. Professor Darby reports that one of the largest roosts of Snail Kites has been reported in the vicinity of Grassy Waters, and Snail Kites have been observed leaving the roost and flying west to forage. Darby Report at p. 5. Clearly, the Ibis Preserve provides foraging territory for the Kites, and the Project as proposed cuts like a machete through this area.
- The ESBA does not address the impact of the Project outside the Snail Kite breeding season, despite the fact that the greatest numbers of Kites in Grassy Waters Preserve have been observed during the non-breeding season, when conditions in other habitats such as the WCAs are less than ideal. Clearly, the impact of the Project on Snail Kite habitat is not limited to the breeding season, nor to construction activities during breeding seasons. Instead, an evaluation must be conducted of the impact of a four- to six-lane highway on Snail Kites and their habitat year round.
- The ESBA falsely concludes that the Project "may affect but is not likely to adversely affect the snail kite." While conceding that the Project "may affect" the snail kite if nesting in the current location continues, the study somehow concludes, without any factual support, that nesting near the Project will not continue. Respected ecologist Phil Darby, as well as the U.S. Fish & Wildlife Service, has concluded that the road Project will definitely affect kite nesting and foraging habitat. The ESBA can make the no-impact claim only by the slight-of-hand of focusing solely on construction-related impacts rather than on operation-related impacts. Actually, a careful review of the ESBA dated September 2011 reveals that this conclusion was preordained before the underlying "Wetland-Dependent Bird Survey as they Pertain to the Snail Kite" was concluded. See ESBA at 56 – 58. The ESBA states in shaded type "Draft Summary; may be rewritten after the survey above is conducted." From the tone of the ESBA it is clear that the authors hoped that the Snail Kites nesting near the project area could be made to disappear before operations of the roadway commence, and that the Survey could be made to say what the applicant desires: i.e., no Snail Kite

nesting in the immediate vicinity of the Project area. That approach is unscientific, improper, unbecoming of a State agency, and contrary to Florida and federal law.

Indeed, the type of impact expected by this Project on the Snail Kite is exactly the kind contemplated by NEPA as requiring an Environmental Impact Study. *See* 42 U.S.C. §4332(2)(C), 40 C.F.R. §1502.1. The agency, in this case the FDOT acting on behalf of the FHWA, must take “a hard look at the environmental consequences of the proposed action. *Sierra Club v. Rice*, 295 F.3d 1209, 1216 (11<sup>th</sup> Cir. 2002). In doing so, it must consider the direct, indirect and cumulative impacts of the proposed activities, as well as the significance of those activities on the human environment. 40 C.F.R. §§1508.7, 1508.8, 1508.27(b). A finding of no significant impact (“FONSI”) is permitted only if the proposed action will not significantly affect the environment, 40 C.F.R. §1508.13, and the FONSI determination must be supported by a statement of reasoning and evidence, not merely conclusions. *Hill v. Boy*, 144 F.3d 1446, 1450 (11<sup>th</sup> Cir. 1998). The process of pre-determining the lack of adverse impact before conducting the survey renders the entire ESBA specious. Moreover, the agency action to be considered in this case is not only the construction activity, but operation of the road itself. If the ESBA and the PD&E Study/EA lead to the issuance of a FONSI by FDOT/FHWA, the agency action would be found to have acted arbitrarily and capriciously precisely because the underlying documents contain merely conclusions, and not reasoning and evidence, on many issues.

- The ESBA does not consider the potential impact of road noise or vehicle collisions on the Snail Kites in Grassy Waters Preserve. Both impacts are a distinct possibility and must be considered, given that the Snail Kite is teetering on the brink of extinction. Bennetts et al. (1998) report on vehicle collisions as a cause of mortality for Snail Kites. The ESBA reports that during a limited survey, “snail kites were observed flying over the project area.” The ESBA does not adequately address this possibility, and simply mentions such impacts as secondary, without any indication of how they affect the Snail Kite. Foraging by Snail Kites in this area would dramatically increase the chances of Kites dying from vehicle collisions once the road is completed. *See* Darby Report at p. 7. Those impacts must be spelled out in the Snail Kite section and properly addressed.
- The ESBA contains several fundamental errors that raise concerns over the accuracy and thoroughness of the report itself. This concern is based, in part, on the paucity of literature cited: Only 10 publications are cited in total, and of these only 3 relate to the Everglade Snail Kite. None of these three were peer-reviewed manuscripts. At least 80 peer-reviewed manuscripts and at least 40 technical reports exist on Everglades Snail Kites, most of which were reviewed and relied

upon by Professor Darby, who concludes that the Project will definitely affect the Snail Kite habitat and the endangered Snail Kite itself.

- It is unclear from the ESBA from which publication the Snail Kite census numbers come (reference is made to “nest location data from USFWS 1996 – 2011) (p. 53). There is no indication of the methods used for the count or of the accuracy of such methods. It should be noted that, generally, many nests go undetected in counts. Literature indicates that nest detection probabilities are only 0.16 to 0.35 (*see* Martin et al., 2007), so that the actual numbers of Snail Kite nests in Grassy Waters Preserves may be significantly higher than represented in ESBA. The same is true for the process of detecting adult snail kites in airboat surveys, where detection rates of 0.25 to 0.40 apply. Moreover, keeping track of nests does not adequately reflect the full use of the Snail Kite, as kites in any given day may travel several kilometers between foraging sites, nest sites and roost sites. *See* Darby Report at p. 3. Significantly, Grassy Waters in recent years has supported an increase in Kite nesting, *see* Darby Report at p. 3., which further emphasizes the importance of preserving this refugium without impacts. The ESBA also fails to indicate what the implications are if an area is determined by USFWS to be a Priority Management Area, as parts of the Preserve are.
- The ESBA simply assumes that the currently reported Snail Kite nests in the Project area will be abandoned shortly. There is no factual basis for that assumption. In fact, Snail Kites do exhibit philopatry with regards to nesting, i.e., adult Snail Kites tend to return to the location where they fledged. *See* Darby Report at p. 4. While Snail Kites do not necessarily return to the same exact nest location year after year, the ESBA concedes that the nests currently located in the Project area have been there for several years. Unless aggressive survey methods, a noisy highway, or other noxious conduct displaces these birds, there is no reason why they would not continue to roost in proximity of the current nests.
- The ESBA incorrectly reports that a primary food source for snail kites is the “exotic ramshorn apple snail” (p. 53). First, the ramshorn snail is not an apple snail, and second, Snail Kites rarely consume ramshorn snails. Snail Kites consume almost exclusively the Florida Apple Snail (*Pomacea paludosa*), which is the only apple snail population supported at Grassy Waters Preserve. *See* Darby Report. Not only does this mistake show the lack of care and scientific foundation in the analysis of the ESBA, but it demonstrates a lack of awareness of the foraging habits of the Snail Kite and a lack of understanding of the importance of preservation of Grassy Waters Preserve in its current condition, without noise, pollution, vibration, light and related impacts from a four- to six-lane highway.
- The ESBA mentions that active Snail Kite nests near the project impact area will be monitored daily (p. 58). Professor Phil Darby states that daily monitoring

would be counterintuitive to the protection of such nests. “Disturbing kites on a regular basis forces adults off the nests and leaves the young vulnerable. . . . If active nests exist, then any activity, including approaching the nests for a status check, should be kept to a minimum until the young are nearly fledged.” Indeed, the No-entry Buffer Zone established for occupied nests (*see* p. 56) expressly prohibits the entry of personnel, use of airboats, helicopters and other equipment in those areas. Thus, rather than serve as protection for this species, daily checks would seem to be the best method to ensure that nests near the Project will be abandoned so that the SR-7 extension can be built.

- The measures identified in the ESBA for the protection of the Snail Kite are inadequate. For one, they only protect the Snail Kites “during the nesting season.” Second, none of the stated remedial measures deal with the noise, vibration and pollution impact of vehicular traffic on the Snail Kite habitat. None of the measures even remotely address the risk of vehicular collisions with Snail Kites. Daily nest monitoring is a direct road to ruin, as discussed above. Compilation of plans, reports and surveys does nothing to protect Snail Kites without indication as to what action will be taken if Kites are found to have been adversely affected by a four- to six-lane urban road crossing their no-entry buffer zone. Nor is there any indication that exotics removal within the Project right-of-way will be a benefit to the Snail Kite. *See* p. 4 of ESBA. Amazingly, one page after claiming exotics removal as a measure for the benefit of the Snail Kite, the ESBA promises to “preserve existing vegetation” within the ROW.
- A further concern for the Snail Kite is of traffic noise on wildlife. A substantial body of literature indicates that birds in wildlife refugia such as Grassy Waters Preserve are particularly sensitive to noise impacts. Noise levels in excess of 50 dBA can mask or interfere with the detection of biologically relevant sounds, such as mating calls. Moreover, excessive noises have behavioral and psychological effects in birds as they sense that due to the noise, they may not be able to detect approaching predators. *See* Siebein Report

In sum, the analysis of the impact of the Project on the Everglade Snail Kite is legally insufficient.

### **3.10.2. The impacts on Wood Storks are not adequately analyzed**

The ESBA concludes that the Project “may affect” the federally endangered Wood Stork. Yet, despite the ESBA’s finding that the Project “may impact” the Wood Stork, the ESBA goes on to find that “the proposed project is not likely to adversely affect the existence of any threatened or endangered species, even though some are known and expected to occur in the study area.” That conclusion is entirely unsupported by the evidence and reasoning. It appears to be based, as the entire PD&E Study, on the definition of the “Project” as the construction

activities to be undertaken by FDOT, rather than the existence and operation of the road itself. The U.S. Fish & Wildlife Service in its February 29, 2012 Letter to FDOT stressed that it does not have enough information to provide concurrence or non-concurrence with the FDOT's determination at this time, and requests detailed mitigation plans for the Wood Stork. See Letter at p. 4.

Any future finding of no significant impact of construction and operation of the road on the Wood Stork based on the record provided would lead to immediate challenges. Indeed, given the finding that the Project corridor is located within the core foraging areas of the Wood Stork, and that prey biomass will be lost for Wood Storks, makes a finding of no significant impact nonsensical. Contrary to longstanding NEPA principles, a FONSI for this Project on the currently existing records would indicate that it is virtually impossible that *any* project could *ever* have a significant impact on any habitat of any endangered species. The expected impacts from operation of a four- to six-lane highway in this location are textbook adverse impacts on an endangered species, requiring preparation of an EIS.

The U.S. population of Wood Stork has been listed as an endangered species since 1984, and its status has recently been under review. (USFWS 2010). Scientific literature demonstrates that the southern Florida population of the Wood Stork appears to be stable, at best, or declining. See T.E. Lodge Ecological Advisors Report of March 15, 2012, at p. 2 of 11.

The ESBA concedes that the project corridor is located within the core foraging areas of three (3) Wood Stork colonies (p. 59), all of which are currently active. During general wildlife surveys, Wood Storks were observed foraging in wetlands within the project area. Moreover, the ESBA finds that “[w]etlands impacted by the proposed construction may be used as foraging habitat by wood storks and other listed wading birds.” ESBA proposes to resolve the Wood Stork problem by calculating the Wood Stork prey biomass lost for the impacted wetlands, which should be replaced through mitigation. There is no indication or calculation of such biomass, or indication where in this vicinity such biomass could possibly be replaced. According to USFWS guidelines (Souza 2010), before considering impacts to suitable foraging habitat exceeding five acres and within Wood Stork core foraging areas, a biomass analysis must be conducted using the USFWS methodology. Together, these analyses form the basis for adjusting the amount and character of mitigation so that available pre-base impacts on the Wood Stork are replaced by mitigation. T.E. Lodge Ecological Advisors Report of March 15, 2012, at p. 3 of 11. Project documents here recognize the requirement for the prey biomass analysis, but lack appropriate maps that show proximity of the Project to active rookeries (the entire Project lies in the core foraging area of some of the rookeries). Without this information, it is impossible to determine the areas where mitigation could be supplied to compensate for the biomass loss for these rookeries. The ESBA's statement postpones this analysis until after the public hearing, making it impossible to determine clearly whether proposed mitigation may ever suffice with respect to the Wood Stork.

What is worse, Wood Storks as ground dwellers would almost certainly be exposed to

vehicular traffic in their foraging habitat. The ESBA does not consider the impact of traffic, noise and pollution on the Wood Storks, and only proposes replacement of the biomass lost as a result of wetland acreage used for project construction. The ESBA contains no analysis with respect to degradation by noise and pollution of current foraging habitat, nor the cumulative impact this and other planned projects will have on the survival of the species as a whole. Those impacts must be spelled out in the Wood Stork section and properly addressed, much as the importance of Grassy Water Preserve on a regional scale for Wood Storks.

### **3.10.3. The impacts on the Florida Sandhill Crane are not adequately analyzed**

The resident, non-migratory Florida subspecies of the Sandhill Crane – the Florida Sandhill Crane – is designated as threatened by the Florida Fish & Wildlife Conservation Commission (“FFWCC”). Numerous Sandhill Cranes were observed by consultants for the City at the Preserve. T.E. Lodge Ecological Advisors Report of March 15, 2012, at p. 4 of 11. While the ESBA acknowledges the presence of the Florida Sandhill Crane foraging in the Project area, there is no analysis of how vehicular traffic will affect Sandhill Cranes. A suggestion is made that if construction is initiated during or just prior to the nesting season, FDOT will commit to resurveying the impact area for nesting Florida Sandhill Cranes. Again, the ESBA and the PD&E Study focus exclusively on impacts during the construction phases of the Project, rather than on impacts during the operation of the four- to six-lane highway. There is no indication of what the impact of the Project would be on the habitat or the physical well-being of the Sand Hill Cranes outside the nesting season, during construction, and at any time during operation of the road. It is entirely unclear, other than wishful thinking, how the agency reached the conclusion that “that the project may affect, but is not likely to adversely affect” the Sand Hill Crane. Evidence indicates otherwise.

The Preserve is part of a formerly larger natural area referred to as the Loxahatchee Slough, whose remnant areas are located immediately adjacent to the Preserve. Those areas have been cited by the FFWCC as supporting “. . . the largest population of the state-listed Sandhill Crane in southern Florida.” See August 10, 2005 letter from Mary Ann Poole, FFWCC, in Appendix B: Advance Notification Package and Responses. As such, the further habitat fragmentation caused by the Project should have been carefully analyzed as a cumulative impact of the Project, but the PD&E Study and supporting documents do not reflect such an analysis.

### **3.10.4 The impacts on the Red-cockaded Woodpecker are not adequately analyzed**

The Red-Cockaded Woodpecker is listed as endangered in both USFWS and FFWCC regulations. The ESBA contains a map (Figure 6-1) showing that a nest of this species was located in the Pond Cypress Natural Area in 2005, and that the proposed alignment of the Project encroaches into the nest buffer boundary. Red-Cockaded Woodpeckers require old-growth pine trees for the cavity nests. As such, it is not feasible to mitigate to impacts to nesting habitat for this species.

The PD&E Study does not indicate that any search was conducted for this species in the Pond Cypress Natural Area, or what the fate of the 2005 nest of the Woodpecker might have been. Nevertheless, the PD&E Study states in conclusory terms that the project will have no effect on this species. Again, that conclusion is not supported with reasoning and evidence and seems to be justified only by the agency's myopic focus on construction of the Project, rather than operation. At least a further explanation and justification should be provided.

### **3.10.5. The impacts on Limpkins, Roseate Spoonbills and Eastern Indigo Snake are not adequately analyzed**

The ESBA focuses only on endangered species. However, three species of special concern (as listed by the FFWCC) also occupy Grassy Waters Preserve. Limpkins (which also rely on apple snails as a food source) have been observed there (including during surveys reported in the ESBA). Recently, groups of 5 to 20 Roseate Spoonbills have been observed, including some that were observed within the area to be impacted by the Project (pers. communication of Pat Painter). The ESBA also mentions that Roseate Spoonbills have been observed in ponds just to the west of Grassy Waters, i.e., they would be crossing road to get there from Grassy Waters. The Project as proposed represents a significant risk for traffic fatalities for these species.

While no recent sightings of the Eastern Indigo Snake are reported in the ESBA, the agency should have considered that highways with highway traffic are death-traps for snakes. Indigo Snakes are especially vulnerable to highway mortality (Moler 1992). The proposed chain-link fence barrier to the Preserve would not restrain indigo snakes at all. Yet the PD&E Study does not address the impacts of the highway on indigo snakes once the Project is operational. The protection measures provided in Appendix C of the SR7 Extension Endangered Species Biological Assessment report does not include the required management and monitoring activities provided in the affect determination document. In this case, a specific requirement that "holes, cavities, and snake refugia other than gopher tortoise burrows will be inspected before planned site manipulation..." is not included. Absent this requirement, the determination must be changed to "may affect" and an independent Section 7 consultation is required.

Male Indigo Snakes range over as much as 800 acres of habitat, so that linear road, as the proposed Project, can bar access to habitat for these snakes. In the specific case of the SR 7 extension, the proposed roadway will effectively isolate the Pond Cypress and Grassy Waters preserves from the Ibis Preserve, causing potential reduction in available home ranges for eastern indigo snakes that may occur in the area. *See* Report of EW Consultants, Inc. In addition to this secondary impact to overall species survival, the roadway will present a high potential for road kill to indigo snakes that may attempt to cross the roadway once it is constructed.

Given these circumstances, a much more detailed biological evaluation of the potential

impacts to eastern indigo snakes is warranted. At a minimum, home range and habitat support evaluation specific to the proposed project area should be completed in order to determine whether, and if so to what degree an incidental take of this species should be anticipated. In addition, enhanced measures for protection during construction should be provided in order to minimize the likelihood of deaths to indigo snakes during construction, and a risk assessment based analysis conducted in order to quantify the likelihood and quantity of indigo snake deaths that can be expected during and after construction of the roadway.

### **3.10.6. The impacts on State and Federal listed plants are not adequately analyzed**

The ESBA indicates that in 1994 and 2007 surveys, 16 state-listed plant species were located within the Pond Cypress Natural Area. Amazingly, *not one* of these species was found in field surveys in 2011, suggesting either an epic die-off of protected plant species between 2007 and 2011 or a woefully inadequate survey. Indeed, there is no indication in the PD&E Study that any field-work related to the PD&E Study was conducted in the Pond Cypress Natural Area or the Preserve to search for threatened and endangered plant species. There is no indication that any effort was made to locate listed plant species in Grassy Water Preserve.

Instead, the ESBA punts and states that “if state listed plant species are observed within the proposed impact limits during the design phase, coordination with the FDACS will be initiated, appropriate permits will be obtained, and efforts will be made prior to construction to allow for seed collection and/or relocation to adjacent habitat or other suitable protected lands.” For one, thorough observations should have been made prior to the rendering of the ESBA report. Second, it is entirely unclear who will be in charge of observing listed species during the design phase, as design engineers are typically not trained to recognize listed species. Indeed, knowledge of the existence of listed species in the Project area, and knowledge of the likely impact of the pollution, fumes, acid rain, etc. created by the Project on such species is of crucial importance to determine at this point which alternative to select. The failure to thoroughly analyze such impacts at this late stage renders the ESBA, and thus the PD&E Study/EA fatally flawed.

### **3.10.7. Other flaws in the ESBA**

#### **3.10.7.1. The lost Snail Kite survey**

In the ESBA dated September 2011, which was produced together with the PD&E Study/EA, there were significant gaps: *see e.g.*, pp. 44, 56 – 58. Yet, both the FDOT and the Division Administrator of the Federal Highway Administration freely approved the PD&E Study/EA. The fact that FDOT and FHWA reached their conclusions despite the fact that the underlying reports were not yet completed speaks for itself. If FDOT were to claim that more updated reports were provided to FHWA than to the public with the PD&E/EA, one must query why the public was given old information.

More concerning is that the original ESBA contained a section called “*Results of Wetland –Dependent Bird Survey as they Pertain to the Snail Kite.*” The September 2011 ESBA at page 56 indicated: “*Because the snail kites have begun to nest closer to the project ROW within recent years, the FDOT decided to undertake a wetland dependent bird/snail kite survey. This survey was completed in the fall of 2011, and the results of the survey are presented below.*” The revised version, online now with a January 2012 date, makes no mention of any wetland dependent bird/snail kite survey. Given the U.S. Fish & Wildlife’s strenuous objection against the Project within the Everglade Snail Kite habitat, one can only wonder why FDOT quietly removed all mention of the bird survey from its September ESBA. The original ESBA stated in the clearest of terms that the survey has been completed, so the omission of the ESBA to present the findings of the survey raises grave concerns about the integrity of the process as a whole.

### **3.10.7.2. Inadequate need analysis**

At section 2.2.4., the ESBA explains that 14,000 residential units were proposed within the areas surrounding the project corridor (in fact, many such units were proposed at a considerable distance from Grassy Waters Preserve). The ESBA then correctly states “[t]hose proposed developments have been cancelled since the start of the study due to recent economic conditions.” The ESBA continues with the following non-sequitur: “However, the traffic analyses prepared for the study maintains the need for a four-lane divided facility even with lower growth and population estimates.” (p. 12). One can only wonder why ESBA even mentions 14,000 residential units if they have been cancelled. At this point, a study that is based upon unbridled residential development in the area is obviously out of date, and *per se* unreliable as a basis for the ESBA. There is no rational basis for ESBA to rely on a study that is based upon admittedly changed circumstances. *See* discussion of flaws in need analysis, above.

Moreover, the ESBA later points out that the potential for “cumulative impacts” is slight because the 14,000 units have been cancelled and “additional development in these areas is not reasonably certain to occur.” (p. 66). The Department and the Project proponents cannot have it both ways: either the 14,000 units will no longer be built, such that there is no need for the Project, or they will likely be built, such that there is likely a cumulative impact that was not adequately discussed. Either way, the ESBA is inadequate.

### **3.10.7.3. Inadequate analysis of impact of encroachment on wetlands**

While the ESBA acknowledges that the straight bridge crossing over the M Canal, which must be used as the proponents of the road lack the necessary rights of way for a skewed bridge crossing, will cause “encroachment” of 7.3 acres into the Pond Cypress Natural Area, it does not analyze the environmental impact on the pond cypress natural area such “encroachment” would have. (p. 21). Indeed, the “encroachment” refers to the extermination of the vegetation on 7.3 acres of protected pond-cypress vegetation.

#### **3.10.7.4. Inadequate analysis of indirect, secondary or cumulative impacts**

At Section 7.1.2. the ESBA purports to discuss indirect, secondary and cumulative impacts. Rather than explain how such impacts will affect particular threatened or endangered species or their habitats or specific natural resources, the report states in conclusory fashion: Indirect and secondary effects are those caused by or resulting from the proposed project later in time and that *are reasonably certain to occur*. They *may* occur outside of the area directly affected by the proposed project [i.e., outside the actual roadbed]. Cumulative effects include the effects of future state, local, or private actions that are reasonably certain to occur in the project area.

Clearly, the *secondary impacts* are of primary importance in this case. This illegal segmentation into carefully analyzed primary impacts – impacts caused by construction activities – and broad-brush secondary impacts – impacts caused by operation of the four- to six-lane highway, is the most fundamental and unacceptable flaw of the PD&E Study. Construction (primary impact) would last a year or two. The noise, pollution, and physical impacts of the four-lane highway would last forever. The PD&E Study cleverly avoids a frank discussion of the real – i.e., secondary impacts – by burying them in a one-page segment on page 65 of the ESBA. Without discussing in any detail what the impacts from the operation of the four- to six-lane highway will be on the various endangered species, the wetland ecology, or the water quality in the Preserve, the PD&E Study effectively sweeps them under the rug, claiming various non-species-specific strategies to minimize and mitigate those impacts. These strategies are entirely ineffective to address many of the issues raised above. Moreover, because the PD&E Study and ESBA discussion strenuously avoids addressing secondary impacts in detail, they are not adequately evaluated and dealt with at all. A one-page formulaic discussion of the real impacts is insufficient for a Project of this magnitude. An EIS is necessary.

While the ESBA declares that indirect and secondary impacts “may occur,” and that such impacts “can include” changes in community structure, water quality, hydrology, and landscape level changes resulting from habitat fragmentation, it utterly fails to analyze what such effects would likely be in this case. The secondary impacts mentioned could be the complete destruction of certain species (“changes in community structure”), terrible pollution of the Grassy Waters water supply (“changes in water quality”), devastating discharges of peak-level flood water run-off via the Ibis Preserve or directly to Grassy Waters Preserve (“changes in hydrology”), and irreversible decline of Grassy Waters as a nature preserve (landscape level changes resulting from habitat fragmentation”), but one would never know it from reading the ESBA. While the ESBA declares that “secondary impacts to wildlife from vehicular traffic can result from roadway lighting, vehicle headlights, vehicle noise and animal strikes along the roadway,” it provides no discussion how such impacts would likely affect specific threatened and endangered species in the project area. As such ESBA is fatally flawed. Accordingly, the PD&E Study does not comply with the mandates of NEPA and/or the Endangered Species Act (“ESA”). Clearly, if any of these mentioned secondary impacts were to occur to the threatened or endangered species listed in ESBA, an EIS would be required at a minimum, and more

appropriately the entire Project should be terminated.

Without a frank analysis of the specific effects caused to specific species by the “indirect” and “secondary” impacts, the abstract discussion of how such impacts would be remedied (pp. 66 - 68) is entirely meaningless. For example, the ESBA contains no discussion of how a roadside fence would prevent endangered birds from landing on the roadway and be killed in vehicular collisions. The abstract discussion of secondary and indirect impacts, and the abstract discussion of minimization of such habitat impacts is woefully inadequate, particularly given the PD&E Study’s conclusion that such impacts are “reasonably certain to occur.” While the ESBA states that each corridor was developed with consideration of existing environmental features, there is no discussion of what impacts operation of the roadway has on Snail Kites and Wood Storks and Sandhill Cranes. How many are expected to be killed, and how? How will habitat fragmentation, traffic noise, exhaust emissions and surface runoff affect their habitat? Where is the conclusion that impacts on the habitat of these endangered species will be reasonably certain to occur? The analysis presented in the PD&E Study is by no means the hard look that is required by NEPA and ESA for such situations. It is a look at construction impacts only, and not the required hard look at the impacts of operation.

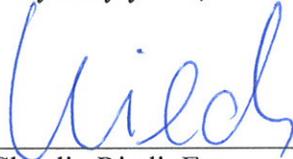
Finally, what the ESBA does not disclose at this point is that the Project is already planned as a six-lane highway. E-mails disclosed pursuant to public records request show that FDOT staff is already planning for two more lanes in the oversized median (*see, e.g.*, email from Joseph Sullivan (FDOT) to Beatriz Caicedo (FDOT Project Manager)). Despite the internal planning activities within FDOT to design the roadway to accommodate a fifth and sixth lane, the ESBA does not inform the public of the cumulative impacts that could be expected from the planned-for six-lane highway. That flaw alone renders the analysis in the ESBA and the PD&E Study inadequate. Moreover, it is unclear whether this secret planning for a six-lane highway adjacent to the region’s most sensitive wetlands was at all communicated to federal regulators (FHWA), so that they could evaluate the cumulative impact analysis. The true scope of this project, as a six-lane highway, must be analyzed in the cumulative impact section.

\* \* \*

For the reasons stated above, The Department would do well to heed the warnings and objections expressed by the U.S. Fish & Wildlife Service in its February 29, 2012 letter. This Project must not be built adjacent to Grassy Waters Preserve and the Pond Cypress Natural Area. The City shares the Service's assessment that this Project will have significant adverse impacts on Grassy Waters Preserve, the City's sole water source and one of the most significant ecological resources in Palm Beach County and the region as a whole. Given the doubtful needs for this Project, the unaccounted costs, the flawed analysis, and the risks inherent in constructing the Project in the chosen location, we urge you to select the no-build alternative. If the Project proceeds for any reason, a full EIS must be prepared taking account of all post-construction impacts, and the legally required hard look must be taken at the true impacts of this Project on the human environment, be it water supply for West Palm Beach citizens or essential habitat for endangered species. On behalf of the City of West Palm Beach, we thank the Department for its professionalism in the entire process.

Please feel free to contact us if you wish to further discuss our concerns.

Very truly yours,



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Claudio Riedi, Esq.  
Special Counsel to the  
City of West Palm Beach

Enclosures:

- Darby, Phil, *Comments on the Draft Endangered Species Biological Assessment: SR 7 Corridor Extension PD & E Study provided by Florida Department of Transportation, District 4*, March 6, 2012 (incl. sources);
- Harper, Harvey H. III, Ph.D., P.E., Environmental Research & Design, Inc., *Technical Memorandum Re: Water Quality Evaluation for the Proposed SR 7 Extension, Palm Beach County, Florida*, March 19, 2012 (incl. sources);
- Nicholas, S. Jordan, P.E., Higgins, Robert H., P.E., Higgins Engineering, Inc., *Report Re: State Road No. 7 – Review of Proposed Drainage*, March 1, 2012 (incl. sources);
- Donaldson, John M., PTOE, JMD Engineering, Inc., *Comparison of No-Build and Build Scenarios, State Road 7 Extension PD&E Study, Prepared for: City of West Palm Beach, West Palm Beach, Florida, TP-11-01*, March 2012 (incl. sources);

- Lodge, Thomas E., Ph.D., CEP, Thomas E. Lodge Ecological Advisors, Inc., *Memorandum re: Comments on the proposed extension of State Road 7 in Palm Beach Co., FL*, March 15, 2012 (incl. sources);
- Malone, Denise, City Comprehensive Planner, City of West Palm Beach Development Services Department, Planning Division. *Report on Zoning & Planning issues*; March 2012;
- Siebein, Gary W., FASA, FAIA, Siebein Associates, Inc. – *Environmental Acoustic Assessment for the Expansion of SR 7 at the Grassy Waters Preserve, West Palm Beach, Florida*, March 6, 2012 (incl. sources);
- Weinberg, Edward R., P.W.S., EW Consultants, Inc., *Memorandum RE: SR 7 Extension; Wetland Impact and Mitigation Summary*, February 29, 2012 (incl. sources).

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March 28, 2012

VIA FIRST CLASS MAIL and/or HAND DELIVERY

Ms. Beatriz Caicedo-Maddison, P.E.  
FDOT Project Manager  
3400 West Commercial Blvd.  
Fort Lauderdale, FL 33309

Mr. Martin C. Knopp  
Federal Highway Administration, Florida Division  
545 John Knox Road, Suite 200  
Tallahassee, FL 32303

***Re: City of West Palm Beach Revised Comments and Objections to State Road 7  
Project Development and Environment ("PD&E") Study / Environmental  
Assessment ("EA")***

Dear Ms. Caicedo-Maddison, dear Mr. Knopp:

This firm represents the City of West Palm Beach ("City") in connection with the State Road 7 Road Expansion Project in Palm Beach County (the "Project"). As an interested and impacted party, the City has monitored and commented on the Project. We have reviewed the PD&E Study as approved by the Federal Highway Administration – Florida Division on January 25, 2012, and we are hereby providing our comments and objections.

Submitted together with this letter are more detailed comments of consultants for the City in many of the fields of concern. This letter, together with the consultants' comments and the

supporting documentations, are to be added to the administrative record in this matter – both for the administrative actions of the Florida Department of Transportation (“FDOT”) and the Federal Highway Administration (“FHWA”).

The State Environmental Policy, as announced by the Governor’s Office of Environmental Management on October 14, 2008, is for FDOT to preserve and enhance Florida’s natural, physical, cultural and social environment as it develops and implements transportation facilities. Clearly, nothing in the proposed preferred alternative enhances Florida’s natural environment. The chosen alternative is not compatible with the surrounding area, the safety and security of public spaces and with aesthetics in accordance with the appropriate standards in Section 4-2.5.2.1 of the PD&E Manual.

The Project is to be constructed immediately adjacent to the City’s Water Catchment Area, also referred to as Grassy Waters Preserve (the “Preserve”) and to sensitive mitigation lands. The Preserve consists of 12,800 acres of pristine but sensitive wetlands, all of which will be impacted as a result of emissions from the expected traffic on the SR 7 extension. The City – as well as the Towns of Palm Beach and South Palm Beach – rely on the Preserve and the adjacent wetlands as their source of potable water. In addition, the Preserve is a state designated natural preserve providing regional ecological and environmental benefits, including water recharge, water quality and wetland habitat for numerous listed species, including the critically endangered Everglade Snail Kite and the Wood Stork. The Preserve is an integral and critical component of the South Florida Water Management District’s restoration of the Loxahatchee River. The Project will adversely impact both the water resources within the Preserve and on adjacent wetlands, resulting in direct, secondary and cumulative impacts to the City’s potable water supply and wetland habitats. The City has opposed this Project as proposed for a long time. *See* City of West Palm Beach Resolution No. 38-07.

**The U.S. Fish & Wildlife Service’s (the “Service”) letter of February 29, 2012 to FDOT demonstrates in the clearest of terms that *this road should not be built in the currently proposed corridor*.** The Service finds that the Project will likely adversely affect the Everglade Snail Kite, and that disturbance will result both from construction and operation of the road, so that FHWA is urged to initiate consultation. Furthermore, the Service notes the inadequate mitigation discussion, and requests that FDOT provide a detailed habitat compensation plan for the Snail Kite. Under the circumstances, a Finding of No Significant Impact (“FONSI”) is obviously inappropriate. Moreover the PD&E Study as drafted is inadequate, as found by the Service with respect to mitigation discussions for both the Everglade Snail Kite and the endangered Wood Stork. For the Department to continue on its current path is to invite perfectly founded legal challenges.

Moreover, the City has found that project managers are secretly discussing a six-lane highway in this location, while presenting to the public, and ostensibly analyzing in the PD&E Study, only a four-lane road. That is simply unacceptable, both as a matter of public policy and as a matter of state and federal law. In his e-mail of February 13, 2012, FDOT employee Joseph

Sullivan writes to FDOT project manager Beatriz Caicedo: "Beatriz, the only comment I have is the response to my comment #17. My comment was with respect to whether a 4 lane roadway using a roundabout intersection (4 lanes) can accommodate, or be expanded to utilize a future 6 lane improvement, or would a standard "T" finalized intersection be needed for 6 lanes? I haven't seen many 6-lane roundabouts so I wanted to see if this could be discussed further . . . ." It is thus clear that the Project is being designed *at this time* to accommodate a six-lane highway, a fact never disclosed to the public. That FDOT is secretly planning for a six-lane highway in this location was not pointed out in the analysis, and is entirely absent from the cumulative impact analysis related to future impacts, which renders the analysis fatally flawed.

The City submits that the Project as currently proposed should not be built, as also urged by the U.S. Fish & Wildlife Service. There is no need for this Project at this location. The environmental impacts of the Project are too far-ranging and significant, and have not been adequately considered in the PD&E Study/EA. The risks this Project represents to the primary fresh water source of the City of West Palm Beach and other communities have not been adequately considered. The PD&E Study/EA discusses the true impacts of the Project – the operation of the road once constructed – only as "secondary impacts," and fails to analyze the impacts of such operation on the water supply and specific endangered species in any reasonable detail.

The City therefore urges all parties to cancel or defer this Project until there is need for it and the environmental impacts of the Project – including both construction and operation -- can be properly evaluated. The City submits these comments and objections, together with the attached reports and supporting materials, and requests that the FDOT and the FHWA make them part of the administrative record and take them into consideration when determining how to proceed in this matter. Given the serious and far-reaching impacts of the proposed Project, at a minimum an Environmental Impact Statement ("EIS") is required, and the agencies are warned against the issuance of baseless Findings of No Significant Impacts (FONSI). The following sections discuss some of the most obvious inadequacies of the PD&E Study/EA.

## **1. THE PD&E STUDY MISREPRESENTS THE NEED FOR THIS PROJECT**

The need analysis in the PD&E Study is conclusory, illogical and circular. The need for the project is summarized as follows: (1) there is a necessity to improve system linkage between Okeechobee Boulevard and Northlake Boulevard; (2) travel demands within western Palm Beach County will continue to grow; and (3) the Palm Beach Metropolitan Planning Organization (MPO) has identified this project as a critical priority. PD&E Study/EA at p. 3. In essence, the PD&E Study argues that need exists because need exists.

For one, system linkage is an argument for need of road construction anywhere in the world where a project links two other roads. There is nothing to indicate in any of the studies that linkage of Okeechobee Boulevard and North Lake Boulevard is needed at this particular location. To the extent linkage is necessary, it could occur in many locations far less detrimental

to the public interest than the proposed alternative.

Second, as concerns transportation demands, the PD&E Study argues that travel demands within Western Palm Beach County will continue to grow. The PD&E Study states that even though over 14,000 residential units proposed for the areas surrounding the project corridor have been *cancelled* since the start of the study, “the traffic analysis prepared for this study maintains the need for a four lane divided facility even with lower growth and population estimates.” PD&E Study at p. 4. This statement is illogical in itself. If the need for the road arose because of 14,000 planned additional housing units in the area, the cancellation of those units obviates this basis of need. While the County and FDOT do not acknowledge this, SR 7 has transitioned from a “need” to a “want,” – a \$100,000,000 luxury. The lack of logic in this position is further obvious when FDOT asserts in its Endangered Species Biological Assessment (“ESBA”) that the 14,000 units should not be considered in the cumulative impact discussion because they have been cancelled and “additional development in these areas is not reasonably certain to occur.” (p. 66). The Department and the Project proponents cannot have it both ways: either the 14,000 units will no longer be built, such that there is no need for the Project, or they will likely be built, such that they likely constitute a cumulative impact that was not adequately analyzed.

The City hired a traffic consultant to review the need for the road. The analysis indicates that all roads within and adjacent to the study area have shown a decrease in traffic in the last five years, so that travel demands are no longer a valid reason for the Project. See JMD Engineering, Inc., *Comparison of No-Build and Build Scenarios, State Road 7 Extension PD&E Study, Prepared for: City of West Palm Beach, West Palm Beach, Florida, TP-11-01*, March 2012 -- Historical 5 Year Traffic Growth, 2006 – 2011. Moreover, even if traffic were to increase in Western Palm Beach County, there is no indication that there is need for this road in this particular location. This factor becomes meaningless because it would support road construction anywhere in Palm Beach County. A vague prediction that traffic volume will increase in the future is in no way indicative of need for a four to six lane highway in this sensitive wetland area. To make matters worse, this vague notion of increasing traffic is later used to argue against the no-build alternative, because it would offer “no relief to the increasing traffic demands in the area.” PD&E Study at p. 13.

The third basis, that the MPO has identified this project as a critical priority, is also specious and circular. For one, the MPO’s determination that this is a priority project came in October 2004, at a time when rapid growth was predicted for the western reaches of Palm Beach County, prior to cancellation of the 14,000 residential units. Second, the MPO based its decision at least in part on the same vague notion that traffic volumes in Western Palm Beach County will increase in the future, hardly a sophisticated analysis.

Finally, the PD&E Study cites to safety, and the need for hurricane evacuation routes as a basis for need of the road. Again, every road, short of a cul-de sac, can be used for hurricane evacuation. This factor pertains to virtually every road in all of South Florida, and as a result becomes meaningless. There is no explanation as to why this road at this location would be

more conducive to an efficient hurricane evacuation than any other corridor. Indeed – the location of the proposed road is not in a hurricane evacuation area. Which particular route would be useful depends entirely on the path of an approaching hurricane. Clearly, there was no analysis done as to why a north-south route in Palm Beach County is more important than an east-west route to escape an approaching hurricane. This factor is not a proper basis to build this road at this location.

In sum, the need analysis is illogical, circular and flawed. It is simply an exercise to justify construction of a generic road in a generic location, and not for a four to six-lane highway immediately adjacent to critical water supply and habitat areas for endangered species.

## **2. THE PD&E STUDY ALTERNATIVES ANALYSIS IS FLAWED**

In the PD&E Study/EA and the underlying documents, four possible corridors are shown, concluding with selection of the corridor with the second-highest wetland and habitat impacts. Within the preferred “Corridor 3,” build alternatives are relatively minor versions of the same general alignment. They include various intersection options, whether a T-intersection or a roundabout is used at 60th Street, the curve configuration for the approach on the south side of the M-Canal, and whether storm water treatment areas are swapped east for west with the proposed road alignment. These alternatives are entirely within the same area of impact. Only the “no build” alternative avoids impacts to the Preserve and additional impacts to the Pond Cypress Natural Area. There is no coverage of alternative routes through developed lands to the west or other options to solve alleged traffic needs as requested by the Florida Fish and Wildlife Conservation Commission (*see* FFWCC recommendations of December 2, 1998 and August 10, 2005, recommending for FDOT to “avoid these impacts by expanding and upgrading existing roadways through urban areas.”).

NEPA requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). NEPA “requires that alternatives ... be given full and meaningful consideration.” *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9<sup>th</sup> Cir. 1988). In this case, reasonable alternatives to the selected route exist, but were rejected by FDOT.

In its February 29, 2012 letter to FDOT, the U.S. Fish and Wildlife Service notes that “we do not support any of the “east of Ibis” build alternatives as currently proposed.” *See* Letter at p. 4. The Service points out that it warned as early as July 2006 that it could not support the current project alternatives, and urged FDOT to reconsider its options. For the Department to ignore the warnings of the Service invites lawsuits. It is the role of the Service, with its unique expertise in endangered species and habitat protection matters, to guide the FHWA (and thus FDOT) in its alternative selection process, and that guidance should not be lightly discarded. Yet, this is the path chosen by FDOT.

The proposed project corridor is the only location in Palm Beach County where SR 7 would deviate from a straight alignment. Corridor 3, the build alternative, follows the Acreage Connector Road Alignment, then jogs to the east 90 degrees on the south side of the M-Canal and then turns 90 degrees to the north along the west side of the WCA. This odd course is necessitated by the flawed decision to use State Road 7 as the north-south connection between Okeechobee Boulevard and North Lake Boulevard despite the immovable objects in the way: the Preserve and the Pond Cypress Natural Area.

**2.1. The Traffic Analysis Is Flawed**

The PD&E Study relies on an October 2010 traffic analysis prepared by Kittleson & Associates to reach the conclusion that construction of the four-lane highway at this location is needed. Both the analysis and the conclusions reached on the analysis are flawed.

For one, the FDOT’s Design Traffic Technical Memorandum (“DTTM”) itself is based on the County’s 2007 “SR 7 Extension Corridor Report,” which is outdated and no longer reflective of actual traffic conditions in the area. The City has retained the firm JMD Engineering, Inc., which has reviewed the data and conclusions reached, supplemented with 2011 and historical 24-hour, AM and PM peak hour traffic and count data provided by Palm Beach County. The report of JMD Engineering, Inc. (the “JMD Report”) is attached and hereby made part of this submission and the administrative record. As the JMD Report points out, the roads within and adjacent to the study area have shown a decrease in traffic volume over the last 5 years:

Road	traffic volume	Road	traffic volume
Beeline Highway	-7%	Coconut Blvd.	-18%
Northlake Blvd.	-17%	Okeechobee Blvd.	-23%
Orange Blvd.	-9%	Persimmon Blvd.	-18%
Royal Palm Beach Blvd.	-41%	Seminole Pratt Whitney Rd.	-22%
SR 7	-18%		

The PD&E Study and underlying documents correctly point out that 14,000 residential units were proposed within the areas surrounding the project corridor, which “have been cancelled since the start of the study due to recent economic conditions.” See ESBA at Section 2.2.3. The reduction in traffic volume on all relevant roads in the area is obviously related to the changed economic conditions, and indicative of the necessity to reassess the traffic analysis underlying the PD&E Study. Projected growth rates of 2% to 4% annually are inaccurate. A 1% average growth rate in the area would be more appropriate. See JMD Report. FDOT has acknowledged the drastic change in conditions when compared to the 2007 SR 7 Corridor Report, but has arbitrarily and capriciously chosen to base its decisions assuming these flawed growth rates.

If the build and no-build alternatives are compared using appropriate growth assumptions, the no-build alternative, with some improvements, provides a slightly better Level of Service (“LOS”) for the roadway links and signalized intersections in the project study than the build scenario, and does so at what would be significantly lower cost and impact in the surrounding areas. At worst, the intersection LOS for the project study area are virtually the same for the no-build and build scenarios for each of the three future years analyzed in the DTTM. The DTTM presented forecasted opening (2020), interim (2030) and design year (2040) LOSs. *See Level of Service Comparison.* Given the reduced growth information known now, there are no LOS improvements in the study area from the build scenario when compared to the no-build scenario. To the extent need for the road is based on anticipated LOS improvements, the PD&E Study, as well as the DTTM , the Corridor Report and the Draft Noise Report are all incorrect.

The diversion analysis provided by JMD Engineering, Inc. shows that while some reduction on adjacent roadway links is anticipated under the build scenario, these diversions in most cases are only about 3,000 vehicles per day, and there are approximately the same number of adjacent links with an increase in traffic as a result of the build scenario.

The evacuation routes closest to the SR 7 study area are SR 80 (Southern Boulevard) and Okeechobee Boulevard (SR 704), both of which connect to both I-95 and Florida’s Turnpike and the Beeline Highway, which connects to the Turnpike but not I-95. Northlake Boulevard is NOT an evacuation route and only connects to I-95. The analysis indicates that only a small area would directly benefit from the SR 7 extension for hurricane evacuation.

Finally, it should be noted that without a grade-separated urban interchange at Okeechobee Boulevard and SR 7, the intersection will remain at LOS F under all scenarios. Accordingly, the Long Range Transportation Plan anticipated its construction for 2020 at a projected cost of \$54,800,000 (it is unclear why the PD&E Study estimates only \$30,000,000 for construction of a grade-separated intersection). The 2040 LOS for this intersection is shown as “F” for an at-grade intersection, and “E” for a grade-separated intersection, making the grade separation the only proper solution. The dollars committed to Segment 2 of the Project could be re-programmed for the urban interchange. According to the City’s traffic consultant, this alternative provides a better level of service return on investment than the proposed segment of SR 7 from 60th Street to Northlake Boulevard.

In sum, the current traffic analysis is flawed, and a correct analysis mandates against implementation of the build alternative.

## **2.2. The Discussion of Drainage Issues Is Inadequate**

The drainage calculations in the PD&E Study contain several unacceptable shortcomings. See Nicholas, S. Jordan, P.E., Higgins, Robert H., P.E., Higgins Engineering, Inc., *Report Re: State Road No. 7 – Review of Proposed Drainage*, March 1, 2012. The City of West Palm Beach

is still concerned over potential drainage impacts to the Ibis Landing Development and to the Ibis Preserve/Grassy Waters Preserve as a result of the Project. A review of the drainage options, together with the underlying Location Hydraulics Report and the Pond Siting Report, demonstrates problems both for Basin 2 (east-west segment south of M-Canal) and Basin 3 (segment east of Ibis).

Basin 2 – For this reach of the roadway a “treatment train” consisting of dry swales outfalling into a wet pond is proposed. It is not stated where the wet pond will outfall to (options are Grassy Waters Preserve or pipe-back to Basin 1). Although the use of wet ponds is proposed, it does not appear that the pond(s) will be able to satisfy the minimum SFWMD width requirement of 100’. The plans do not show the pond dimensions.

Basin 3 – This reach of the roadway lies adjacent to the Ibis Landing Development and the Preserve and is to drain into the Ibis development. The SFWMD permit issued for Ibis does address 46.9 acres of SR 7 right of way but the actual right of way for the Project is on the order of 116 acres. As such, this portion of the system will need to provide for a significant amount of attenuation in the form of swale/lakes. Although calculations are provided in the Pond Siting Report, the calculations do not address flood stages or discharges within the Ibis development. Again, it is not clear how the SFWMD minimum wet detention pond width of 100’ will be met. Accordingly, the PD&E Study is inadequate.

An additional option for this reach of the roadway is identified as Option 3C. This option calls for the roadway to discharge into the Ibis Preserve. As stated above, the Ibis Preserve was not designed to handle inflows of polluted water from offsite areas, and therefore, a detailed analysis is required to proceed with this proposal. Of even greater concern is that the Ibis Preserve eventually discharges into Grassy Waters Preserve. During storm events, this may lead to unpermitted discharges of pollutants to the Preserve (including without limitation violations of Section 402 of the Clean Water Act), which is entirely unacceptable, as the PD&E Study seems to acknowledge. As the potable water source for West Palm Beach and various other cities, the Preserve cannot become the dumping ground for contaminated run-off from State Road 7, even if it is only on rare occasions. Even one single contamination event would be catastrophic, not only for humans depending on clean water but also for the various threatened and endangered species in the Preserve. This Option 3C is entirely unacceptable.

In addition, the Location Hydraulics Report used FIRMs from 1979 and 1982 to assess flooding. These reports are outdated. The Report contends that the Project location is within Zone B between the 100-year and 500-year flood plain. This is clearly incorrect given the 120 acres of wetlands within the area that will be impacted. In addition, the soils all fall within the poorly drained category.

In summary, the proposed routing of runoff from the northern reach of State Road 7 into the Ibis Landing Development may cause adverse impacts. The PD&E Study discussion will need to be corrected, and a detailed hydrologic analysis, including the Ibis water management

system, will need to be completed in order to assess pre- versus post-Project impacts.

### **2.3 Cost Calculations Are Incomplete**

According to the PD&E Study's cost calculations, Segment 1 (from Okeechobee to 60th Street) of the Project is estimated to cost \$22,462,676. Segment 2 (from 60th Street to North Lake Boulevard) is estimated to cost \$43,433,014. The grade-separated intersection at Okeechobee Boulevard, which is absolutely necessary (*see* traffic analysis, above, at section 2.1), is estimated in the PD&E Study at \$30,000,000 (note that the predicted cost for a grade-separated interchange in the County's Long Range Transportation Plan for 2020 is \$54,800,000, rendering the \$30,000,000 number highly specious), for a total of approximately \$95,900,000 for the entire Project, without cost of the roundabouts and interconnections at North Lake Boulevard. The PD&E Study points out that it also does not include the costs for mitigation, and the additional costs of land acquisition for the straight crossing of the M-canal, which is also an absolute necessity. In sum, the cost will be far in excess of \$100,000,000 for a project of questionable need with the potential to devastate the potable water supply to 130,000 Palm Beach County residents and a pristine habitat for threatened and endangered species.

The cost estimate in the PD&E Study does not include the costs associated with land acquisition for the skewed bridge crossing. Part of the right of way over the M-Canal needed for the skewed bridge crossing is owned by the City and would require an eminent domain proceeding. If the eminent domain proceeding were successful, the additional cost to remove and relocate Control Structure No. 3 would have to be included along with the acquisition cost. The relocation costs for Control Structure 3 alone are expected to be several million dollars.

Of all of the foregoing unaccounted-for costs, perhaps the most overwhelming will be the cost of mitigation for the wetland impacts of the Project. In 2009, Palm Beach County sought environmental permits from the Army Corps of Engineers and South Florida Water Management District for a 3.2 mile four-lane divided extension of Roebuck Road that would have been constructed adjacent to the southern boundary of the Preserve. The mitigation required for the road due to the potential adverse impacts to the water quality and the wetlands was estimated at the time to increase the project cost by approximately \$60,000,000, so that the projected costs for the Roebuck Road extension went from \$40,000,000 to \$100,000,000. The project was subsequently withdrawn. Later, Palm Beach County applied for permits for an extension to Jog Road adjacent to the eastern boundary of the WCA. The permit applications for that project were also withdrawn, albeit prior to a determination of the full cost of mitigation.

The inadequate mitigation analysis and attempted postponement of hard choices is also noted in the Service's February 29, 2012 letter to FDOT. The Service requests that FDOT provide now "a detailed habitat compensation plan indicting how the FDOT intends to minimize the project's adverse effects on the snail kite." It also notes that "[t]he Service does not have enough information to provide concurrence or non-concurrence with the FDOT's determination [concerning impact on the Wood Stork] at this time." For the Wood Stork, too, the Service

requested “a final wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project.” Accordingly, a complete mitigation analysis must be provided now, before the Project proceeds to the next stage and irretrievable commitments of funds are made. A complete mitigation analysis would permit a calculation of the likely costs of mitigation in real terms.

The PD&E Study also fails to account for the cost of noise abatement walls towards the preserve areas, where serenity and quiet is essential for their functioning. The additional costs for noise protection for these areas will be between \$9,500,000 and \$37,000,000 depending on several factors to be discussed.

Finally, projects over \$25,000,000 require a Value Engineering Study (PD&E Manual at 4-2.5.2.5). This is a project of over \$25 million, and no Value Engineering Study has been provided. It is notable, that the requirement for a Value Engineering Study is part of the PD&E manual’s requisites for the PD&E Study, not for some subsequent project stage.

#### **2.4 The Cultural Resource Assessment Survey, the Findings Regarding Consistency With the Comprehensive Plan, the Representations of the Land Use Adjacent to the Proposed Corridor and Representation of Impacts to the Conservation Areas are Inaccurate and Flawed**

The PD&E Study fails to thoroughly evaluate the threats to the conservation areas that will result from this project. It does not ensure protection for the Conservation areas; specifically, there has been insufficient evaluation to show that there will be no adverse impacts to the biological and/or hydrological conditions of the extremely sensitive areas adjacent to the proposed project. This failure is inconsistent with the City of West Palm Beach’s Comprehensive Plan, which requires protection and conservation of the environmentally significant conservation areas and their associated wildlife, including listed species. This specifically requires protection of the Grassy Waters Area Preserve and Ibis Conservation areas as they are environmentally significant ecosystems. The proposed Project will have neighboring direct, secondary and cumulative impacts to these areas that are within the City’s jurisdiction. The proposed use and its impacts are inconsistent with the Conservation Future Land use designation on the Future Land use Map of the City; indeed, any impact to the Conservation area’s uses or purposes of conserving/protecting natural resources or environmental quality is a violation of the City’s Comprehensive Plan.

The PD&E Study’s Cultural Resource Assessment Survey (“Survey”) is flawed and incomplete: (i) It fails to include the “2000 Cultural Resources Assessment Survey of 8 Alternative Routes for SR 7 from Okeechobee Blvd. to the Beeline highway, Palm Beach County, Florida (Survey #6137 or #6173),” which was relied upon to determine that no further subsurface testing is needed; (ii) The Survey fails to attach the detailed original archeological survey from 2000, upon which its findings are based; (iii) The Survey fails to address how the current water levels in the Area of Potential Effect (“APE”) relate to those from 2000 and if there

has been a variation in water levels that could have potential effects on determining the presence of archeological and historic resources. Notably, the County Archeologist, Mr. Chris Davenport, was not contacted by any agency regarding this project. His participation would be essential in the preparation of an adequate Survey.

Particularly misleading is the Survey's false statement that "the land use associated with the corridor consists of both residential and recreational." A large portion of the corridor is *not in recreation use but rather is conservation – and all but the Right-of-Way is protected by Conservation Future Land Use and Zoning designations, and conservation easements* (with limited passive recreation opportunities on a small scale). These areas comprise a portion of the Grassy Waters Preserve and the ibis Preserve Conservation Area south of the IBIS residential community. These misrepresentations exist in several areas of the Survey.

Additionally, the Survey fails to acknowledge that the south of the residential portion of Ibis is a 387 acre, City-owned and managed preserve area with City Conservation Future Land Use and Zoning designations that is part of the same hydrologic system as Grassy Waters. *This conservation area will be bisected by the proposed project – and is inconsistent with the Future Land Map of the City's Comprehensive Plan.* The direct, secondary and cumulative impacts are severely minimized by the Survey and the PD&E Study. This minimization is further demonstrated by the failure to accurately label the 387 acre preserve area as such; indeed – it is mislabeled to be part of the residential community.

The PD&E Study's inaccurate labeling is also found in Section 4.1, Land Use, of the PD&E Study, as it misrepresents the location and amount of land in conservation. The PD&E Study lists the Grassy Waters Preserve and the Ibis Preserve as municipal/institutional – however, these should be reflected as conservation use. This fundamentally flawed assumption by the PD&E results in a necessarily deficient evaluation and assessment of the impact of the proposed road. Indeed, the PD&E Study fails to provide any assessment of the roadway impacts on the conservation lands. While it mentions local government Comprehensive Plan requirements, it does not provide an analysis of the roadway impacts on consistency with all of the affected local government comprehensive plans – including a failure to analyze impacts on the conservation areas.

### **3. THE PD&E STUDY INADEQUATELY ANALYZES THE IMPACTS OF THE PROJECT**

#### **3.1 Land Acquisition And Displacement Impacts**

The PD&E Study is incomplete in its discussion of land acquisition impacts. For one, the Study states "[t]he skewed bridge over the M-Canal would result in 0.5 acres from a portion of the M-Canal owned by the City of West Palm Beach." PD&E Study at p. 84. Not only is this statement nonsensical as stated, but it omits mention that Florida law does not permit the City to grant rights to this land as doing so would be inconsistent with water supply, environmental,

educational or conservation purposes. *See* Chapter 67-2169, Laws of Florida, Section 2.<sup>1</sup> Moreover, the PD&E Study completely disregards the necessary relocation of Control Structure No. 3, which is located at the location the skewed M Canal crossing would occupy. This failure to address this important issue and additional cost is a serious flaw in the PD&E Study.

The PD&E Study mentions in similarly ungrammatical language that “[t]he straight bridge crossing would result in 7.3 acres from the Pond Cypress Natural Area owned by Palm Beach County.” *See* PD&E Study at p. 84. There is no explanation as to how the authority contained in “Right of Way and Relocation Program in accordance with Florida Statute 339.09 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” could be used in contravention of Chapter 67-2169, Laws of Florida. Further, the PD&E Study seems to suggest that these same 7.3 acres already serve as mitigation for the County’s two-lane extension of SR 7, *see* PD&E at p. 55, so that it is unclear how those same 7.3 acres could now be paved over for the Project.

### **3.2 Recreational/Parkland**

FHWA has determined that the straight bridge crossing would constitute a Section 4(f) use of the Pond Cypress Natural Area, a preserve and wildlife refuge owned by Palm Beach County. *See* PD&E Study at pp. 55, 91. With the legal and financial obstacles to acquiring the necessary rights of way to build the skewed bridge alternatives, the straight bridge approach is the only viable alternative.

Section 4(f) of the Federal Transportation Act allows the Secretary of Transportation to approve a federal highway project using the land of a public park, recreation area, wildlife refuge, or historic site *only if* “(1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” 49 U.S.C. § 303(c). Section 4(f)(1) requires that the Secretary must make a finding that no feasible or prudent alternatives to the use of Section 4(f) lands exist. If the Secretary determines that there are no feasible or prudent alternatives to using Section 4(f) property for the Project, the Secretary must then comply with the mandate of Section 4(f)(2) to minimize harm to parks and historic sites. This requires “a simple balancing process which totals the harm caused by each alternate route to section 4(f) areas and selects the option which does the least harm.” *Druid Hills Civic Ass’n, Inc. v. Fed. Highway Admin.*, 772 F.2d 700, 716 (11th Cir. 1985).

In this case, the use of Pond Cypress Natural Area land will be necessary to build the straight bridge crossing over the M-Canal, thus triggering the requirement for a Section 4(f) review by the Secretary. Given the discussion of several feasible and prudent alternatives (other corridors to the west), the Secretary will not be legally able to conclude that there are no other feasible and prudent alternatives. Any efforts to declare this park land use as *de minimis* use would contravene established law and would be met with immediate legal action.

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<sup>1</sup> Uses.—It shall be mandatory that the City of West Palm Beach retain in perpetuity full ownership and control and shall not lease or grant any license for any part of the water catchment area which is inconsistent with water supply, environmental, educational or conservation purposes, including, but not limited to, environmental mitigation.

Accordingly, the mandates of Section 4(f) of the Federal Transportation Act render the preferred alternative impracticable.

### **3.3 Visual/Aesthetic**

The PD&E Study concludes that visual and aesthetic impacts would be minimal along the Project corridor north of Persimmon Blvd. "as existing visual barriers along residential borders would remain in place." PD&E Study at 93. The visual and aesthetic impact of the Project on the Preserve is completely ignored. At page 4 of the ESBA, FDOT states its plan to remove exotics within the Project right of way. However, those exotics are the primary visual and aesthetic barrier that would exist between the Project and Grassy Waters Preserve. The conclusion that visual and aesthetic impacts would be minimal is specious as it concerns the Preserve.

The Service, in its February 29, 2012 letter to the Department noted the obvious: "Constant noise from motor vehicles using the new road will also reduce the aesthetic value of the Pond Cypress Natural Area and Grassy Waters Preserve." *See* Letter at p. 4. It is unclear why the PD&E Study did not reach that conclusion.

### **3.4 Air**

Air quality analysis was conducted exclusively for the intersection of SR 7 and Okeechobee Blvd, as it was identified as the intersection with the highest vehicle traffic. It was found that the expected carbon monoxide emissions at that intersection will not exceed National Ambient Air Quality Standard. However, no analysis was undertaken of the impact of vehicular emissions on the pristine Water Catchment Area. It cannot be disputed that increasing exhaust levels will have an impact on the threatened and endangered species in the Preserve, and that some of the additional emissions will find their way in the City's potable water supply. The PD&E Study is flawed because it fails to consider the Project impacts on air quality and eventual water quality in the Preserve.

### **3.5 Noise**

The noise analysis of the PD&E Study and its underlying Draft Noise Study Report ("DNSR") is particularly inadequate. As the U.S. Fish & Wildlife Service noted in its February 29, 2012 letter: "Constant noise from motor vehicles using the new road will also reduce the aesthetic value of the Pond Cypress Natural Area and Grassy Waters Preserve." *See* Letter at p. 4. Yet, the DNSR identifies exclusively residential areas in the southernmost portions of the Project as being impacted by noise. The Study and the DNSR completely ignore the fact that the Project will run along one of the most serene preservation areas, where quietness is essential to the preservation of endangered species. Moreover, visitors to the Preserve enjoy and expect the natural quiet and serenity in the Preserve, and additional road noise would adversely affect the quality of the experience of visitors to the Preserve.

23 C.F.R. 772 states that “[n]oise impacts occur when the predicted traffic noise levels approach or exceed the noise abatement criteria levels, or when the traffic noise levels substantially exceed the existing noise levels.” The PD&E Study concedes that the noise levels for this Project range between 46.2 and 62.7 dBA.

### 3.5.1. Applicable noise criteria

FDOT and FHWA have established a criterion for what they identify as Category A land, which includes exterior spaces “on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of these qualities is essential if the area is to continue to serve its intended purpose.” See PD&E Manual, Part 2, 17-5.5.1. The Preserve fits that definition, so that Category A noise levels apply to it. See Siebein Associates, Inc. – *Environmental Acoustic Assessment for the Expansion of SR 7 at the Grassy Waters Preserve, West Palm Beach, Florida*, March 6, 2012. The PD&E Study and DNSR only apply Category B and C levels. However, FDOT acknowledges that 56 dBA is the sound level limit that applies to Category A lands.

FDOT has a criterion level that future noise impacts from road construction cannot exceed 15 dBA above existing ambient sound levels. A study conducted by the City found sound levels from 28 to 48 dBA in areas of Grassy waters removed from current roads, such as Northlake Boulevard. Levels measured at 150 feet from Northlake Boulevard throughout the day varied from 48 to 68 dBA. See Siebein Report. This 20 dBA increase is well beyond the 15 dBQA limit provided by FDOT regulations.

A substantive body of literature regarding the effects of traffic noise on wildlife, particularly birds, indicates that wildlife refugia such as Grassy Waters Preserve are particularly sensitive to noise impacts. Research sponsored by major transportation authorities has suggested that a criterion level of 50 dBA be applied to minimize interference with communication among birds of all types. See Siebein Report. Noise levels in excess of 50 dBA can mask or interfere with the detection of biologically relevant sounds, such as mating calls. Moreover, excessive noises have behavioral and psychological effects in birds as they sense that due to the noise, they may not be able to detect approaching predators. *Id.*

The U.S. Environmental Protection Agency (EPA), the World Health Organization (WHO) and other standards bodies and government agencies provide noise criteria for residential and natural preserve areas. The World Health Organization (WHO) includes a land use category of outdoors in parkland and conservation areas where the critical health effect is the disruption of tranquility. WHO assigns a criterion level that states “existing quiet outdoor areas should be preserved and the ratio of intruding noise to natural background sound should be kept low.” WHO also assigns criteria to outdoor living areas with critical health effects described as serious annoyance, day time and evening with a maximum level of 55 dBA over 16 hours; and moderate annoyance, daytime and evening with a maximum level of 50 dBA over 16 hours.

### 3.5.2. Expected noise levels as applied to criteria

Pursuant to the DNRR, sound levels under the build alternative are expected at 53.2 to 66.8 dBA, well beyond the 56 dBA permitted for Category A lands. However, the DNSR and the PD&E Study do not address noise impacts for any of the build or no-build options for the Project on the Preserve. A review of the DNSR (Section 4.2) shows that not a single noise reading was conducted in the Grassy Waters Preserve.

However, the study conducted for the City by Siebein Associates, Inc. did conduct noise studies in the Preserve. See Figure 1 of Siebein Report. The study conducted by Siebein Associates found sound levels as high as 74 dBA near Northlake Boulevard. Siebein & Associates determined that noise levels in portions of the preserve will increase to levels beyond the 56 dBA acceptable for Category A lands on approximately 358 acres, and beyond the 50 dBA threshold on about 605 acres. The expected increase as a result of the additional traffic levels on the road will exceed the acceptable 15 dBA on approximately 307 acres, exceeding EPA and WHO criteria as well.

### 3.5.3 Noise mitigation measures

The inclusion of an 8'-0" to 12'-0" tall noise barrier along the eastern side of the Project would reduce traffic noise levels to the FDOT Category A criterion of LAeq 56 dBA. To reduce traffic noise levels to the recommended LAeq 50 dBA criterion, the proposed noise barrier height would have to be increased to approximately 16'-0" to 25'-0" tall as shown in Table 7 of the Siebein Report. Because the PD&E Study and the DNSR did not address noise barriers protecting the sensitive environmental areas, the City has conducted its own analysis of such measures. Below is a cost calculation for eight possible scenarios depending upon speed, barrier placement and noise level to be met. The PD&E Study assumes construction of only 1600 linear feet of noise walls. In order to protect the serenity and quiet of the sensitive habitat for the endangered species discussed below, several additional miles of noise walls will be necessary.

TOTAL PROJECTED NOISE BARRIER WALL COSTS						
<u>SCENARIO</u>	<u>SPEED</u>	<u>BARRIER LOCATION</u>	<u>CRITERIA LEVEL</u>	<u>SIEBEIN COST</u>	<u>FDOT COST</u>	<u>TOTAL COST</u>
1	45	100' FROM EDGE	56 dBA	\$11,940,000	\$738,720	\$12,678,720
2	45	10' FROM EDGE	56 dBA	\$9,552,000	\$738,720	\$10,290,720
3	55	100' FROM EDGE	56 dBA	\$14,328,000	\$738,720	\$15,066,720
4	55	10' FROM EDGE	56 dBA	\$11,940,000	\$738,720	\$12,678,720
5	45	100' FROM EDGE	50 dBA	\$23,880,000	\$738,720	\$24,618,720
6	45	10' FROM EDGE	50 dBA	\$19,104,000	\$738,720	\$19,842,720
7	55	100' FROM EDGE	50 dBA	\$29,850,000	\$738,720	\$30,588,720

8	55	10' FROM EDGE	50 dBA	\$23,880,000	\$738,720	\$24,618,720
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See John M. Donalson, P.E., PTOE Report. As is readily apparent, the additional cost of noise mitigation toward the Preserve areas adjacent to the currently proposed alignment for the Project will be between \$9 million and \$30 million, none of which is accounted for in the PD&E Study. Because the Study fails to address and account for the cost of noise mitigation toward the Preserve and the Pond Cypress Natural Area, the analysis undertaken is incomplete and inadequate.

The berm or barrier wall height required to achieve traffic noise levels similar to the existing condition at areas of the site that currently have no existing roadway would be impractical if even possible to achieve. Accordingly, if the build alternative is selected, at the very least, a 8' to 12' tall noise barrier must be included along the eastern side of the Project area, and preferably a 16' to 15' barrier. The PD&E Study as drafted completely ignores these impacts and the need for noise abatement, and is therefore inadequate.

### **3.6 Impact On City Water Supply**

#### **3.6.1 Impacts from potential contaminations**

The Project is proposed to be constructed immediately adjacent to the Preserve, also referred to as the City's Water Catchment Area. The Water Catchment Area functions as the City's (and several other communities') drinking water supply. It is classified as a Class 1 water body, which is the highest and most stringent water quality standard for surface waters of the state. According to the Florida Department of Environmental Protection, Southeast District Surface Water Quality Section (FDEP), the Water Catchment Area "is a 'pristine' (i.e., 'belonging to the earliest period or state, uncorrupted by civilization, innocent, free from decay, fresh and clean' – Webster's Collegiate) remnant of the original Everglades." See FDEP *Ecosummary*, June 2004.

The M-Canal, also a Class 1 water body, provides a connection between the Water Catchment Area/Preserve and Lake Okeechobee by means of the L-8 tieback and L-8 canals. Water from the L-8 canal is pumped upward to the M-Canal (a higher elevation), which then flows through the Preserve and then east to Lake Mangonia and Clear Lake, concluding at the City's water treatment plant. FDEP initiated monthly sampling in the Preserve beginning in January 2004. FDEP's preliminary findings indicate that "the water quality within the interior of the marsh is clean, clear, and extremely low in nutrients, i.e., the scientific data so far collected shows that the interior of Grassy Waters is in fact characteristic of a pristine Everglades remnant." Significantly, water from the Preserve can also flow north by gravity to the Loxahatchee Slough and C18 Canal (and from there to the Loxahatchee River). See FDEP *Ecosummary*, June 2004. Contamination of the M-Canal would mean contamination of the Preserve, and vice versa.

The PD&E Study and corresponding documentation in no way address the impact the Project will have on the Water Catchment Area/Preserve as a source of potable water for over 130,000 Palm Beach County citizens. *See* PD&E Study at p. 91. Choosing instead to focus on primary impacts of construction activities, the PD&E Study is silent on the impact of additional vehicular traffic attracted by a new four to six lane highway next to this pristine area. Not only will vehicular emissions, in the form of fallout bound by rain and runoff from road-tops through swales into the Ibis Preserve, find their way into the Water Catchment Area and from there into the City's drinking water supply during normal operation of the road, but with the increased truck traffic crossing the M Canal and proceeding along the very edge of the Preserve, there will be the potential for a calamity of cataclysmic proportions under certain conditions.

Studies commissioned by the City indicate that a spill of dricleaning fluid could lead to toxin concentrations 600 times greater than clean-up response standards, and a pesticide spill of up to 2,000 times clean-up response standards. Even by the time the toxins reach Lake Mangonia, they would be more than 100 times greater than Federal drinking water standards permit. Such spills, or a gasoline tanker spill, would rapidly and permanently poison the water well for a good part of Palm Beach County. The carcinogenic and toxic effects would end the use of this source of potable water, and the poisons may be bioaggregated in the flora and fauna for a long time. *See* Thomas, Cassondra, Ph.D., Cardno Entrix, Modeling Fate and Transport of a Hazardous Material Spill and Risk Assessment of Ecological and Human Health Impacts., March 26, 2012; That eventuality might seem to be remote until one considers that the road is making an approximate 100-degree turn at this most exposed point where the Water Catchment Area, the Pond Cypress Natural Area and the M-Canal meet, and that the bridge, regardless of the strength of its railings, could not contain a major liquid spill. The calamity represented by such an accident is comparable, if not in scale in severity, to the BP New Horizons Gulf of Mexico disaster, which nobody thought possible. Indeed, the PD&E Study seems to acknowledge this concern in passing when it recommends use of stronger than normal bridge railings, which should be "considered when a vehicle penetrating or overtopping the traffic railing would cause a high risk to the public or surrounding facilities." PD&E Study at p. 25. Of course, no matter how strong railings are, they could not prevent in the case of an accidental spill the flow of contaminants through cracks and fissures into the Preserve or the M-Canal.

The City has commissioned a study that demonstrates what would happen if an accidental discharge occurred. The poisoning of the City's potable water supply under those circumstances would be accompanied by the permanent destruction of part or all of 12,800 acres of pristine habitat of some highly endangered species. Yet, the PD&E Study does not contain any discussion or consideration of how it would effectively respond to such an accidental spill. Moreover, it does not appear that the agencies have conducted any analysis of the nature of truckloads likely to be transported in the immediate vicinity of the Water Catchment Area, and whether a spill could be directly or indirectly be discharged into the sensitive water courses abutting the project area. Nor is there any indication in the PD&E Study of how surface run-off and exhaust discharges will impact the water quality in the Water Catchment Area. Accordingly,

the PD&E Study is fatally flawed.

### **3.6.2 Impacts from loss of water storage capacity**

While the Project is proposed to be constructed on existing rights of way along the west side of the Water Catchment Area and not inside the WCA, these areas are hydrologically connected to the WCA and represent approximately 1% of the WCA's water storage capacity. Redirecting storm water westward away from the catchment represents a loss of 488,777 gallons of water storage. As water shortage years such as 2011 demonstrate, the health and capacity of the WCA is essential to water supply for the entire region. At the most dire times in 2011, which can be expected to recur more frequently as alternative water sources dwindle, the Water Catchment Area was one of the last remaining reservoirs of fresh water for humans, flora, and fauna in the region. Any project that reduces the water storage capacity of the WCA is detrimental to the public interest and should not be built.

## **3.7 Wetland Impacts**

The PD&E Study calculates that the proposed SR 7 extension will have both direct and secondary impacts on approximately 114.5 acres of wetlands. An additional, approximately 8 acres will be impacted with the straight bridge crossing over the City's M-Canal, which is a virtual necessity since the rights of way do not exist for the skewed bridge crossing. Note that the land use of a skewed bridge crossing would be incompatible with the legislative purpose of the Grassy Waters Preserve, so that the City could not agree to requests for easements even if it were in favor of the Project. *See* discussion above at Section 3.1. FHWA has determined that the straight bridge crossing would constitute a Section 4(f) use of the Pond Cypress Natural Area, a preserve and wildlife refuge owned by Palm Beach County. *See* PD&E Study at pp. 55, 91. The proposed M-Canal skewed crossing requires acquisition of land over the M-Canal from the City, as well as removal and reconstruction of Control Structure No. 3, a major utility that is not identified in FDOT's environmental assessment or its budget. The Water Catchment Area is protected by special act of the Florida legislature, which requires the City to retain the Water Catchment Area in perpetuity and prohibits the transfer of any WCA lands for purposes inconsistent with public water supply, education, environmental and conservation purposes. Clearly, construction of a road threatening the very functions of the land to be protected is not one of the purposes for which easements may be granted.

### **3.7.1. Mitigation options**

The PD&E Study's discussion concerning mitigation is insufficiently detailed, and the mitigation information contained in the Wetland Evaluation Report ("WER") is inadequate. *See* Letter from USFWS to FDOT of February 29, 2012. The Letter makes it clear that "[t]he Service does not have enough information to provide concurrence or non-concurrence with the FDOT's determination [concerning mitigation for loss of Wood Stork habitat] at this time." Letter at p. 4. The Letter also challenges FDOT to "provide a detailed habitat compensation plan indicating

how the FDOT intends to minimize the project's adverse impacts on the snail kite," and "to provide a detailed wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project." It is inexcusable that such plans are not contained in the PD&E Study and its supporting documentation. Clearly, the PD&E Study as presented does not permit informed decisions by the public or the agencies as to whether mitigation is even an option – not to mention an affordable option for this Project.

Wetlands adjacent to the Project are considered "moderate to high" quality per the Uniform Mitigation Assessment Method (UMAM). Grassy Waters has a Class I Outstanding Florida Waters designation. Additionally, the FWC provided Environmental Screening Tool (EST) comments stating that the effects to wildlife and habitat under the proposed work plan would be "moderate". During the ETDM process, the USACE and FDEP both ranked wetland involvement for this corridor as "substantial", and expressed concerns about habitat fragmentation, isolation of the Ibis Preserve, and providing adequate mitigation for impacts to forested wetlands.

Primary proposed direct wetland and surface water impacts within the proposed ROW are estimated in the PD&E Study to be 112.46 acres: 111.82 acres of wetland impact and 0.64 acres of surface water impact. The wetland impacts will result in 86.24 units of UMAM Functional Loss. Additional direct wetland impacts associated with construction of the straight bridge crossing of the M Canal equal 8.02 acres, or 6.54 units of UMAM Functional Loss. Secondary direct impacts associated with the alignment and intersection alternatives will result in 8.54 units of UMAM Functional Loss. Additional secondary wetland impacts associated with construction of the straight bridge crossing of the M Canal equal 0.28 units of UMAM Functional Loss. It is indisputable that these wetlands, particularly in the Pond Cypress Area and the Preserve, provide a high level of ecological services and are extremely important foraging habitats for wading birds and Snail Kites. Wood Storks and Snail Kites have documented, active nesting colonies and locations, respectively, in the immediate ROW project area. There is no indication in the PD&E Study that anticipated wetland mitigation resulting from construction *and operation* of this project will satisfy all mitigation requirements of Part IV, Chapter 373, F.S. and 33 U.S.C. §1344. Yet, the PD&E Study proposes to deal with all "secondary impacts" – i.e., the real impacts from operation of the four to six lane highway – with as yet undefined mitigation.

Of the 14 tabulated mitigation options provided (WER at p. 56), only the first entry, called "Rangeline," represents mitigation directly within the wetlands potentially affected by the SR 7 extension. However, mitigation in Rangeline provides insufficient ecological lift to be significant. All of the other options would essentially represent an unacceptable fragmentation of wetland values. Mitigated wetlands are required to be located in a manner as to maintain continuity to Grassy Waters. Mitigated wetlands are required to match the habitat type, plant community assemblages, and hydrology of the impacted wetlands, which is not the case for any of the proposed options other than Rangeline. More importantly, all options (except Rangeline) are either too far away or are inappropriate to compensate for specific impacted wetland values. The Pond Cypress Natural Area has already been used for mitigation for other projects, and will

not be available to provide the entire mitigation necessary to compensate for the loss of wetlands and habitat for the Snail Kite, Wood Stork and other species. This general flaw also applies to consideration of the possible use of Corbett Wildlife Management Area for mitigation, recently proposed as an additional option.

At least the most promising mitigation options should have more detailed information, including their ecological relationship to the impact site, intervening distances and land uses, and appropriate maps that show the geographic relationships of the impacted land and potential mitigation areas. The tabulated information and related report text are vague and too abbreviated for reasonable, or even general, evaluation. Moreover, some of the preliminary work necessary for an adequate mitigation analysis, such as a referenced wood-stork prey biomass analysis, have not even been conducted, yet. The current FDOT mitigation plan for this requirement is shown as "NOT DETERMINED," and this despite the fact that such mitigation will be absolutely required if the Project proceeds as proposed. The PD&E Study proposes to deal with all impacts of operation of the Project with mitigation, but much of the mitigation discussion has been postponed until after the public hearing, which prevents an informed public discourse or checks and balances on the mitigation process.

Because of the exceptional ecological values of the remaining parts of the Loxahatchee Slough, impact and mitigation requirements measured by the Uniform Mitigation Assessment Method (UMAM), as proposed for this Project, may not even be adequate. *See* T.E. Lodge Ecological Advisors, Inc., analysis of March 15, 2012, P. 5 of 11. While UMAM is a useful tool for many projects, it does not recognize and capture the importance of contiguous spatial extent and the potential loss of value that may be caused by approaching lower-limit habitat thresholds that have been recognized for many species such as the Snail Kite (Martin et al. 2006). In this regard, even the potential use of enhancement within the Pond Cypress Natural Area (the "Rangeline" option), while beneficial to wetland integrity, would still result in a net loss of spatial extent. In addition, the wetland value of Pond Cypress Natural Area is already so high that it provides insufficient lift to provide adequate mitigation in this case. *See* PD&E Study at p. 98.

The Project alignment next to productive wetlands where high-speed traffic will be in proximity to species vulnerable to vehicular collision makes mitigation nearly impossible. *See* T.E. Lodge Ecological Advisors, Inc., analysis of March 3, 2012, P. 5 of 11. From the existing north end of SR 7 at Persimmon Blvd., the proposed new alignment of SR 7 going eastward along the M Canal and then northward to North Lake Blvd. will expose wildlife to vehicular traffic at higher speeds and closer distances than exist now. Particularly avian, mammalian, reptilian and amphibian species cannot be excluded from the Project area, and vehicular deaths are unavoidable. This problem is especially significant along the corridor segment bordering the M-Canal and continuing north to and along the Ibis Golf and Country Club where no road currently exists, and then along Ibis where significant intervening barriers now lie between existing vehicular traffic and the Grassy Waters Preserve. The value of the existing protective barriers for wildlife species such as the Wood Stork, Snail Kite, Florida Sand Hill Crane and the

Eastern Indigo Snake will be compromised. The proposed mitigation options, to the extent they are even capable of intelligent analysis as represented in the WER, are entirely inadequate to account for the severe secondary impacts (i.e., impacts from operation of the new highway) of this Project.

In general, analyses of the success of wetland mitigation in offsetting wetland impacts have found that most projects are not providing the goal of “no net loss of wetlands” as required under the Clean Water Act. Numerous mitigation examples involve freshwater marsh and swamp communities (National Research Council 2001, Pittman and Waite 2009). As such, mitigation should be avoided whenever possible if a highly valued wetland resource is involved, such as here. Moreover, mitigation is of doubtful effectiveness if some of the mitigation land is later used for development, anyway, as the PD&E Study seems to indicate for the 7.3 acres of Pond Cypress land needed to truct the straight bridge approach to the M Canal crossing. *See* PD&E Study at p. 55: “This section of the Pond Cypress Natural Area also serves as mitigation for the County’s two-lane extension of SR-7.”

The PD&E Study does not even attempt to quantify the cost of mitigation prior to the public hearing on the selection of Corridor 3. It would seem impossible for any observer to make an informed decision as to whether the currently proposed preferred alternative is the best and most cost effective alternative.

In sum, the mitigation section of the PD&E Study is not sufficiently detailed, and flawed at that. The fact that FDOT has been unable to advance any plan that properly mitigates the high quality wetland losses and services expected in the Project (i.e., foraging habitat loss, continuity, plant community assemblage, prey biomass) mandates against Project implementation. The Department is urged to heed the warnings of the U.S. Fish & Wildlife Service, who opposes any project corridors along Grassy Waters Preserve. Clearly, the Service has the expertise to determine whether federally endangered species are adversely impacted by the Project, and its determinations are to be afforded great deference. The Service’s warnings against construction of the Project in this location provides a backstop that will be used by all those opposing the project to seek redress if this Project is approved without proper mitigation analysis.

### **3.8 Water Quality**

Water Quality consultants Environmental Research and Design have warned the City against the impacts of the Project on water quality. *See* ERD Technical Memorandum dated March 19, 2012. Initially, ERD found that the PD&E and supporting documents do not reflect design criteria or calculations to assess the adequacy of the proposed stormwater management system under SFWMD design criteria. ERD found that while the proposed alignments are not expected to discharge directly into the Preserve, lateral ground water discharges from the Project area to the Preserve could not be eliminated considering the highly permeable nature of the subsurface strata in this area, particularly is there is a pressure gradient between the proposed swales and the Preserve itself.

According to FDEP (June 2005), water within the Grassy Waters Preserve is oligotrophic, i.e. characterized by extremely low levels of total phosphorus, with mean concentrations at seven water quality monitoring sites ranging from 0.007-0.026 mg/l (Parts per billion, ppb) over the period from January 2004-March 2005 (excluding measurements which were collected directly from the M-Canal). The Preserve also has low to moderate total nitrogen levels. The foregoing indicates that water in the Preserve is highly phosphorus-limited, so that inputs of phosphorus into the system can rapidly stimulate additional algal productivity. Potential seepage from the swales to the Preserve could contain higher phosphorus levels, with additional phosphorus being added to the Preserve over time. As a result, the Grassy Waters Preserve appears to be highly susceptible to additional phosphorus loadings which could potentially cause additional algal production and even a change in species to cyanobacteria which would significantly impact the suitability of the preserve for its intended use as a potable water supply. Higher phosphorus concentration over time would also lead to a change in periphyton communities, and eventually could completely change the floral communities in the Preserve to favor such invasive species as cattail, which has created devastating mats of monoculture in large swaths of Everglades lands, such as the area west of the S-9 pump in suburban Broward County.

A further potential is for airborne contaminants from the new four-to six-lane highway being added to the Preserve. The proposed SR 7 extension is a designated trucking route which will be used to transport a wide range of cargo, including cargo which could contain elevated phosphorus (such as fertilizers, soils, cement mixes, and other similar materials). Deposition of these materials into the Preserve over time could further increase phosphorus concentrations and stimulate algal growth.

The PD&E Study fails to adequately articulate such threats, and thus does not properly assess the impacts of the Project on Water Quality in the Project area and in the Preserve.

### **3.9 Contamination**

As indicted above, the City has commissioned a study to determine the potential impacts from a major gasoline tanker spill on the City's Water Supply. See Thomas, Cassondra, Ph.D., Cardno Entrix, Modeling Fate and Transport of a Hazardous Material Spill and Risk Assessment of Ecological and Human Health Impacts., March 26, 2012, discussed above, at section 3.6. One of the concerns raised by both residents and regulatory agencies early during the evaluation process for the SR 7 extension is the potential for contamination of the Grassy Waters Preserve by a spill of material on the roadway as a result of an accident or equipment failure. Even the FDOT acknowledges this concern to the drinking water in a powerpoint presentation. However, FDOT's analysis of the impact of a spill in that presentation is entirely superficial, and concludes that spills on the roadway will simply be collected in the curb and gutter system and directed into the dry retention and wet detention treatment areas and eventually cleaned up by state and local responders. This type of cursory analysis and subsequent dismissal of the issue as insignificant is clearly inappropriate given the level of significance of the Grassy Waters Preserve and its importance as a potable water supply for over 130,000 residents in Palm Beach County. No alternative long-term solution is available to replace the Preserve as the water source for 130,000 Palm Beach County citizens. The Cardno Entrix study indicates that an accident where drycleaning fluid, pesticide or gasoline is spilled at the M-Canal bridge could poison the drinking water supply with carcinogen levels many times above what is safe, with toxins at levels far exceeding EPA limits. For practical purposes, an accidental discharge of pollutants from the road into the M-Canal could mean the loss of drinking water for more than one hundred thousand Palm Beach County residents.

Moreover, spills along the SR 7 segment along the Preserve may not be entirely contained in the swale, as the PD&E Study seems to suggest. While minor spills may remain within the dry and wet detention ponds, spills from major accidents onto the edge of the Preserve could have a devastating impact. *See* ERD Report. The opportunity for this type of incident appears to be greatest with the eastern and center alignments, which for this reason alone should be eliminated from consideration. It should also be noted that the drainage system discussed in the PD&E Study includes the possibility of discharges from the swales to wet detention ponds, the Ibis Preserve, and from there during major storm events to the Grassy Waters Preserve. *See* discussion of drainage issues, above. The consequences of contamination via the surface drainage system would be devastating to the Preserve. The ERD analysis found that water quality standards in the Preserve would be violated with the addition of as little as 53 kg of ammonia or 26 kg of arsenic. The addition of as little as 20.3 grams of beryllium, or approximately one pound of cadmium or carbon tetrachloride would eliminate the Preserve as a water source. *See* ERD Report. Based on the possibility of water quality violations in the Preserve as a result of the addition of relatively minor quantities of pollutants, the potential and the effects of contamination should have been analyzed in a far more comprehensive manner than the cursory FDOT powerpoint presentation.

With the benefit of hindsight to such events as the Gulf of Mexico New Horizons oil spill, there is no excuse for the cavalier treatment contamination risks receive from FDOT in the PD&E Study. As we have learned in the recent past, our natural resources must be protected with greatest care, and any projects that give additional access to the nation's water and food supply should be viewed with great skepticism. The PD&E Study fails in this regard.

### **3.10 Wildlife & Habitat**

All projects that have a significant impact on the human environment require an Environmental Impact Statement ("EIS") pursuant to 23 CFR 771. While the PD&E Study contains statements, contrary to all evidence, that this project is not expected to cause primary impacts, it is only clever word-use – the designation of construction-related impacts as "primary" and road-operation related impacts as "secondary" – that lets the FDOT make these claims. It is patently obvious that this Project will be located adjacent to perhaps the most sensitive wetlands area in the entire region, and will have extensive adverse impacts on those wetlands. The conclusory statements that the project may, but is not likely to affect endangered species, violates the requirements of the National Environmental Policy Act ("NEPA"). According to the Department's own PD&E Manual, projects that do have a significant environmental impact should address all environmental issues identified during the PD&E Study phases. (Manual at 4-2.9.2). In this case, the analysis does not adequately consider the likely impacts of road construction and road operation on endangered species, and thus does not comply with the legal requirements.

Because the PD&E Study considers only construction-related impacts to be primary or direct impacts, it states that "[n]o direct impact is expected within Grassy Waters Preserve." PD&E Study at p. 91. However, it is obvious that the real impacts of concern here are the impacts resulting from the operation of the four to six lane highway immediately adjacent to the Preserve. Thus, calling those impacts "secondary," and reviewing them minimally or not at all, renders the PD&E Study fatally flawed. The primary concern should have been the impact of

the Project once constructed, yet the PD&E Study deals with those effects as an afterthought. Its determination that “no direct impact is expected within Grassy Waters Preserve” is nearly meaningless, and merely designed to sway public opinion, rather than to make a bona-fide determination of how the highway to be built will impact the wetland areas. This clever limitation of detailed review to primary – i.e. construction-related impacts – lets FDOT avoid consideration of the impact of highway traffic proceeding through no-entry buffer zones of Everglade Snail Kite nests, but it makes the entire analysis virtually meaningless. This practice represents an example of improper segmentation of project analysis, which is prohibited by law. *See, e.g., Florida Wildlife Federation v. U.S. Army Corps of Engineers*, 401 F.Supp.2d 1298, 1316 (S.D.Fla. 2005).

The U.S. Fish & Wildlife Service clearly rejects this notion of designating impacts from the operation of the road as secondary. In its February 29, 2012 Letter it notes that “disturbance will result from construction-related activities *and* motor vehicles and human activity on the roadway following construction.” Letter at p. 3 (emphasis added). The Service acknowledges that the impacts of this Project once built will substantially impair the ecological function and integrity of the wetlands along the proposed corridor both temporarily (during construction) and permanently (during operation of the new four to six lane road). In truth, permanent direct impacts are the unacceptable loss of contiguous habitat by the proposed SR7 extension. They include habitat fragmentation (the separation of the Ibis Preserve from the Pond Cypress/Grassy Waters areas). *See* Analysis of Thomas E. Lodge Ecological Advisors, Inc., attached hereto. Permanent secondary impacts of high-speed traffic include increased vehicular impact fatalities as a result of the new 5.1 miles of four- to six-lane roads immediately adjacent to sensitive wetlands, as well as degradation of wetland values throughout the Preserve and the Pond Cypress Natural Area as a result of emissions of all kinds from vehicular traffic (noise, exhaust, lights, etc.).

The PD&E Study’s analysis of Wildlife and Habitat issues are based upon an ESBA, which itself is deeply flawed and apparently biased. Particularly the analysis and conclusions related to the endangered Everglade Snail Kite are incomplete, unscientific and incorrect. Besides containing the specific flaws and shortcomings discussed below, many of which by themselves render the analysis legally inadequate, the ESBA demonstrates an overarching tendency to brush off all potential impacts as insignificant, with the obvious goal of seeing the Project built at any cost. It accomplishes that goal by focusing primarily on construction-related impacts, rather than the more severe operations-related impacts.

### **3.10.1. The impacts on the Everglade Snail Kite are not adequately analyzed**

The Everglade Snail Kite (*Rostrhamus sociabilis plumbeus*) is a critically endangered species. The presence of such large numbers of these endangered birds as are found at Grassy Waters Preserve is remarkable. Snail Kite numbers have declined precipitously in recent years, and population counts have dropped to as few as 700 birds throughout the range in recent years, rendering the survival of the species questionable. Given that this species is in decline, and

Grassy Waters supports breeding snail kites, it is essential that we preserve Grassy Waters in support of the snail kite recovery.

U.S. Fish and Wildlife Service (USFWS), in its Everglade Snail Kite Quick Facts, notes that snail kites “regularly occur in the expansive marshes of southern Florida such as Water Conservation Areas 1, 2 and 3, Everglades National Park, the upper St. John’s River marshes, and Grassy Waters Preserve.” USFWS also notes that “kites will generally stay in one area as long as they can find food (apple snails), but will seek another wetland that has food available if foraging conditions decline.” The key to managing Everglade snail kites, according to USFWS, is “maintaining suitable habitat. This includes both nesting and foraging habitat.” *See* USFWS Quick Facts. In its February 29, 2012 letter to FDOT, the Service stresses that the Snail Kite Population is “precariously small,” and finds that “the project will likely adversely impact the snail kite.” The Service out and out rejects the FDOT’s determination of no likely impact. Instead, the Service recommends that FHWA initiate formal consultation with the Service concerning the Everglade Snail Kite in accordance with 50 C.F.R. 402.14. Given that such consultation is to be initiated “at the earliest possible time,” FDOT should not wait to see whether FHWA heeds the Service’s request. As part of that consultation, the agency has the obligation to provide the best scientific data, which did not happen in this case. *See* comments in Darby Report, that FDOT did not rely on any peer-reviewed publications, and limited itself to three publications out of some 80 existing publications on the Everglade Snail Kite.

In its February 29, 2012 Letter, the Service states: “Please provide a detailed habitat compensation plan indicating how FDOT intends to minimize the project’s adverse effects to the snail kite.” The lack of such a plan at this time is an insurmountable roadblock for this Project to proceed. If FDOT does not stop the Project, it proceeds at its own peril to waste taxpayer funds without adequate environmental review.

FDOT acknowledges for the Preserve that “ample suitable habitat and potential prey (native apple snails) have been observed.” PD&E Study at p. 105. While FDOT observed four nesting sites in the immediate proximity of the Project area during its field survey, the annual survey conducted by USFWS and the University of Florida in January 2011 actually observed numerous additional snail kite nesting sites in the Preserve. *See* Snail Kite nesting map. The number of Snail Kites in the Preserve is especially important to note given the declining numbers of Snail Kites over the entire range.

As the PD&E Study properly recognizes, the entire Project is located in the Consultation Area for the Everglade Snail Kite. In fact, the Project will run straight through the No Entry buffer zone and Limited Activity Buffer Zone for one nest, and the Limited Activity Buffer Zone of three additional nests. *See* Figure 6-4. While the ESBA and the PD&E Study brush aside that fact with the argument that construction would not take place during nesting season and that Snail Kites tend to build their nests in different locations from one season to the next, there is an acknowledgment that the four nests have been in this location for several years (p. 53). Moreover, it is ludicrous to suggest that a four-lane highway built within 162 feet of the

preferred habitat of one of the most direly endangered foraging birds is not likely to impact the bird, before, during, or after nesting season. This is a textbook situation where NEPA requires an Environmental Impact Statement, and the Endangered Species Act (“ESA”) requires initiation of consultation.

The PD&E Study and the ESBA completely ignore the impact of expected four- to six-lane highway traffic in a No Entry Buffer Zone for the Snail Kite by focusing exclusively on construction activity. Quite simply: if construction activities are not permitted during the nesting season, vehicle driving activities are not permitted, either. This means that the road, once built, would have to be later closed for significant portions of the year. The PD&E Study and ESBA seem to presume that the Snail Kites will nest elsewhere in future seasons. While that may be true, those other locations may again be within the No-Entry Buffer Zone or the Limited Activity Buffer Zone. Moreover, the PD&E Study and the ESBA completely ignore any significance of the Limited Activity Buffer Zone, and seem to assume that vehicular traffic through these zones will not have any adverse impact of the Snail Kites nesting there. The ESA under the circumstances prohibits any adverse impacts on endangered species, such as the Snail Kite, and adverse impacts on habitat are within the ambit of the ESA prohibitions.

The ESBA’s analysis of the Snail Kite issues is flawed in many additional ways (*see* report of Phil Darby, Ph.D., plus supporting documentation):

- The ESBA does not address the critical importance of Grassy Waters Preserve as a refuge for Everglade Snail Kites when other critical wetlands (e.g., Water Conservation Areas – WCAs – in the Everglades) run dry. Under such conditions, Grassy Waters Preserve, with its carefully regulated water depths, becomes a Noah’s Ark for the survival of this endangered species. Any negative impact on the Snail Kite population in Grassy Waters is therefore magnified within the context of the struggle for survival of this species as a whole. *See* Darby Report at p. 5.
- The ESBA does not address the cumulative impacts of the Project on Grassy Waters as part of a regional network of wetlands necessary for the survival of the species. As is more fully explained in the attached report of Phil Darby, Snail Kite ecology and the impact on habitat change cannot be understood at an individual wetland unit level, nor on a seasonal or even annual time scale. Instead, potential impacts of a project must be evaluated cumulatively as part of a network of habitats that, over multi-year-timeframes, are critical to the Snail Kite population. In other words, any impact by the Project on Grassy Waters will reverberate throughout the entire range of the Snail Kite, and will have cumulative adverse effects on the survival of the species. None of this is acknowledged in the ESBA.
- The ESBA does not address the potential impacts of the Project on Snail Kite foraging. As is more fully explained in Professor Darby’s report, Snail Kites have

been observed foraging miles from their nests. It is undisputed that the Project will cut deeply through the foraging areas of these birds. Professor Darby reports that one of the largest roosts of Snail Kites has been reported in the vicinity of Grassy Waters, and Snail Kites have been observed leaving the roost and flying west to forage. Darby Report at p. 5. Clearly, the Ibis Preserve provides foraging territory for the Kites, and the Project as proposed cuts like a machete through this area.

- The ESBA does not address the impact of the Project outside the Snail Kite breeding season, despite the fact that the greatest numbers of Kites in Grassy Waters Preserve have been observed during the non-breeding season, when conditions in other habitats such as the WCAs are less than ideal. Clearly, the impact of the Project on Snail Kite habitat is not limited to the breeding season, nor to construction activities during breeding seasons. Instead, an evaluation must be conducted of the impact of a four- to six-lane highway on Snail Kites and their habitat year round.
- The ESBA falsely concludes that the Project “may affect but is not likely to adversely affect the snail kite.” While conceding that the Project “may affect” the snail kite if nesting in the current location continues, the study somehow concludes, without any factual support, that nesting near the Project will not continue. Respected ecologist Phil Darby, as well as the U.S. Fish & Wildlife Service, has concluded that the road Project will definitely affect kite nesting and foraging habitat. The ESBA can make the no-impact claim only by the slight-of-hand of focusing solely on construction-related impacts rather than on operation-related impacts. Actually, a careful review of the ESBA dated September 2011 reveals that this conclusion was preordained before the underlying “Wetland-Dependent Bird Survey as they Pertain to the Snail Kite” was concluded. See ESBA at 56 – 58. The ESBA states in shaded type “Draft Summary; may be rewritten after the survey above is conducted.” From the tone of the ESBA it is clear that the authors hoped that the Snail Kites nesting near the project area could be made to disappear before operations of the roadway commence, and that the Survey could be made to say what the applicant desires: i.e., no Snail Kite nesting in the immediate vicinity of the Project area. That approach is unscientific, improper, unbecoming of a State agency, and contrary to Florida and federal law.

Indeed, the type of impact expected by this Project on the Snail Kite is exactly the kind contemplated by NEPA as requiring an Environmental Impact Study. See 42 U.S.C. §4332(2)(C), 40 C.F.R. §1502.1. The agency, in this case the FDOT acting on behalf of the FHWA, must take “a hard look at the environmental consequences of the proposed action. *Sierra Club v. Rice*, 295 F.3d 1209, 1216 (11<sup>th</sup> Cir. 2002). In doing so, it must consider the direct, indirect and cumulative

impacts of the proposed activities, as well as the significance of those activities on the human environment. 40 C.F.R. §§1508.7, 1508.8, 1508.27(b). A finding of no significant impact (“FONSI”) is permitted only if the proposed action will not significantly affect the environment, 40 C.F.R. §1508.13, and the FONSI determination must be supported by a statement of reasoning and evidence, not merely conclusions. *Hill v. Boy*, 144 F.3d 1446, 1450 (11<sup>th</sup> Cir. 1998). The process of pre-determining the lack of adverse impact before conducting the survey renders the entire ESBA specious. Moreover, the agency action to be considered in this case is not only the construction activity, but operation of the road itself. If the ESBA and the PD&E Study/EA lead to the issuance of a FONSI by FDOT/FHWA, the agency action would be found to have acted arbitrarily and capriciously precisely because the underlying documents contain merely conclusions, and not reasoning and evidence, on many issues.

- The ESBA does not consider the potential impact of road noise or vehicle collisions on the Snail Kites in Grassy Waters Preserve. Both impacts are a distinct possibility and must be considered, given that the Snail Kite is teetering on the brink of extinction. Bennetts et al. (1998) report vehicle collisions as a cause of mortality for Snail Kites. The ESBA reports that during a limited survey, “snail kites were observed flying over the project area.” The ESBA does not adequately address this possibility, and simply mentions such impacts as secondary, without any indication of how they affect the Snail Kite. Foraging by Snail Kites in this area would dramatically increase the chances of Kites dying from vehicle collisions once the road is completed. *See Darby Report* at p. 7. Those impacts must be spelled out in the Snail Kite section and properly addressed.
- The ESBA contains several fundamental errors that raise concerns over the accuracy and thoroughness of the report itself. This concern is based, in part, on the paucity of literature cited: Only 10 publications are cited in total, and of these only 3 relate to the Everglade Snail Kite. None of these three were peer-reviewed manuscripts. At least 80 peer-reviewed manuscripts and at least 40 technical reports exist on Everglades Snail Kites, most of which were reviewed and relied upon by Professor Darby, who concludes that the Project will definitely affect the Snail Kite habitat and the endangered Snail Kite itself.
- It is unclear from the ESBA from which publication the Snail Kite census numbers come (reference is made to “nest location data from USFWS 1996 – 2011) (p. 53). There is no indication of the methods used for the count or of the accuracy of such methods. It should be noted that, generally, many nests go undetected in counts. Literature indicates that nest detection probabilities are only 0.16 to 0.35 (*see Martin et al., 2007*), so that the actual numbers of Snail Kite nests in Grassy Waters Preserves may be significantly higher than represented in

ESBA. The same is true for the process of detecting adult snail kites in airboat surveys, where detection rates of 0.25 to 0.40 apply. Moreover, keeping track of nests does not adequately reflect the full use of the Snail Kite, as kites in any given day may travel several kilometers between foraging sites, nest sites and roost sites. *See Darby Report at p. 3.* Significantly, Grassy Waters in recent years has supported an increase in Kite nesting, *see Darby Report at p. 3.*, which further emphasizes the importance of preserving this refugium without impacts. The ESBA also fails to indicate what the implications are if an area is determined by USFWS to be a Priority Management Area, as parts of the Preserve are.

- The ESBA simply assumes that the currently reported Snail Kite nests in the Project area will be abandoned shortly. There is no factual basis for that assumption. In fact, Snail Kites do exhibit philopatry with regards to nesting, i.e., adult Snail Kites tend to return to the location where they fledged. *See Darby Report at p. 4.* While Snail Kites do not necessarily return to the same exact nest location year after year, the ESBA concedes that the nests currently located in the Project area have been there for several years. Unless aggressive survey methods, a noisy highway, or other noxious conduct displaces these birds, there is no reason why they would not continue to roost in proximity of the current nests.
- The ESBA incorrectly reports that a primary food source for snail kites is the “exotic ramshorn apple snail” (p. 53). First, the ramshorn snail is not an apple snail, and second, Snail Kites rarely consume ramshorn snails. Snail Kites consume almost exclusively the Florida Apple Snail (*Pomacea paludosa*), which is the only apple snail population supported at Grassy Waters Preserve. *See Darby Report.* Not only does this mistake show the lack of care and scientific foundation in the analysis of the ESBA, but it demonstrates a lack of awareness of the foraging habits of the Snail Kite and a lack of understanding of the importance of preservation of Grassy Waters Preserve in its current condition, without noise, pollution, vibration, light and related impacts from a four- to six-lane highway.
- The ESBA mentions that active Snail Kite nests near the project impact area will be monitored daily (p. 58). Professor Phil Darby states that daily monitoring would be counterintuitive to the protection of such nests. “Disturbing kites on a regular basis forces adults off the nests and leaves the young vulnerable. . . . If active nests exist, then any activity, including approaching the nests for a status check, should be kept to a minimum until the young are nearly fledged.” Indeed, the No-entry Buffer Zone established for occupied nests (*see p. 56*) expressly prohibits the entry of personnel, use of airboats, helicopters and other equipment in those areas. Thus, daily checks would seem to be the best method to ensure that nests near the Project will be abandoned so that the SR-7 extension can be built.

- The measures identified in the ESBA for the protection of the Snail Kite are inadequate. For one, they only protect the Snail Kites “during the nesting season.” Second, none of the stated remedial measures deal with the noise, vibration and pollution impact of vehicular traffic on the Snail Kite habitat. None of the measures even remotely address the risk of vehicular collisions with Snail Kites. Daily nest monitoring is the safest road to ruin, as discussed above. Compilation of plans, reports and surveys does nothing to protect Snail Kites without indication as to what action will be taken if Kites are found to have been adversely affected by a four- to six-lane urban road crossing their no-entry buffer zone. Nor is there any indication that exotics removal within the Project right-of-way will be a benefit to the Snail Kite. *See* p. 4 of ESBA. Amazingly, one page after claiming exotics removal as a measure for the benefit of the Snail Kite, the ESBA promises to “preserve existing vegetation” within the ROW.
- A further concern for the Snail Kite is of traffic noise on wildlife. A substantial body of literature indicates that birds in wildlife refugia such as Grassy Waters Preserve are particularly sensitive to noise impacts. Noise levels in excess of 50 dBA can mask or interfere with the detection of biologically relevant sounds, such as mating calls. Moreover, excessive noises have behavioral and psychological effects in birds as they sense that due to the noise, they may not be able to detect approaching predators. *See* Siebein Report

In sum, the analysis of the impact of the Project on the Everglade Snail Kite is legally insufficient.

### **3.10.2. The impacts on Wood Storks are not adequately analyzed**

The ESBA concludes that the Project “may affect” the federally endangered Wood Stork. Yet, despite the ESBA’s finding that the Project “may impact” the Wood Stork, the ESBA goes on to find that “the proposed project is not likely to adversely affect the existence of any threatened or endangered species, even though some are known and expected to occur in the study area.” That conclusion is entirely unsupported by the evidence and reasoning. It appears to be based, as the entire PD&E Study, on the definition of the “Project” as the construction activities to be undertaken by FDOT, rather than the existence and operation of the road itself. The U.S. Fish & Wildlife Service in its February 29, 2012 Letter to FDOT stressed that it does not have enough information to provide concurrence or non-concurrence with the FDOT’s determination at this time, and requests detailed mitigation plans for the Wood Stork. *See* Letter at p. 4.

Any future finding of no significant impact of construction and operation of the road on the Wood Stork based on the record provided would lead to immediate challenges. Indeed, given the finding that the Project corridor is located within the core foraging areas of the Wood Stork, and that prey biomass will be lost for Wood Storks, makes a finding of no significant

impact nonsensical. A FONSI for this Project on the currently existing records would indicate that it is virtually impossible that *any* project could *ever* have a significant impact on any habitat of any endangered species. The expected impacts from operation of a four- to six-lane highway in this location are textbook adverse impacts on an endangered species, requiring preparation of an EIS.

The U.S. population of Wood Stork has been listed as an endangered species since 1984, and its status has recently been under review. (USFWS 2010). Scientific literature demonstrates that the southern Florida population of the Wood Stork appears to be stable, at best, or declining. See T.E. Lodge Ecological Advisors Report of March 15, 2012, at p. 2 of 11.

The ESBA concedes that the project corridor is located within the core foraging areas of three (3) Wood Stork colonies (p. 59), all of which are currently active. During general wildlife surveys, Wood Storks were observed foraging in wetlands within the project area. Moreover, the ESBA finds that “[w]etlands impacted by the proposed construction may be used as foraging habitat by wood storks and other listed wading birds.” ESBA proposes to resolve the Wood Stork problem by calculating the Wood Stork prey biomass lost for the impacted wetlands, which should be replaced through mitigation. There is no indication or calculation of such biomass, or indication where in this vicinity such biomass could possibly be replaced. According to USFWS guidelines (Souza 2010), before considering impacts to suitable foraging habitat exceeding five acres and within Wood Stork core foraging areas, a biomass analysis must be conducted using the USFWS methodology. Together, these analyses form the basis for adjusting the amount and character of mitigation so that available pre-base impacts on the Wood Stork are replaced by mitigation. T.E. Lodge Ecological Advisors Report of March 15, 2012, at p. 3 of 11. Project documents here recognize the requirement for the prey biomass analysis, but lack appropriate maps that show proximity of the Project to active rookeries (the entire Project lies in the core foraging area of some of the rookeries). Without this information, it is impossible to determine the areas where mitigation could be supplied to compensate for the biomass loss for these rookeries. The ESBA’s statement postpones this analysis until after the public hearing, making it impossible to determine clearly whether proposed mitigation may ever suffice with respect to the Wood Stork.

What is worse, Wood Storks as ground dwellers would almost certainly be exposed to vehicular traffic in their foraging habitat. The ESBA does not consider the impact of traffic, noise and pollution on the Wood Storks, and only proposes replacement of the biomass lost as a result of wetland acreage used for project construction. The ESBA contains no analysis with respect to degradation by noise and pollution of current foraging habitat, nor the cumulative impact this and other planned projects will have on the survival of the species as a whole. Those impacts must be spelled out in the Wood Stork section and properly addressed, much as the importance of Grassy Water Preserve on a regional scale for Wood Storks.

### **3.10.3. The impacts on the Florida Sandhill Crane are not adequately analyzed**

The resident, non-migratory Florida subspecies of the Sandhill Crane – the Florida Sandhill Crane – is designated as threatened by the Florida Fish & Wildlife Conservation Commission (“FFWCC”). Numerous Sandhill Cranes were observed by consultants for the City at the Preserve. T.E. Lodge Ecological Advisors Report of March 15, 2012, at p. 4 of 11. While the ESBA acknowledges the presence of the Florida Sandhill Crane foraging in the Project area, there is no analysis of how vehicular traffic will affect Sandhill Cranes. A suggestion is made that if construction is initiated during or just prior to the nesting season, FDOT will commit to resurveying the impact area for nesting Florida Sandhill Cranes. Again, the ESBA and the PD&E Study focus exclusively on impacts during the construction phases of the Project, rather than on impacts during the operation of the four- to six-lane highway. There is no indication of what the impact of the Project would be on the habitat or the physical well-being of the Sand Hill Cranes outside the nesting season, during construction, and at any time during operation of the road. It is entirely unclear, other than wishful thinking, how the agency reached the conclusion that “that the project may affect, but is not likely to adversely affect” the Sand Hill Crane. Evidence indicates otherwise.

The Preserve is part of a formerly larger natural area referred to as the Loxahatchee Slough, whose remnant areas are located immediately adjacent to the Preserve. Those areas have been cited by the FFWCC as supporting “. . . the largest population of the state-listed Sandhill Crane in southern Florida.” *See* August 10, 2005 letter from Mary Ann Poole, FFWCC, in Appendix B: Advance Notification Package and Responses. As such, the further habitat fragmentation caused by the Project should have been carefully analyzed as a cumulative impact of the Project, but the PD&E Study and supporting documents do not reflect such an analysis.

#### **3.10.4 The impacts on the Red-cockaded Woodpecker are not adequately analyzed**

The Red-Cockaded Woodpecker is listed as endangered in both USFWS and FFWCC regulations. The ESBA contains a map (Figure 6-1) showing that a nest of this species was located in the Pond Cypress Natural Area in 2005, and that the proposed alignment of the Project encroaches into the nest buffer boundary. Red-Cockaded Woodpeckers require old-growth pine trees for the cavity nests. As such, it is not feasible to mitigate to impacts to nesting habitat for this species.

The PD&E Study does not indicate that any search was conducted for this species in the Pond Cypress Natural Area, or what the fate of the 2005 nest of the Woodpecker might have been. Nevertheless, the PD&E Study states in conclusory terms that the project will have no effect on this species. Again, that conclusion is not supported with reasoning and evidence and seems to be justified only by the agency’s myopic focus on construction of the Project, rather than operation. At least a further explanation and justification should be provided.

#### **3.10.5. The impacts on Limpkins, Roseate Spoonbills and Eastern Indigo Snake are**

**not adequately analyzed**

The ESBA focuses only on endangered species. However, three species of special concern (as listed by the FFWCC) also occupy Grassy Waters Preserve. Limpkins (which also rely on apple snails as a food source) have been observed there (including during surveys reported in the ESBA). Recently, groups of 5 to 20 Roseate Spoonbills have been observed, including some that were observed within the area to be impacted by the Project (pers. communication of Pat Painter). The ESBA also mentions that Roseate Spoonbills have been observed in ponds just to the west of Grassy Waters, i.e., they would be crossing road to get there from Grassy Waters. The Project as proposed represents a significant risk for traffic fatalities for these species.

While no recent sightings of the Eastern Indigo Snake are reported in the ESBA, the agency should have considered that highways with highway traffic are death-traps for snakes. Indigo Snakes are especially vulnerable to highway mortality (Moler 1992). The proposed chain-link fence barrier to the Preserve would not restrain indigo snakes at all. Yet the PD&E Study does not address the impacts of the highway on indigo snakes once the Project is operational. The protection measures provided in Appendix C of the SR7 Extension Endangered Species Biological Assessment report does not include the required management and monitoring activities provided in the affect determination document. In this case, a specific requirement that “holes, cavities, and snake refugia other than gopher tortoise burrows will be inspected before planned site manipulation...” is not included. Absent this requirement, the determination must be changed to “may affect” and an independent Section 7 consultation is required.

Male Indigo Snakes range over as much as 800 acres of habitat, Scientific literature indicates that linear road, as the proposed Project, can bar access to habitat for these snakes. In the specific case of the SR 7 extension, the proposed roadway will effectively isolate the Pond Cypress and Grassy Waters preserves from the Ibis Preserve, causing potential reduction in available home ranges for eastern indigo snakes that may occur in the area. See Weinberg, Edward R., P.W.S., EW Consultants, Inc., *Listed Species Impact Summary*, March 5, 2012 (incl. sources). In addition to this secondary impact to overall species survival, the roadway will present a high potential for road kill to indigo snakes that may attempt to cross the roadway once it is constructed.

Given these circumstances, a much more detailed biological evaluation of the potential impacts to eastern indigo snakes is warranted. At a minimum, home range and habitat support evaluation specific to the proposed project area should be completed in order to determine whether, and if so to what degree an incidental take of this species should be anticipated. In addition, enhanced measures for protection during construction should be provided in order to minimize the likelihood of deaths to indigo snakes during construction, and a risk assessment based analysis conducted in order to quantify the likelihood and quantity of indigo snake deaths that can be expected during and after construction of the roadway.

### **3.10.6. The impacts on State and Federal listed plants are not adequately analyzed**

The ESBA indicates that in 1994 and 2007 surveys, 16 state-listed plant species were located within the Pond Cypress Natural Area. Amazingly, *not one* of these species was found in field surveys in 2011, suggesting either an epic die-off of protected plant species between 2007 and 2011 or a woefully inadequate survey. Indeed, there is no indication in the PD&E Study that any field-work related to the PD&E Study was conducted in the Pond Cypress Natural Area or the Preserve to search for threatened and endangered plant species. There is no indication that any effort was made to locate listed plant species in Grassy Water Preserve.

Instead, the ESBA punts and states that “if state listed plant species are observed within the proposed impact limits during the design phase, coordination with the FDACS will be initiated, appropriate permits will be obtained, and efforts will be made prior to construction to allow for seed collection and/or relocation to adjacent habitat or other suitable protected lands.” For one, thorough observations should have been made prior to the rendering of the ESBA report. Second, it is entirely unclear who will be in charge of observing listed species during the design phase, as design engineers are typically not trained to recognize listed species. Indeed, knowledge of the existence of listed species in the Project area, and knowledge of the likely impact of the pollution, fumes, acid rain, etc. created by the Project on such species is of crucial importance to determine at this point which alternative to select. The failure to thoroughly analyze such impacts at this late stage renders the ESBA, and thus the PD&E Study/EA fatally flawed.

### **3.10.7. Other flaws in the ESBA**

#### **3.10.7.1. The lost Snail Kite survey**

In the ESBA dated September 2011, which was produced together with the PD&E Study/EA, there were significant gaps: *see e.g., pp. 44, 56 – 58.* Yet, both the FDOT and the Division Administrator of the Federal Highway Administration freely approved the PD&E Study/EA. The fact that FDOT and FHWA reached their conclusions despite the fact that the underlying reports were not yet completed speaks for itself. If FDOT were to claim that more updated reports were provided to FHWA than to the public with the PD&E/EA, one must query why the public was given old information.

More concerning is that the September 2011 ESBA contained a section called “*Results of Wetland –Dependent Bird Survey as they Pertain to the Snail Kite.*” The September 2011 ESBA at page 56 indicated: “*Because the snail kites have begun to nest closer to the project ROW within recent years, the FDOT decided to undertake a wetland dependent bird/snail kite survey. This survey was completed in the fall of 2011, and the results of the survey are presented below.*” The revised version, online now with a January 2012 date, makes no mention of any wetland dependent bird/snail kite survey. Given the U.S. Fish & Wildlife’s strenuous objection

against the Project within the Everglade Snail Kite habitat, one can only wonder why FDOT quietly removed all mention of the bird survey from its September ESBA. The original ESBA stated in the clearest of terms that the survey has been completed, so the omission of the ESBA to present the findings of the survey raises grave concerns about the integrity of the process as a whole.

### **3.10.7.2. Inadequate need analysis**

At section 2.2.4., the ESBA explains that 14,000 residential units were proposed within the areas surrounding the project corridor (in fact, many such units were proposed at a considerable distance from Grassy Waters Preserve). The ESBA then correctly states “[t]hose proposed developments have been cancelled since the start of the study due to recent economic conditions.” The ESBA continues with the following non-sequitur: “However, the traffic analyses prepared for the study maintains the need for a four-lane divided facility even with lower growth and population estimates.” (p. 12). One can only wonder why ESBA even mentions 14,000 residential units if they have been cancelled. At this point, a study that is based upon unbridled residential development in the area is obviously out of date, and *per se* unreliable as a basis for the ESBA. There is no rational basis for ESBA to rely on a study that is based upon admittedly changed circumstances. *See* discussion of flaws in need analysis, above.

Moreover, the ESBA later points out that the potential for “cumulative impacts” is slight because the 14,000 units have been cancelled and “additional development in these areas is not reasonably certain to occur.” (p. 66). The Department and the Project proponents cannot have it both ways: either the 14,000 units will no longer be built, such that there is no need for the Project, or they will likely be built, such that there is likely a cumulative impact that was not adequately discussed. Either way, the ESBA is inadequate.

### **3.10.7.3. Inadequate analysis of impact of encroachment on wetlands**

While the ESBA acknowledges that the straight bridge crossing over the M Canal, which must be used as the proponents of the road lack the necessary rights of way for a skewed bridge crossing, will cause “encroachment” of 7.3 acres into the Pond Cypress Natural Area, it does not analyze the environmental impact on the pond cypress natural area such “encroachment” would have. (p. 21). Indeed, the “encroachment” refers to the extermination of the vegetation on 7.3 acres of protected pond-cypress vegetation.

### **3.10.7.4. Inadequate analysis of indirect, secondary or cumulative impacts**

At Section 7.1.2. the ESBA purports to discuss indirect, secondary and cumulative impacts. Rather than explain how such impacts will affect particular threatened or endangered species or their habitats or specific natural resources, the report states in conclusory fashion: Indirect and secondary effects are those caused by or resulting from the proposed project later in time and that *are reasonably certain to occur*. They *may* occur outside of the area directly

affected by the proposed project [i.e., outside the actual roadbed]. Cumulative effects include the effects of future state, local, or private actions that are reasonably certain to occur in the project area.

Clearly, the *secondary impacts* are of primary importance in this case. This illegal segmentation into carefully analyzed primary impacts – impacts caused by construction activities – and broad-brush secondary impacts – impacts caused by operation of the four- to six-lane highway, is the most fundamental and unacceptable flaw of the PD&E Study. Construction (primary impact) would last a year or two. The noise, pollution, and physical impacts of the four-lane highway would last forever. The PD&E Study cleverly avoids a frank discussion of the real – i.e., secondary impacts – by burying them in a one-page segment on page 65 of the ESBA. Without discussing in any detail what the impacts from the operation of the four- to six-lane highway will be on the various endangered species, the wetland ecology, or the water quality in the Preserve, the PD&E Study effectively sweeps them under the rug, claiming various non-species-specific strategies to minimize and mitigate those impacts. These strategies are entirely ineffective to address many of the issues raised above. Moreover, because the PD&E Study and ESBA discussion strenuously avoids addressing secondary impacts in detail, they are not adequately evaluated and dealt with at all. A one-page formulaic discussion of the real impacts is insufficient for a Project of this magnitude. An EIS is necessary.

While the ESBA declares that indirect and secondary impacts “may occur,” and that such impacts “can include” changes in community structure, water quality, hydrology, and landscape level changes resulting from habitat fragmentation, it utterly fails to analyze what such effects would likely be in this case. The secondary impacts mentioned could be the complete destruction of certain species (“changes in community structure”), terrible pollution of the Grassy Waters water supply (“changes in water quality”), devastating discharges of peak-level flood water run-off via the Ibis Preserve or directly to Grassy Waters Preserve (“changes in hydrology”), and irreversible decline of Grassy Waters as a nature preserve (landscape level changes resulting from habitat fragmentation”), but one would never know it from reading the ESBA. While the ESBA declares that “secondary impacts to wildlife from vehicular traffic can result from roadway lighting, vehicle headlights, vehicle noise and animal strikes along the roadway,” it provides no discussion how such impacts would likely affect specific threatened and endangered species in the project area. As such ESBA is fatally flawed. Accordingly, the PD&E Study does not comply with the mandates of NEPA and/or the Endangered Species Act (“ESA”). Clearly, if any of these mentioned secondary impacts were to occur to the threatened or endangered species listed in ESBA, an EIS would be required at a minimum, and more appropriately the entire Project should be terminated.

Without a frank analysis of the specific effects caused to specific species by the “indirect” and “secondary” impacts, the abstract discussion of how such impacts would be remedied (pp. 66 - 68) is entirely meaningless. For example, the ESBA contains no discussion of how a roadside fence would prevent endangered birds from landing on the roadway and be killed in vehicular collisions. The abstract discussion of secondary and indirect impacts, and the

abstract discussion of minimization of such habitat impacts is woefully inadequate, particularly given the PD&E Study's conclusion that such impacts are "reasonably certain to occur." While the ESBA states that each corridor was developed with consideration of existing environmental features, there is no discussion of what impacts operation of the roadway has on Snail Kites and Wood Storks and Sandhill Cranes. How many are expected to be killed, and how? How will habitat fragmentation, traffic noise, exhaust emissions and surface runoff affect their habitat? Where is the conclusion that impacts on the habitat of these endangered species will be reasonably certain to occur? The analysis presented in the PD&E Study is by no means the hard look that is required by NEPA and ESA for such situations. It is a look at construction impacts only, and not the required hard look at the impacts of operation.

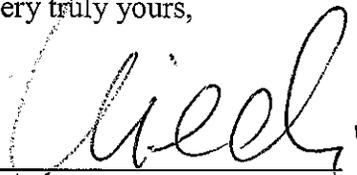
Finally, what the ESBA does not disclose at this point is that the Project is already planned as a six-lane highway. E-mails disclosed pursuant to public records request show that FDOT staff is already planning for two more lanes in the oversized median (*see, e.g.*, email from Joseph Sullivan (FDOT) to Beatriz Caicedo (FDOT Project Manager)). Despite the internal planning activities within FDOT to design the roadway to accommodate a fifth and sixth lane, the ESBA does not inform the public of the cumulative impacts that could be expected from the planned-for six-lane highway. That flaw alone renders the analysis in the ESBA and the PD&E Study inadequate. Moreover, it is unclear whether this secret planning for a six-lane highway adjacent to the region's most sensitive wetlands was at all communicated to federal regulators (FHWA), so that they could evaluate the cumulative impact analysis. The true scope of this project, as a six-lane highway, must be analyzed in the cumulative impact section.

\* \* \*

For the reasons stated above, The Department would do well to heed the warnings and objections expressed by the U.S. Fish & Wildlife Service in its February 29, 2012 letter. This Project must not be built adjacent to Grassy Waters Preserve and the Pond Cypress Natural Area. The City shares the Service's assessment that this Project will have significant adverse impacts on Grassy Waters Preserve, the City's primary water source and one of the most significant ecological resources in Palm Beach County and the region as a whole. Given the doubtful needs for this Project, the unaccounted costs, the flawed analysis, and the risks inherent in constructing the Project in the chosen location, we urge you to select the no-build alternative. If the Project proceeds for any reason, a full EIS must be prepared taking account of all post-construction impacts, and the legally required hard look must be taken at the true impacts of this Project on the human environment, be it water supply for West Palm Beach citizens or essential habitat for endangered species. On behalf of the City of West Palm Beach, we thank the Department for its professionalism in the entire process.

Please feel free to contact us if you wish to further discuss our concerns.

Very truly yours,



Claudio Riedi, Esq.  
Special Counsel to the  
City of West Palm Beach

Enclosures:

- Darby, Phil, *Comments on the Draft Endangered Species Biological Assessment: SR 7 Corridor Extension PD & E Study provided by Florida Department of Transportation, District 4*, March 6, 2012 (incl. sources);
- Harper, Harvey H. III, Ph.D., P.E., Environmental Research & Design, Inc., *Technical Memorandum Re: Water Quality Evaluation for the Proposed SR 7 Extension, Palm Beach County, Florida*, March 19, 2012 (incl. sources);
- Nicholas, S. Jordan, P.E., Higgins, Robert H., P.E., Higgins Engineering, Inc., *Report Re: State Road No. 7 – Review of Proposed Drainage*, March 1, 2012 (incl. sources);
- Donaldson, John M., PTOE, JMD Engineering, Inc., *Comparison of No-Build and Build Scenarios, State Road 7 Extension PD&E Study, Prepared for: City of West Palm Beach, West Palm Beach, Florida, TP-11-01*, March 2012 (incl. sources);

- Lodge, Thomas E., Ph.D., CEP, Thomas E. Lodge Ecological Advisors, Inc., *Memorandum re: Comments on the proposed extension of State Road 7 in Palm Beach Co., FL.* March 15, 2012 (incl. sources);
- Malone, Denise, City Comprehensive Planner, City of West Palm Beach Development Services Department, Planning Division. *Report on Zoning & Planning issues;* March 2012;
- Siebein, Gary W., FASA, FAIA, Siebein Associates, Inc. – *Environmental Acoustic Assessment for the Expansion of SR 7 at the Grassy Waters Preserve, West Palm Beach, Florida,* March 6, 2012 (incl. sources);
- Thomas, Cassondra, Ph.D., Cardno Entrix, *Modeling Fate and Transport of a Hazardous Material Spill and Risk Assessment of Ecological and Human Health Impacts.*, March 26, 2012;
- Weinberg, Edward R., P.W.S., EW Consultants, Inc., *Memorandum RE: SR 7 Extension; Wetland Impact and Mitigation Summary,* February 29, 2012 (incl. sources).
- Weinberg, Edward R., P.W.S., EW Consultants, Inc., *Listed Species Impact Summary,* March 5, 2012 (incl. sources).



*Florida Department of Transportation*

RICK SCOTT  
GOVERNOR

3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309

ANANTH PRASAD, P.E.  
SECRETARY

November 20, 2014

The Honorable Jeri Muoio, Mayor  
City of West Palm Beach  
401 Clematis Street  
West Palm Beach, FL 33401

Dear Mayor Muoio:

**SUBJECT: SR 7 Extension Project Development and Environment (PD&E) Study  
From SR (704) Okeechobee Boulevard to Northlake Boulevard  
Palm Beach County, Florida  
Federal Aid Project No.: 4752-030-P  
Financial Project ID No.: 229664-2-22-01**

This letter serves as a status update for the SR 7 Extension PD&E Study and as a follow-up to the letter received at the public hearing held on March 21, 2012. The letter dated March 21, 2012 was written by Tew Cardenas on behalf of the City of West Palm Beach and stated that the environmental analysis conducted at the time was inadequate. Since the public hearing, the Florida Department of Transportation (Department) continued coordinating with the environmental agencies, including the U.S. Fish and Wildlife Service (USFWS), the U.S. Army Corps of Engineers (USACE) and the South Florida Water Management District (SFWMD).

A focus of the coordination has been related to addressing comments from the USFWS regarding potential impacts to the Everglade snail kite, an endangered medium-sized raptor. Through this coordination effort, the proposed project footprint has been significantly reduced to minimize potential impacts. This leaves a wider area that will be identified as conservation and act as a buffer between the proposed roadway and Grassy Waters Preserve. As a result, the USFWS issued a Biological Opinion on November 13, 2014. The USFWS concluded that the construction and operation of the SR 7 Extension project is not likely to jeopardize the continued existence of the Everglade snail kite. The Biological Opinion further states that "critical habitat has been designated for the Everglade snail kite; however, the SR 7 extension project is located outside of the designated critical habitat." Based on the findings of the Biological Opinion and the proposed mitigation plan, the Department will make a recommendation for the Federal Highway Administration (FHWA) to approve a Finding of No Significant Impact (FONSI) for this project.

At this point in the process, all assessments have been completed which includes a review of the concerns raised in your letter dated March 21, 2012. For unavoidable impacts, the Department is committed to providing mitigation to compensate for remaining wetland and habitat impacts. It includes the donation of State-owned property previously identified for transportation purposes. This includes the segments from north of Okeechobee Boulevard to the M-Canal (82 acres), Northlake Boulevard to SR 710 (44 acres), and SR 710 to Jupiter Farms (90 acres). The combination of these properties is approximately 216 acres in size. In addition, the Department will restore, enhance, and apply a conservation easement over the unused portion of the Rangeline property between the M-Canal and Northlake Boulevard. This 56-acre portion is approximately 170 feet wide and is located between the proposed limits of construction and the western boundaries of the Grassy Waters Preserve. Exotic vegetation will be removed and this section will be restored and enhanced to improve natural conditions.

The Honorable Jeri Muoio, Mayor  
November 19, 2014  
Page 2

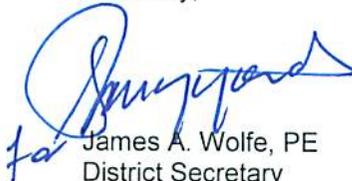
In addition, comments were received from both the City of West Palm Beach and USACE to evaluate additional corridors to the west. In response, the Department conducted an evaluation of five alternative alignments within two corridors; three alternative alignments along 130th Avenue North and two alternative alignments along 140th Avenue North. The results of this study are documented within a Corridor Report Addendum, prepared under separate cover, and conclude that these corridors would result in significant impacts involving numerous property and residential impacts. None of the five corridors are acceptable alternatives to the proposed alignment.

Please be aware that this study has been on-going over the last nine years with extensive involvement from state and federal agencies along with local stakeholders. Although the proposed project is being evaluated as an Environmental Assessment (EA), it has involved an extensive evaluation of all human and natural environment considerations with similar levels of evaluation as an Environmental Impact Statement (EIS). Therefore, we do not expect that an EIS would result in new findings or recommendations.

Once the EA/FONSI is submitted to FHWA, the FHWA will determine whether to elevate the proposed project to an EIS if significant impacts are identified. This EA complies with the *National Environmental Policy Act (NEPA)* and other applicable federal environmental laws, regulations, and Executive Orders.

If you would like to discuss further, we are available for a meeting or presentation before the City Commission. You can also contact the Department Project Manager, Ms. Beatriz Caicedo-Maddison at (954) 777-4336 or by email at [beatriz.caicedo@dot.state.fl.us](mailto:beatriz.caicedo@dot.state.fl.us). Again, we want to thank you for your active participation in this process.

Sincerely,



James A. Wolfe, PE  
District Secretary  
District Four

JAW:bc

cc: Joseph Sullivan, Federal Highway Administration  
Marjorie Kirby, Manager, State Environmental Management Office  
Steve Braun, PE, District Planning & Environmental Engineer  
Richard Young, PE, District Project Development Engineer  
Ann Broadwell, District Environmental Administrator  
Beatriz Caicedo-Maddison, PE, FDOT Project Manager

**APPENDIX D-2: CORRESPONDENCE FROM STATE AGENCIES**



# Florida Department of Transportation

RICK SCOTT  
GOVERNOR

3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309

ANANTH PRASAD, P.E.  
SECRETARY

June 15, 2011

PLANNING & ENVIRONMENTAL  
MANAGEMENT

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HISTORIC PRESERVATION  
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Ms. Linda Anderson  
U.S. Department of Transportation  
Federal Highway Administration  
Florida Division Office  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Subject: **Request for Review**  
Cultural Resources Assessment Survey (CRAS)  
State Road (SR) 7 Corridor Extension PD&E Study  
Financial Management #: 229664-2-22-01  
ETDM # 8127  
Palm Beach County, Florida

Dear Ms. Anderson:

The Florida Department of Transportation (FDOT), District 4, is conducting a PD&E Study that proposes to extend State Road (SR) 7 from Okeechobee Boulevard (SR 704) to Northlake Boulevard in Palm Beach County, Florida. The project length is 8.5 miles. The proposed improvements include widening the existing two-lane roadway (from Okeechobee Boulevard to 60th Street) to four lanes, and continuing with a new four-lane road to Northlake Boulevard. The roadway would feature a 42-foot wide median, 4-foot wide bike lanes, standard curb and gutter, and 6-foot sidewalks. In addition, there is one proposed bridge structure for the crossing over the M-canal. All improvements will be done within FDOT or Palm Beach County right-of-way (ROW).

This cultural resource assessment survey (CRAS) of the SR7 Corridor Extension PD&E was undertaken at the request of the FDOT, District 4 by Janus Research. This assessment was designed and implemented to comply with Section 106 of the *National Historic Preservation Act (NHPA)* of 1966 (Public Law 89-655, as amended); as implemented by 36 CFR 800 (*Protection of Historic Properties*, effective January 2001); Chapter 267, *Florida Statutes*; Section 4(f) of the *Department of Transportation Act of 1966*, as amended (49 USC 303); and the minimum field methods data analysis, and reporting standards embodied in the Florida Division of Historical Resources' (FDHR) *Historic Preservation Compliance Review Program* (November 1990), *Cultural Resource Management Standards and Operational Manual* (February 2003), and Chapter 1A-46 (*Archaeological and Historic Report*

*Standards and Guidelines*), *Florida Administrative Code*. In addition, this report was prepared in conformity with standards set forth in Part 2, Chapter 12 (*Archaeological and Historic Resources*) of the *FDOT Project Development and Environment Manual* (revised, January 1999). All work conforms to professional guidelines set forth in the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716, as amended and annotated).

The purpose of the CRAS was to locate and evaluate archeological and historic resources within the Area of Potential Effect (APE) and to assess eligibility for inclusion in the National Register of Historic Places (NRHP) according to the criteria set forth in 36 CFR Section 60.4.

A CRAS was completed for this project in 2000 (DHR Survey # 6137), which included extensive research regarding the prehistory of the project corridor as well as a detailed discussion of the archaeological site potential. Therefore, this information is not repeated within the attached CRAS. A concurrence letter from the State Historic Preservation Office (SHPO) for the 2000 CRAS is included in **Appendix A**. This historic resources survey was conducted to ensure that there were no additional resources within the project APE that have become historic since the 2000 survey. One historic resource was identified; the M-canal (8PB14880). This resource does not have any distinguishing engineering features and is considered ineligible for listing in the National Register either individually or as part of an historic district. Therefore, based on the results of this survey, FDOT has determined that the proposed improvements will not have an adverse effect on any sites or properties that have historical, cultural or sacred significance or that otherwise meet the minimum criteria for listing in the NRHP. FDOT requests concurrence with this determination.

Please complete the signature block below and forward the additional report copy to SHPO. If you have questions regarding the subject project, please contact me at 954-777-4325, or Lynn Kelley at 954-777-4334.

Sincerely,



Ann Broadwell  
Environmental Administrator  
FDOT - District 4

Enclosures

Cc: Ray Holzweiss – District Four  
Roy Jackson – CEMO

The FHWA finds the attached Cultural Resources Assessment Report complete and sufficient and  approves /  does not approve the above recommendations and findings.

The FHWA requests the SHPO's opinion on the sufficiency of the attached report and the SHPO's opinion on the recommendations and findings contained in this cover letter and in the comment block below.

**FHWA Comments:**

PLEASE ADDRESS COMMENTS / OPINION TO LINDA ANDERSON, FHWA. P: 850-553-2226. E: linda.anderson@dot.gov. PLEASE CC: LYNN KELLEY, FOOT D4; MARK CLASGENS, FHWA; AND ROY JACKSON, FOOT CEMO.
---

*/s/ Martin C. Knopp*  
**Martin C. Knopp**  
Division Administrator  
Florida Division  
Federal Highway Administration

7/21/11  
Date

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The Florida State Historic Preservation Officer finds the attached Cultural Resources Assessment Report complete and sufficient and concurs with the recommendations and findings provided in this cover letter for SHPO/DHR Project File Number 2011-2997.

*for* *Laura A. Kammmer Deputy, SHPO*  
~~Scott Stroh~~ *Judée L. Pawkins, Interim*  
**Judée L. Pawkins**  
State Historic Preservation Officer  
Florida Division of Historical Resources

7.29.2011  
Date

## **APPENDIX D-3: CORRESPONDENCE FROM FEDERAL AGENCIES**



**DEPARTMENT OF THE ARMY**  
**JACKSONVILLE DISTRICT CORPS OF ENGINEERS**  
**4400 PGA BOULEVARD, SUITE 500**  
**PALM BEACH GARDENS, FLORIDA 33410**

REPLY TO  
ATTENTION OF

May 27, 2010

Palm Beach Gardens Regulatory Office  
SAJ-2010-01514

Florida Department of Transportation - District 4  
Attn: Beatriz Caicedo-Maddison  
3400 Commercial Boulevard  
Ft Lauderdale, FL 33409

Dear Ms. Caicedo-Maddison:

The U.S. Army Corps of Engineers (Corps) is pleased to provide a response to the May 5, 2010 SR-7 Extension Alternatives Workshop for the SR-7 Extension Planning Development and Environment (PD&E) Study, Financial Identification Number 229664. The Corps is providing comments based on the premise that the project will require a permit for activities within waters of the United States. The activities are regulated pursuant to the discharge of fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. §1344). Our comments are provided in accordance with 40 CFR 1503.3 and 33 CFR 325 Appendix B.

We request the following:

- a. The Corps will require a summary outlining the FDOT's conclusions regarding the potentially affected aquatic environments and other aquatic resources, including: identification, delineation, and quantification in acres of all direct, secondary and cumulative adverse effects on waters of the United States, and Department of the Army (DA) authorized compensatory mitigation sites in the area of any SR-7 Extension alternatives. The FDOT will be required to avoid all adverse effects to any DA authorized compensatory mitigation site within, or adjacent to, any proposed alternative for the SR-7 Extension PD&E project.
- b. The Corps reviewed the traffic analysis presented at the May 5, 2010 alternatives workshop illustrating the traffic modeling predictions. The predictions were based on transportation improvements to existing roadways such as Northlake Boulevard, for example, and new roadways such

Seminole Pratt Road Extension and Roebuck Road. The Corps has previously reviewed these new roadway projects (excluding Northlake) for Palm Beach County Engineering. The Corps had serious concerns for impacts to wetlands and compensatory mitigation sites directly abutting these proposed new roadway facilities, and based on the Corps comments to the Palm Beach County Engineering and Public Works Department, the applications were withdrawn. Therefore, please submit the conclusions of a revised traffic modeling analysis that supports the purpose and need for the SR-7 Extension project. The Corps also requests verification that the traffic analysis used to justify the SR-7 Extension roadway can demonstrate that SR-7 Extension will be justified and will function independently without any other proposed improvements to the transportation network.

- c. The Corps' 404 (b)(1) Guidelines presume that practical alternatives do exist that would also achieve the project purpose and would not impact special aquatic sites (wetlands) since the project is not water dependent (see 40 CFR 230.10). The Guidelines require the applicant to rebut these presumptions. The Corps is requesting the FDOT to evaluate all practical alternatives that avoid all adverse effects to wetlands, and compensatory mitigation sites.
- d. The Corps is requesting a statement and discussion of the FDOT's current understanding of the existing 544 acre compensatory mitigation site required for Palm Beach County's Acreage Reliever Road (Permit Number SAJ 2002-8273) wetland impacts, as well as any other compensatory mitigation site within the project area that may be affected. The 544 acre site's boundaries are as follows: southeast corner of 110<sup>th</sup> and 60<sup>th</sup> Street, and is bounded on the west by 110<sup>th</sup>, on the east by the Water Catchment Area, and on the south by Palm Beach County Pond Cypress Natural Area. The site is located geographically in Range 41 east, Township 43 south, Section 1. The site was required to be protected in perpetuity with a conservation easement as a special condition of the DA authorization. The Corps' understanding is that the 544 acre site was required to be protected from any construction or development in perpetuity and would obtain, and maintain, the forecasted

ecological functions and services as identified in the *Preserve Area Management Plan for Section I Upland and Wetland Preserve Area* dated November 1, 2004. Furthermore, the compensatory mitigation site was required as part of the 404 (b) (1) Guidelines to offset unavoidable impacts to the Nation's aquatic resources and was a major component in the Corps favorable decision to authorize the Acreage Reliever Road. By accepting the site as compensatory mitigation, the Corps was able to demonstrate the Acreage Reliever Road was in the public's interest. Furthermore, the Corps is unlikely to support, and in fact, is unlikely to review any proposal, that proposes impacts to a compensatory mitigation site or that have been, or are required to be restored, enhanced or created resulting from previous or current Department of the Army authorization.

- e. We are concerned with your decision to dismiss the alternative that was located to the west of Ibis Development. It is our opinion that an increase in residential relocations is not enough to eliminate an alternative.
- f. Additional detail is required to fulfill the requirements set forth in 40 CFR Part 230 - Section 404(b) (1) Guidelines, Subpart H - Actions to Minimize Adverse Effects. Please incorporate into any future NEPA documents a detailed evaluation of how adverse effects to human use and plants and animal populations have been minimized, and a thorough discussion of the 404 (b)(1) Guidelines. Your evaluation should also include a discussion on how technological improvements control the discharge of fill material. Additionally, include a discussion of what best management practices will be utilized to contain the fill material and reduce potential secondary impacts.
- g. In order to fulfill requirements set forth in 40 CFR 1508.20, 40 CFR 1502.14, 33 CFR 320.4(r), and 33 CFR 325.4, 33 CFR 325, Appendix B you are required to fully evaluate and provide a detailed analysis of compensatory mitigation, provided impacts to waters of the United States have been avoided and minimized to the maximum extent practical. Please include a detailed compensatory mitigation assessment which would fully replace all functional units

lost by the proposed action. This detailed analysis should include an estimated break down of impacts by habitat type, functional assessment per habitat type, and conceptual mitigation plan.

- h. Furthermore, any roadway design as part of a build alternative should be reduced in cross section so that only the minimum necessary to achieve the project purpose is constructed. We recommend the following: a shoulder design width that achieves the project purpose, however, is the minimum width necessary to provide safety; the Corps would support the maximum utilization of traffic separators or barriers in lieu of grassed medians to reduce roadway width; the least amount of additional impervious so that the drainage design would require only the minimum amount of wetlands or natural areas for stormwater retention or detention areas; the Corps recommends the roadway be adjacent to residential development, and have the stormwater treatment facilities provide a buffering effect to the remaining onsite wetlands and natural uplands.

Thank you for providing us this opportunity to comment on the PD&E study. If you have any questions regarding this letter, please contact Garrett Lips at the letterhead address or by telephone at 561-472-3519.

Sincerely,



Garrett Lips  
Project Manager

Cc:

Ann Broadwell, FDOT District 4 Environmental Administrator  
John Wrublik, USFWS Vero Beach  
Brandon Howard, NMFS West Palm Beach  
Ron Miedema, EPA West Palm Beach



## *Florida Department of Transportation*

**CHARLIE CRIST**  
GOVERNOR

3400 West Commercial Blvd.  
Fort Lauderdale, FL 33309

**STEPHANIE C. KOPELOUSOS**  
SECRETARY

August 3, 2010

Mr. Garrett Lips  
U.S. Army Corps of Engineers  
4400 PGA Boulevard, Suite 500  
Palm Beach Gardens, FL 33410

**SUBJECT: SR 7 Extension Project Development and Environment (PD&E) Study  
From Okeechobee Blvd to Northlake Blvd  
FPID No. 229664-2-22-01  
Palm Beach County, FL**

Dear Mr. Lips:

The Florida Department of Transportation (FDOT) is in receipt of your letter (SAJ-2010-01514) dated May 27, 2010 in reference to the SR 7 Extension PD&E Study. We thank you for your participation during the May 5, 2010 Alternatives Workshop. Below is a response to the items requested in your letter:

- a. The conclusions regarding potentially affected aquatic environments will be documented as part of the study effort. At this time, all wetlands within the project area have been identified, delineated, and quantified. Before any conclusions are made, we would like to schedule a meeting with the U.S. Army Corps to discuss our interim findings and analysis approach. We will contact your office in the near future to schedule this meeting.
- b. The traffic analysis was recently revised to reflect current data from the Palm Beach Metropolitan Planning Organization (MPO) 2035 Long Range Transportation Plan (LRTP). This version of the LRTP was adopted in October, 2009, and does not show the extension of Seminole Pratt Whitney Road. However, Roebuck Road is still shown within the LRTP and, therefore, it must still be considered for traffic planning purposes.
- c. All practical alternatives are being considered as a part of the study process. The project began with a corridor level analysis that evaluated several corridors between Okeechobee Blvd and Northlake Blvd. This included an alignment to the west of the Ibis Golf & Country Club (Corridor 1), an alignment to the east of the Ibis community (Corridor 3), and the rangeline corridor (Corridor 4). Selection of the rangeline corridor would have resulted in the bifurcation of the natural area made up of the Pond Cypress Natural Area and the Grassy Waters Preserve. This was one of the reasons for selecting Corridor 3 and the lead federal agency, Federal Highway Administration (FHWA), has determined that

Corridor 3 should be carried forward. Although Corridor 3 would require additional roadway curves and lane miles, it would avoid adverse effects to the natural environment as it is located adjacent to existing development. We are now in the process of evaluating alternatives within Corridor 3. This includes an east and west alignment shift along the Ibis Golf & Country Club and Grassy Waters Preserve. Consideration will be given to avoiding adverse effects to wetlands and compensatory mitigation sites as the evaluation continues.

- d. Please refer to the legal description and sketch attached to the end of the referenced permit (SAJ 2002-8273). There are four parcels within Section 1 that are excluded from the compensatory mitigation site. This includes a 360-ft wide strip of land that runs along the west and north side of Section 1. This section of land has been reserved for transportation purposes. Alternatives proposed for the extension of SR 7 are located within the transportation right-of-way and will not encroach into the 544 acres designated for mitigation purposes.
- e. The corridor selection process involved considerable debate and discussion from the public and permitting agencies. The corridor located to the west of Ibis (Corridor 1) would have involved significant impacts to the community, including the potential for 107 residential property impacts. The decision to pursue this corridor would have elevated the amount of controversy, adding many more years to the study process and potentially resulting with the selection of the No-Build option. The Rangeline corridor (Corridor 4) received a dispute resolution rating during the ETDM process from the permitting agencies. The conclusion reached from the permitting agencies about the Rangeline was that it was not permissible. This led to the selection of Corridor 3. This corridor minimized community impacts and provided the best alternative for avoiding adverse effects to wetlands and the natural environment. Corridor 3 does not bifurcate the natural area formed by the Pond Cypress Natural Area and the Grassy Waters Preserve and is located adjacent to existing development.
- f. The decision to discard the Rangeline option during the corridor evaluation phase should be considered as a major avoidance effort. Further actions that could be undertaken to minimize adverse effects will be outlined in the PD&E Study documents. Details of those actions will be discussed in the Wetland Evaluation Report and Environmental Assessment.
- g. During the PD&E Study, conceptual mitigation alternatives will be developed that will offset proposed impacts. A meeting will be scheduled with your office and other agencies to discuss various mitigation options as the plan is developed. A fully developed mitigation proposal will be included as part of the PD&E study.
- h. Efforts to minimize the roadway footprint are already reflected in the proposed typical section. This includes the use of an urban typical section (curb and gutter) as opposed to a rural typical section with shoulders. Minimum widths were used without compromising on safety. Your preference for locating the roadway adjacent to the

residential development within Corridor 3 will be considered as we move forward with the study.

We look forward to working with you and the U.S. Army Corps on this project. We will contact your office in the near future to discuss permitting requirements. In the meantime, please feel free to call me if you have any other questions at (954) 777-4336.

Sincerely,



Beatriz Caicedo-Maddison, P.E.  
FDOT Project Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

July 1, 2011

Ann Broadwell  
Florida DOT, District 4  
3400 West Commercial Boulevard  
Fort Lauderdale, Florida 33309

PLANNING & ENVIRONMENTAL  
MANAGEMENT

JUL 08 2011

DISTRICT FOUR  
RECEIVED

Subject: Sole Source Aquifer Review, Palm Beach County, FL; SR 7 Extension

Dear Ms. Broadwell:

The U.S. Environmental Protection Agency (EPA), Region 4, received your May 27, 2011 request to assess the above referenced project and we reviewed it pursuant to Section 1424(e) of the Safe Drinking Water Act. The assessment is to determine if the project lies within the boundaries (recharge and streamflow source zones) of an EPA designated Sole Source Aquifer (SSA); and to determine if the project poses potential, adverse health or environmental impacts. A sole source aquifer is the sole or principal water source for a designated area. If the aquifer is contaminated, there would be a significant hazard to public health and an economic burden for those using the aquifer to tap into and deliver drinking water from another water source.

The project has been determined to lie **inside** the designated boundaries of the Biscayne Aquifer. Regulatory groups within the EPA responsible for administering other programs may, at their own discretion and under separate cover, provide additional comments

Based on the information provided, the project is not expected to cause a significant impact to the aquifer system. However, it is requested that all debris from any demolition of the existing structures are properly contained and removed from the site prior to construction of the new building. If applicable, contractors should follow all county flood plain management's plans and public notification processes. During construction, it is EPA's understanding and expectation that those responsible for the project will strictly adhere to all Federal, State and local government permits, ordinances, planning designs, construction codes, operation & maintenance requirements, and engineering. All best management practices for erosion and sedimentation control should be followed. State and County environmental offices should be contacted to address proper drainage and storm water designs. Additionally, the project manager should contact State and local environmental officials to obtain a copy of any local Wellhead Protection Plans. <http://www.dep.state.fl.us/swapp/Default.htm> The project manager should contact Palm Beach County Water Utilities as there are drinking water wells near the southern end of the project.

If proper protection measures are followed, this project is not expected to cause significant adverse impacts to the aquifer. All findings of "no significant impact" are based on EPA's understanding and expectation that those responsible for the project will strictly adhere to all federal, state and local government permits, ordinances, best management practices, planning designs, construction and maintenance requirements, monitoring requirements and engineering recommendations to protect the integrity of the surrounding ground water recharge zones. It is requested that you contact the EPA Region 4 office should there be any major project changes.

Thank you for your concern with the environmental impacts of this project. If you have any questions, please contact me at 404-562-9423.

Sincerely,



Robert S. Olive  
Environmental Scientist  
Ground Water and SDWA Enforcement Sec.



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

February 29, 2012

David Bogardus  
Florida Department of Transportation  
3400 Commercial Boulevard  
Fort Lauderdale, Florida 33309

PLANNING & ENVIRONMENTAL  
MANAGEMENT

MAR - 9 2012

DISTRICT FOUR  
RECEIVED

Service Federal Activity Code: 2012-CPA-0091  
Service Consultation Code: 2012-I-0079  
Date Received: February 1, 2012  
Project: Extension of State Road 7 from  
Okeechobee Boulevard to Northlake  
Boulevard  
County: Palm Beach

Dear Mr. Bogardus:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter dated January 18, 2012, and Endangered Species Biological Assessment (ESBA) submitted by the Florida Department of Transportation (FDOT), on behalf of the Federal Highway Administration (FHWA), for the project referenced above. This letter is submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

## PROJECT DESCRIPTION

The FDOT is currently conducting a Project Development and Environment Study for the proposed widening and extension of State Road (SR) 7 from Okeechobee Boulevard to Northlake Boulevard. The existing two-lane roadway from Okeechobee Boulevard to 60<sup>th</sup> Street will be enlarged to four lanes and a new four lane roadway will be constructed from 60<sup>th</sup> Street to Northlake Boulevard. Three build alternatives, all of which are east of Ibis Golf and Country Club, are proposed for the roadway section from 60<sup>th</sup> Street to Northlake Boulevard. The three "east of Ibis" alternatives differ only regarding the location of the proposed linear retention swale and linear stormwater treatment pond (*i.e.*, located either east, west, or on both sides of the roadway within the project footprint). Each "east of Ibis" alternative would also include the construction of sidewalks, a 42-foot wide median, a bridge over the M-Canal, a shared-use path, and an exclusion fence along the eastern edge of the road right-of-way to prevent wildlife from entering the roadway. A "no-build" alternative will also be considered for the project.

The purpose of the project is to provide additional capacity to help meet current and projected traffic demands. According to the ESBA, the project will fill approximately 100.82 acres of



wetlands. The FDOT discussed potential options to compensate for the project's impacts to wetlands in the ESBA. However, a final wetland mitigation plan has not yet been provided for our review. The project site is located in Section 19, Township 43 South, Range 42 East; Sections 1, 12, 13, 14, and 24, Township 43 South, Range 41 East; and Sections 13, 24, 25, and 36, Township 42 South, Range 41 East in Palm Beach County, Florida.

### THREATENED AND ENDANGERED SPECIES

#### Eastern indigo snake

The project occurs within the geographic range of the threatened eastern indigo snake (*Drymarchon corais couperi*). To minimize adverse effects to this species during construction, the FDOT has agreed to follow the Service's *Standard Protection Measures for the Eastern Indigo Snake* (Service 2004a) during construction of the project. The Corps has determined the project "may affect, but is not likely to adversely affect" the eastern indigo snake. Based on the adherence to the indigo snake protection measures, the Service concurs with this determination.

For the species listed above, this letter fulfills the requirements of section 7 of the Act and further action is not required. If modifications are made to the project, if additional information involving potential effects to listed species becomes available, or if a new species is listed, reinitiation of consultation may be necessary.

#### Everglade snail kite

The project occurs within the geographic range of the endangered Everglade snail kite (snail kite; *Rostrhamus sociabilis plumbeus*). The ESBA indicates snail kites have been observed nesting within wetlands adjacent to the project site. One active snail kite nest was documented about 530 feet east of the project footprint in 2010 and, in 2011, three active nests were documented 161 feet, 530 feet, and 574 feet east of the project footprint, respectively. The FDOT has determined the project "may affect, but is not likely to adversely affect" the snail kite.

The Service notes the population of the Everglade snail kite has declined significantly during recent years and may be precariously small. The size of the Everglade snail kite population has been estimated at less than 700 individuals (Cattau et al., 2009) and the reasons for the decline are largely unknown. Moreover, the Service is concerned the current level of recruitment of juveniles into the breeding population may be lower than necessary to increase the snail kite population.

The project will likely adversely affect the Everglade snail kite. Potential adverse effects include the loss of foraging habitat for the snail kite within the project footprint. Moreover, the project will likely result in disturbance to snail kites located east of the project site within wetlands of the Pond Cypress Natural Area and Grassy Waters Preserve. The disturbance will result from construction-related activities and motor vehicles and human activity on the roadway following

construction. Little is known regarding the effects of roads on snail kite foraging and nesting, although snail kites could respond to the disturbance by avoiding the project area or otherwise altering their behavior. Consequently, the disturbance resulting from the project could result in the loss of foraging and nesting habitat for the snail kite, and may ultimately reduce the breeding success of snail kites in the project area. Due to project's potential adverse effects, we cannot concur with the FDOT's determination and find the project "may affect, and is likely to adversely affect" the snail kite. We recommend the FHWA request initiation of formal consultation for the Everglade snail kite in accordance with 50 CFR 402.14. We also request the following:

- Please provide a detailed habitat compensation plan indicating how the FDOT intends to minimize the project's adverse effects to the snail kite. As discussed in our meeting with the FDOT on October 28, 2011, we recommend the FDOT acquire and provide for the long-term management and protection of currently unprotected snail kite habitat. A potential option includes acquisition of lands within the Vavrus Ranch site.

#### Wood stork

The project site is located within the core foraging area (CFA; within 18.6 miles) of two active breeding colonies of the endangered wood stork (*Mycteria americana*). The Service believes the loss of wetlands within a CFA may reduce foraging opportunities for wood storks. To minimize adverse effects to the wood stork, the Service's Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Services Consultation Area (Service 2004b) recommends the applicant replace wetlands lost due to the action. The compensation plan should include a temporal lag factor, if necessary, to ensure wetlands provided as compensation adequately replace the wetland functions lost due to the project. Moreover, wetlands offered as compensation should be of the same hydroperiod, and located within the CFA of the affected wood stork colony.

The Service does not consider the preservation of wetlands, by itself, as adequate compensation for impacts to wood stork foraging habitat, because the habitat lost is not replaced. Accordingly, any wetland mitigation plan that includes the preservation of wetlands should include a restoration, enhancement, or creation component. In some cases, the Service accepts wetlands compensation located outside the CFA of the affected wood stork nesting colony. Specifically, wetland credits purchased from a "Service Approved" mitigation bank located outside the CFA would be acceptable to the Service, provided the impacted wetlands occur within the permitted service area of the bank.

For projects that impact 5 or more acres of wood stork foraging habitat, the Service requires a functional assessment be conducted using our "Wood Stork Foraging Analysis Methodology" (Methodology) on the foraging habitat to be impacted and the foraging habitat provided as mitigation. The Methodology can be found in the Service's May 18, 2010, wood stork determination key (Service Federal Activity Code Number 41420-2007-FA-1494) provided to the Corps.

The FDOT has determined the project “may affect, but is not likely to adversely affect” the wood stork. The Service does not have enough information to provide concurrence or non-concurrence with the FDOT’s determination at this time. We request the following information:

1. The ESBA discussed potential options to compensate for the project’s impacts to wetlands and wood stork foraging habitat. However, a final wetland mitigation plan has not yet been provided. Please provide a detailed wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project.
2. Appendix D of the ESBA currently provides a functional assessment, based on the Service’s Methodology, of 41.43 acres of wetlands that will be impacted by the project. However, on page 2 of the ESBA the wetland impacts of the project are estimated to be 100.82 acres. Please note the Service generally considers all wetland types, including forested wetlands, as suitable foraging habitat for the wood stork. Therefore, please revise your current functional assessment of wood stork foraging habitat to include all of the 100.82 wetlands to be affected by the project. The assessment should also be applied to the wetland mitigation proposed for the project (as requested above).

### **FISH AND WILDLIFE RESOURCES**

The Service notes the three “east of Ibis” alternatives located in the northern section of the proposed project from the M-Canal to Northlake Boulevard would result in significant adverse impacts to high-quality fish and wildlife habitat and public conservation lands. The “east of Ibis” alternatives are located immediately west and adjacent to pristine wetlands and high-quality fish and wildlife habitat within the Pond Cypress Natural Area and Grassy Waters Preserve. The project, as proposed, will result in the direct loss of about 118 acres of uplands and wetlands that provide valuable habitat for fish and wildlife. In addition, the noise from motor vehicles and human activities during construction and ongoing operation of the roadway will indirectly result in significant disturbance to fish and wildlife within adjacent public conservation lands. Constant noise from motor vehicles using the new road will also reduce the aesthetic value of Pond Cypress Natural Area and Grassy Water Preserves.

Based on the impacts to fish and wildlife, fish and wildlife habitat, and public conservation lands, we do not support any of the “east of Ibis” build alternatives as currently proposed. The Service notes that, during the planning and development of this project, an alternative for the section of proposed roadway from the M-Canal to Northlake Boulevard located immediately west of the Ibis Golf and Country Club (“west of Ibis” alternative) was proposed. However, the FDOT did not carry forward the “west of Ibis” alternative for consideration. The Service has strongly supported and recommended that the FDOT adopt the “west of Ibis” alternative throughout the project development process. Moreover, through our written comments submitted through FDOT’s Efficient Transportation Decision Making Process in July 2006, the Service clearly stated that we could not support the current “east of Ibis” project alternatives. We strongly urge the FHWA and FDOT to reinstate the “west of Ibis” alternative as the preferred

alternative for the section of the project from the M-Canal to Northlake Boulevard, and discard the "east of Ibis" alternatives.

Thank you for your cooperation in the effort to protect federally listed species and fish and wildlife resources. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,



for

Larry Williams  
Field Supervisor

South Florida Ecological Services Office

cc: electronic only

Corps, Palm Beach Gardens (Garett Lips)

FWC, Tallahassee, Florida (FWC-CPS)

NOAA Fisheries Service, West Palm Beach, Florida (Brandon Howard)

#### LITERATURE CITED

Cattau, C., W.M. Kitchens, B. Reichert, J. Olbert, K. Pias, J. Martin, and C. Zweig. 2009. Snail kite demography annual report 2009. Unpublished report for the U.S. Army Corps of Engineers, Jacksonville, Florida. Contract # W912EP-09-C-0023.

U.S. Fish and Wildlife Service. 2004a. Standard protection measures for the eastern indigo snake. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.

U.S. Fish and Wildlife Service. 2004b. Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Services Consultation Area. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.



DEPARTMENT OF THE ARMY  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS  
4400 PGA BOULEVARD, SUITE 500  
PALM BEACH GARDENS, FLORIDA 33410

REPLY TO  
ATTENTION OF

April 2, 2012

Palm Beach Gardens Regulatory Office  
SAJ-2010-01514

Florida Department of Transportation District 4  
Attn: Beatriz Caicedo-Maddison  
3400 Commercial Boulevard  
Ft. Lauderdale, FL 33409

Dear Ms. Caicedo-Maddison:

The U.S. Army Corps of Engineers (Corps) is providing comments in response to the SR-7 Extension Public Hearing for the Planning Development and Environment (PD&E) Study held on March 26, 2012, Financial Identification Number 229664. The subject project is located along State Road (SR) 7 from SR 704 (Okeechobee Boulevard) to County Road (CR) 809A (Northlake Boulevard) in Palm Beach County, Florida. The project is located west of the Florida's Turnpike between the Village of Royal Palm Beach and the City of West Palm Beach.

The Corps is providing comments regarding future applications for Department of the Army (DA) authorization for activities within waters of the United States. The activities are regulated pursuant to the discharge of fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. §1344). Our comments are provided in accordance with 40 CFR 1503.3 and 33 CFR 325 Appendix B.

**Comments on Environmental Assessment (EA):**

- On page *XIII* of the Executive Summary it states the following: *"It was determined that Corridor 3 balanced the concerns and desires of the public and permitting agencies"*.  
**Corps Comment:** The Corps has previously objected to Corridor 3 as an alternative since the proposal includes impacts to DA authorized mitigation sites (see enclosed letter dated May 27, 2010).
- On page *XIV* the document states: *"A discussion of potential Section 4(f) resources is provided within Section 4.9. The portion of the Pond Cypress Natural Area where the straight bridge crossing option would impact served as mitigation for the County's two lane extension of SR 7 from Okeechobee Boulevard to 60th Street. Coordination with Palm Beach County, US Army Corps of Engineers (ACOE) and South Florida Water Management District (SFWMD) has begun to determine the required amount of mitigation for this option. A significant land swap would be required"*.  
**Corps Comment:** The Corps has previously stated (by letter dated May 27, 2010, and personal communications) there was a high potential that the Corps would not authorize any impacts to an existing DA authorized compensatory mitigation sites. The Corps recommends the EA be revised to more accurately characterize the Corps potential to refuse future impacts to the areas or to find that the project

may be contrary to the public interest as currently proposed with impacts to DA authorized mitigation sites.

- **See page XV, Areas of Controversy:**  
**Corps Comment:** The EA document has failed to disclose the United States Fish and Wildlife Service's (USFWS) objection for any build alternative proposed east of Ibis Development. The EA should be revised to include the substantial documented concerns for the Everglades snail kite expressed in their letter dated February 29, 2012 (enclosed).
- The EA states impact avoidance and minimization has occurred, but identification of the precise design measures implemented and the actual accounting of the ecological benefits due to the measures is absent. Please provide a summary of the avoidance and minimization measures (aside from other alternative corridors) and the resulting ecological benefits (i.e. acres avoided). Otherwise, the language throughout the document should be revised to state that no avoidance and minimization efforts were considered. The typical section appears to be identical to the design originally conceived at the start of the project without modification.

#### **Comments on Effects on Authorized Mitigation Areas**

In previous agency coordination meetings leading up to the Public Hearing, the Corps and Florida Department of Transportation (FDOT) have discussed the anticipated adverse effects of the project on DA authorized mitigation sites. As proposed, the FDOT's preferred alternative would cause adverse effects on three DA authorized mitigation sites. Approximately eight acres of direct impacts (and other secondary adverse effects outside the area of direct impacts) would result from filling a portion of the 544-acre mitigation site authorized under SAJ 2002-8273(IP-JBH). The 544-acre site's boundaries are as follows: southeast corner of 110<sup>th</sup> and 60<sup>th</sup> Street, and is bounded on the west by 110<sup>th</sup>, on the east by the Water Catchment Area, and on the south by Palm Beach County Pond Cypress Natural Area. The site is located geographically in Range 41 east, Township 43 south, Section 1. The site was required to be protected in perpetuity with a conservation easement as a special condition of the DA authorization for the Acreage Reliever Road. The 544-acre site was required to be protected from any construction or development in perpetuity and is required to obtain, and maintain, the forecasted ecological functions and services identified in the *Preserve Area Management Plan for Section I Upland and Wetland Preserve Area* dated November 1, 2004. Furthermore, the compensatory mitigation site was required as part of the 404 (b) (1) Guidelines to offset unavoidable impacts to the Nation's aquatic resources, a major component in the Corps favorable decision to authorize the Acreage Reliever Road. By accepting the site as compensatory mitigation, the Corps was able to demonstrate the Acreage Reliever Road was in the public's interest. Furthermore, the Corps is unlikely to support, and in fact, is unlikely to review any proposal that requests to impact a compensatory mitigation site that has been, or is required to be restored, enhanced or created resulting from previous or current DA authorization. Proposals for impacting DA authorized compensatory mitigation sites will not be reviewed unless the proposal meets the re-evaluation requirements as outlined in 33 CFR 325.7(a)+(b). Based on the proposed impacts, the Corps would require substantial information demonstrating the proposal to impact the Nation's aquatic resources is in the public's interest.

The Corps responded by letter dated May 27, 2010, to the FDOT SR-7 Alternatives Workshop. The letter stated very clear objections to any proposal impacting DA authorized mitigation sites. However, the FDOT has failed to revise, or implement any measures to avoid or minimize the anticipated adverse effects. The Corps is re-stating our request for FDOT to avoid or minimize to the extent practical, all adverse effects to all DA authorized compensatory mitigation sites within, or adjacent to, any proposed alternative for the SR-7 Extension PD&E project. The Corps recommends the FDOT dismiss Corridor 3 and consider other un-evaluated alternative corridors.

### **Traffic Modeling**

The traffic modeling predictions suggest only modest network improvements from the proposed project. The Corps believes, based on the anticipated impacts to high functioning aquatic resources within a DA authorized compensatory mitigation site, the level of environmental impact far outweighs the level of improvements. Additional alternatives should be investigated where the level of improvements and environmental impact are commensurate and are adequately balanced.

### **Feasibility Study and Alternatives**

The SR-7 Extension project alternatives are based on the *State Road 7 Corridor Extension Feasibility Study Proposed Alternatives* dated 1999. The document illustrates for most alternatives, the northern termini is SR 710. The Corps believes the current study on the aforementioned corridor report is unacceptable since the document does not take into account the current environmental or socio-economic conditions, and does not adequately identify all practical alternative corridors. Considering the potential adverse environmental effects, the Corps recommends FDOT re-evaluate the 1999 Corridor Report and the alternatives that were studied.

### **Alternatives**

Section 404 (b)(1) of the Clean Water Act stipulates that no discharge of fill material into waters of the United States, which include wetlands, shall be permitted if there is a practicable alternative which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant environmental consequences. The 404(b)(1) Guidelines state that practicable alternatives that do not involve fill in wetlands are presumed to be available unless clearly demonstrated otherwise for activities which are not water dependent. As this project is not water dependent, the guidelines require the applicant to rebut these presumptions and clearly demonstrate that no alternatives are available (see 40 CFR 230.10). The Corps is requesting that FDOT evaluate all practical alternatives that avoid all adverse effects to wetlands, and compensatory mitigation sites. The Corps notes that other less damaging alternatives exist, and achieve the project purpose, but have not been sufficiently evaluated.

The Corps believes other viable alternative corridors may exist and recommend exploration and evaluation of previously unidentified corridor alignments. At this time, significant public controversy exists between FDOT and the City of West Palm Beach regarding potential adverse effects of the proposed project on the M-Canal. In contrast, the Indian Trails Improvement District has stated strong support of the project. Numerous roadway projects within southern Florida have designed large diameter culverts to convey water in place of open ditches.

In this scenario, roads can be constructed over the culvert but within existing canal rights of way. Therefore, the Corps is recommending, as an example of a previously un-evaluated alternative, a potential corridor within an existing drainage canal. The SR-7 extension could consider, for example, the canal corridor between 130<sup>th</sup> Ave North and 130<sup>th</sup> Trail North. Existing dirt roads are located on both the eastern and western sides of the canal, and the canal open water system has minimal aquatic resource function. The width of the corridor including the two dirt roads and the canal is approximately 230 feet, and extends from the south at Orange Avenue to Hamlin Boulevard. The northern end has an approximate 650 foot section of undeveloped land between Northlake Boulevard and Hamlin Boulevard, with approximately 2.5 acres of wetlands. Considering the low ecological functions and services of open water ditches compared to the high functioning 544 acre mitigation site, contiguous and abutting, with Grassy Waters Preserve and the Water Catchment Area, the Corps would consider backfilling a ditch as a minimization effort. The Corps believes this corridor should be evaluated, along with other practicable alternative corridors identified by the Federal Highway Administration (FHWA) or FDOT, which could achieve the project purpose, as required by the National Environmental Policy Act (NEPA).

The Corps has reviewed the project documents but was unable to identify relevant information rising to the level necessary to demonstrate Alternative 3 is not contrary to the public interest. The Corps continues to encourage the FDOT to re-evaluate a reasonable range of alternatives within the study area. The Corps will only authorize projects that are the least environmentally damaging practical alternative (LEDPA) and are not contrary to the public's interest. The 2007 Corridor Report discusses eight corridors identified in the interagency meeting on February 24, 1999, all of which are located within the overall study area. The Corps believes the current SR-7 Extension EA Alternative Corridors are based on what appears to be an outdated 1999 Feasibility Study.

### **Potential need for an Environmental Impact Statement (EIS)**

The Corps considers the following significance factors when determining the need for an EIS:

- a highly controversial project;
- potential impacts on species protected under the Endangered Species Act or resources protected by the National Historic Preservation Act;
- unique characteristics;
- potential for precedence;
- cumulative impacts;
- potential to violate other laws;
- new major construction.

Based on the environmental information disclosed in the SR-7 Environmental Assessment, and the known substantial public controversy, the Corps recommends FHWA consider alternatives to the proposed project to avoid the need to conclude the study with a Finding of Significant Impact (FOSI). The August 2007 Corridor Report states the following: "In January, 2000, the FDOT initiated a formal PD&E study of the remaining 8 alternatives and

began to prepare an Environmental Impact Statement (EIS). However, the project was suspended in October, 2000". The Corps notes the NEPA Class of Action previously considered appropriate by FHWA was an EIS. While the Corps has not determined whether an EIS is necessary, given the lack of a final proposed alternative, preparation of an EIS to address potentially significant effects related to the proposal may be required.

The Corps recommends the following design elements be implemented for the proposed typical section: a shoulder design width that achieves the project purpose, however, is the minimum width necessary to provide safety; the Corps would support the maximum utilization of traffic separators or barriers in lieu of grassed medians to reduce roadway width; the least amount of additional impervious so that the drainage design would require only the minimum amount of wetlands or natural areas for stormwater retention or detention areas; the Corps recommends the roadway be adjacent to residential development, and have the stormwater treatment facilities provide a buffering effect to the remaining onsite wetlands and natural uplands. The Corps believes the project roadway footprint can be compressed to fit into a 70-80 foot typical section if the 40-foot median is deleted, and the usage of the existing drainage facilities within Ibis Isles Development is maximized to reduce the project's drainage footprint.

Thank you for providing us this opportunity to comment on the PD&E study. If you have any questions regarding this letter, please contact Garrett Lips at the letterhead address or by telephone at 561-472-3519.

Sincerely,



Leah Oberlin  
Chief, Palm Beach Gardens Section

Enclosures

Cc:

Ann Broadwell, FDOT District 4 Environmental Administrator  
John Wrublik, USFWS Vero Beach  
Joe Sullivan, FHWA, Tallahassee



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

February 29, 2012

David Bogardus  
Florida Department of Transportation  
3400 Commercial Boulevard  
Fort Lauderdale, Florida 33309

Service Federal Activity Code: 2012-CPA-0091  
Service Consultation Code: 2012-I-0079  
Date Received: February 1, 2012  
Project: Extension of State Road 7 from  
Okeechobee Boulevard to Northlake  
Boulevard  
County: Palm Beach

Dear Mr. Bogardus:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter dated January 18, 2012, and Endangered Species Biological Assessment (ESBA) submitted by the Florida Department of Transportation (FDOT), on behalf of the Federal Highway Administration (FHWA), for the project referenced above. This letter is submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

### PROJECT DESCRIPTION

The FDOT is currently conducting a Project Development and Environment Study for the proposed widening and extension of State Road (SR) 7 from Okeechobee Boulevard to Northlake Boulevard. The existing two-lane roadway from Okeechobee Boulevard to 60<sup>th</sup> Street will be enlarged to four lanes and a new four lane roadway will be constructed from 60<sup>th</sup> Street to Northlake Boulevard. Three build alternatives, all of which are east of Ibis Golf and Country Club, are proposed for the roadway section from 60<sup>th</sup> Street to Northlake Boulevard. The three “east of Ibis” alternatives differ only regarding the location of the proposed linear retention swale and linear stormwater treatment pond (*i.e.*, located either east, west, or on both sides of the roadway within the project footprint). Each “east of Ibis” alternative would also include the construction of sidewalks, a 42-foot wide median, a bridge over the M-Canal, a shared-use path, and an exclusion fence along the eastern edge of the road right-of-way to prevent wildlife from entering the roadway. A “no-build” alternative will also be considered for the project.

The purpose of the project is to provide additional capacity to help meet current and projected traffic demands. According to the ESBA, the project will fill approximately 100.82 acres of



wetlands. The FDOT discussed potential options to compensate for the project's impacts to wetlands in the ESBA. However, a final wetland mitigation plan has not yet been provided for our review. The project site is located in Section 19, Township 43 South, Range 42 East; Sections 1, 12, 13, 14, and 24, Township 43 South, Range 41 East; and Sections 13, 24, 25, and 36, Township 42 South, Range 41 East in Palm Beach County, Florida.

### **THREATENED AND ENDANGERED SPECIES**

#### Eastern indigo snake

The project occurs within the geographic range of the threatened eastern indigo snake (*Drymarchon corais couperi*). To minimize adverse effects to this species during construction, the FDOT has agreed to follow the Service's *Standard Protection Measures for the Eastern Indigo Snake* (Service 2004a) during construction of the project. The Corps has determined the project "may affect, but is not likely to adversely affect" the eastern indigo snake. Based on the adherence to the indigo snake protection measures, the Service concurs with this determination.

For the species listed above, this letter fulfills the requirements of section 7 of the Act and further action is not required. If modifications are made to the project, if additional information involving potential effects to listed species becomes available, or if a new species is listed, reinitiation of consultation may be necessary.

#### Everglade snail kite

The project occurs within the geographic range of the endangered Everglade snail kite (snail kite; *Rostrhamus sociabilis plumbeus*). The ESBA indicates snail kites have been observed nesting within wetlands adjacent to the project site. One active snail kite nest was documented about 530 feet east of the project footprint in 2010 and, in 2011, three active nests were documented 161 feet, 530 feet, and 574 feet east of the project footprint, respectively. The FDOT has determined the project "may affect, but is not likely to adversely affect" the snail kite.

The Service notes the population of the Everglade snail kite has declined significantly during recent years and may be precariously small. The size of the Everglade snail kite population has been estimated at less than 700 individuals (Cattau et al., 2009) and the reasons for the decline are largely unknown. Moreover, the Service is concerned the current level of recruitment of juveniles into the breeding population may be lower than necessary to increase the snail kite population.

The project will likely adversely affect the Everglade snail kite. Potential adverse effects include the loss of foraging habitat for the snail kite within the project footprint. Moreover, the project will likely result in disturbance to snail kites located east of the project site within wetlands of the Pond Cypress Natural Area and Grassy Waters Preserve. The disturbance will result from construction-related activities and motor vehicles and human activity on the roadway following

construction. Little is known regarding the effects of roads on snail kite foraging and nesting, although snail kites could respond to the disturbance by avoiding the project area or otherwise altering their behavior. Consequently, the disturbance resulting from the project could result in the loss of foraging and nesting habitat for the snail kite, and may ultimately reduce the breeding success of snail kites in the project area. Due to project's potential adverse effects, we cannot concur with the FDOT's determination and find the project "may affect, and is likely to adversely affect" the snail kite. We recommend the FHWA request initiation of formal consultation for the Everglade snail kite in accordance with 50 CFR 402.14. We also request the following:

- Please provide a detailed habitat compensation plan indicating how the FDOT intends to minimize the project's adverse effects to the snail kite. As discussed in our meeting with the FDOT on October 28, 2011, we recommend the FDOT acquire and provide for the long-term management and protection of currently unprotected snail kite habitat. A potential option includes acquisition of lands within the Vavrus Ranch site.

#### Wood stork

The project site is located within the core foraging area (CFA; within 18.6 miles) of two active breeding colonies of the endangered wood stork (*Mycteria americana*). The Service believes the loss of wetlands within a CFA may reduce foraging opportunities for wood storks. To minimize adverse effects to the wood stork, the Service's Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Services Consultation Area (Service 2004b) recommends the applicant replace wetlands lost due to the action. The compensation plan should include a temporal lag factor, if necessary, to ensure wetlands provided as compensation adequately replace the wetland functions lost due to the project. Moreover, wetlands offered as compensation should be of the same hydroperiod, and located within the CFA of the affected wood stork colony.

The Service does not consider the preservation of wetlands, by itself, as adequate compensation for impacts to wood stork foraging habitat, because the habitat lost is not replaced. Accordingly, any wetland mitigation plan that includes the preservation of wetlands should include a restoration, enhancement, or creation component. In some cases, the Service accepts wetlands compensation located outside the CFA of the affected wood stork nesting colony. Specifically, wetland credits purchased from a "Service Approved" mitigation bank located outside the CFA would be acceptable to the Service, provided the impacted wetlands occur within the permitted service area of the bank.

For projects that impact 5 or more acres of wood stork foraging habitat, the Service requires a functional assessment be conducted using our "Wood Stork Foraging Analysis Methodology" (Methodology) on the foraging habitat to be impacted and the foraging habitat provided as mitigation. The Methodology can be found in the Service's May 18, 2010, wood stork determination key (Service Federal Activity Code Number 41420-2007-FA-1494) provided to the Corps.

The FDOT has determined the project “may affect, but is not likely to adversely affect” the wood stork. The Service does not have enough information to provide concurrence or non-concurrence with the FDOT’s determination at this time. We request the following information:

1. The ESBA discussed potential options to compensate for the project’s impacts to wetlands and wood stork foraging habitat. However, a final wetland mitigation plan has not yet been provided. Please provide a detailed wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project.
2. Appendix D of the ESBA currently provides a functional assessment, based on the Service’s Methodology, of 41.43 acres of wetlands that will be impacted by the project. However, on page 2 of the ESBA the wetland impacts of the project are estimated to be 100.82 acres. Please note the Service generally considers all wetland types, including forested wetlands, as suitable foraging habitat for the wood stork. Therefore, please revise your current functional assessment of wood stork foraging habitat to include all of the 100.82 wetlands to be affected by the project. The assessment should also be applied to the wetland mitigation proposed for the project (as requested above).

### **FISH AND WILDLIFE RESOURCES**

The Service notes the three “east of Ibis” alternatives located in the northern section of the proposed project from the M-Canal to Northlake Boulevard would result in significant adverse impacts to high-quality fish and wildlife habitat and public conservation lands. The “east of Ibis” alternatives are located immediately west and adjacent to pristine wetlands and high-quality fish and wildlife habitat within the Pond Cypress Natural Area and Grassy Waters Preserve. The project, as proposed, will result in the direct loss of about 118 acres of uplands and wetlands that provide valuable habitat for fish and wildlife. In addition, the noise from motor vehicles and human activities during construction and ongoing operation of the roadway will indirectly result in significant disturbance to fish and wildlife within adjacent public conservation lands. Constant noise from motor vehicles using the new road will also reduce the aesthetic value of Pond Cypress Natural Area and Grassy Water Preserves.

Based on the impacts to fish and wildlife, fish and wildlife habitat, and public conservation lands, we do not support any of the “east of Ibis” build alternatives as currently proposed. The Service notes that, during the planning and development of this project, an alternative for the section of proposed roadway from the M-Canal to Northlake Boulevard located immediately west of the Ibis Golf and Country Club (“west of Ibis” alternative) was proposed. However, the FDOT did not carry forward the “west of Ibis” alternative for consideration. The Service has strongly supported and recommended that the FDOT adopt the “west of Ibis” alternative throughout the project development process. Moreover, through our written comments submitted through FDOT’s Efficient Transportation Decision Making Process in July 2006, the Service clearly stated that we could not support the current “east of Ibis” project alternatives. We strongly urge the FHWA and FDOT to reinstate the “west of Ibis” alternative as the preferred

alternative for the section of the project from the M-Canal to Northlake Boulevard, and discard the "east of Ibis" alternatives.

Thank you for your cooperation in the effort to protect federally listed species and fish and wildlife resources. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,



for Larry Williams  
Field Supervisor  
South Florida Ecological Services Office

cc: electronic only  
Corps, Palm Beach Gardens (Garett Lips)  
FWC, Tallahassee, Florida (FWC-CPS)  
NOAA Fisheries Service, West Palm Beach, Florida (Brandon Howard)

#### LITERATURE CITED

- Cattau, C., W.M. Kitchens, B. Reichert, J. Olbert, K. Pias, J. Martin, and C. Zweig. 2009. Snail kite demography annual report 2009. Unpublished report for the U.S. Army Corps of Engineers, Jacksonville, Florida. Contract # W912EP-09-C-0023.
- U.S. Fish and Wildlife Service. 2004a. Standard protection measures for the eastern indigo snake. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.
- U.S. Fish and Wildlife Service. 2004b. Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Services Consultation Area. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.



**DEPARTMENT OF THE ARMY**  
**JACKSONVILLE DISTRICT CORPS OF ENGINEERS**  
**4400 PGA BOULEVARD, SUITE 500**  
**PALM BEACH GARDENS, FLORIDA 33410**

REPLY TO  
ATTENTION OF

May 27, 2010

Palm Beach Gardens Regulatory Office  
SAJ-2010-01514

Florida Department of Transportation - District 4  
Attn: Beatriz Caicedo-Maddison  
3400 Commercial Boulevard  
Ft Lauderdale, FL 33409

Dear Ms. Caicedo-Maddison:

The U.S. Army Corps of Engineers (Corps) is pleased to provide a response to the May 5, 2010 SR-7 Extension Alternatives Workshop for the SR-7 Extension Planning Development and Environment (PD&E) Study, Financial Identification Number 229664. The Corps is providing comments based on the premise that the project will require a permit for activities within waters of the United States. The activities are regulated pursuant to the discharge of fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. §1344). Our comments are provided in accordance with 40 CFR 1503.3 and 33 CFR 325 Appendix B.

We request the following:

- a. The Corps will require a summary outlining the FDOT's conclusions regarding the potentially affected aquatic environments and other aquatic resources, including: identification, delineation, and quantification in acres of all direct, secondary and cumulative adverse effects on waters of the United States, and Department of the Army (DA) authorized compensatory mitigation sites in the area of any SR-7 Extension alternatives. The FDOT will be required to avoid all adverse effects to any DA authorized compensatory mitigation site within, or adjacent to, any proposed alternative for the SR-7 Extension PD&E project.
- b. The Corps reviewed the traffic analysis presented at the May 5, 2010 alternatives workshop illustrating the traffic modeling predictions. The predictions were based on transportation improvements to existing roadways such as Northlake Boulevard, for example, and new roadways such

Seminole Pratt Road Extension and Roebuck Road. The Corps has previously reviewed these new roadway projects (excluding Northlake) for Palm Beach County Engineering. The Corps had serious concerns for impacts to wetlands and compensatory mitigation sites directly abutting these proposed new roadway facilities, and based on the Corps comments to the Palm Beach County Engineering and Public Works Department, the applications were withdrawn. Therefore, please submit the conclusions of a revised traffic modeling analysis that supports the purpose and need for the SR-7 Extension project. The Corps also requests verification that the traffic analysis used to justify the SR-7 Extension roadway can demonstrate that SR-7 Extension will be justified and will function independently without any other proposed improvements to the transportation network.

- c. The Corps' 404 (b)(1) Guidelines presume that practical alternatives do exist that would also achieve the project purpose and would not impact special aquatic sites (wetlands) since the project is not water dependent (see 40 CFR 230.10). The Guidelines require the applicant to rebut these presumptions. The Corps is requesting the FDOT to evaluate all practical alternatives that avoid all adverse effects to wetlands, and compensatory mitigation sites.
- d. The Corps is requesting a statement and discussion of the FDOT's current understanding of the existing 544 acre compensatory mitigation site required for Palm Beach County's Acreage Reliever Road (Permit Number SAJ 2002-8273) wetland impacts, as well as any other compensatory mitigation site within the project area that may be affected. The 544 acre site's boundaries are as follows: southeast corner of 110<sup>th</sup> and 60<sup>th</sup> Street, and is bounded on the west by 110<sup>th</sup>, on the east by the Water Catchment Area, and on the south by Palm Beach County Pond Cypress Natural Area. The site is located geographically in Range 41 east, Township 43 south, Section 1. The site was required to be protected in perpetuity with a conservation easement as a special condition of the DA authorization. The Corps' understanding is that the 544 acre site was required to be protected from any construction or development in perpetuity and would obtain, and maintain, the forecasted

ecological functions and services as identified in the *Preserve Area Management Plan for Section I Upland and Wetland Preserve Area* dated November 1, 2004. Furthermore, the compensatory mitigation site was required as part of the 404 (b) (1) Guidelines to offset unavoidable impacts to the Nation's aquatic resources and was a major component in the Corps favorable decision to authorize the Acreage Reliever Road. By accepting the site as compensatory mitigation, the Corps was able to demonstrate the Acreage Reliever Road was in the public's interest. Furthermore, the Corps is unlikely to support, and in fact, is unlikely to review any proposal, that proposes impacts to a compensatory mitigation site or that have been, or are required to be restored, enhanced or created resulting from previous or current Department of the Army authorization.

- e. We are concerned with your decision to dismiss the alternative that was located to the west of Ibis Development. It is our opinion that an increase in residential relocations is not enough to eliminate an alternative.
- f. Additional detail is required to fulfill the requirements set forth in 40 CFR Part 230 - Section 404(b) (1) Guidelines, Subpart H - Actions to Minimize Adverse Effects. Please incorporate into any future NEPA documents a detailed evaluation of how adverse effects to human use and plants and animal populations have been minimized, and a thorough discussion of the 404 (b)(1) Guidelines. Your evaluation should also include a discussion on how technological improvements control the discharge of fill material. Additionally, include a discussion of what best management practices will be utilized to contain the fill material and reduce potential secondary impacts.
- g. In order to fulfill requirements set forth in 40 CFR 1508.20, 40 CFR 1502.14, 33 CFR 320.4(r), and 33 CFR 325.4, 33 CFR 325, Appendix B you are required to fully evaluate and provide a detailed analysis of compensatory mitigation, provided impacts to waters of the United States have been avoided and minimized to the maximum extent practical. Please include a detailed compensatory mitigation assessment which would fully replace all functional units

lost by the proposed action. This detailed analysis should include an estimated break down of impacts by habitat type, functional assessment per habitat type, and conceptual mitigation plan.

- h. Furthermore, any roadway design as part of a build alternative should be reduced in cross section so that only the minimum necessary to achieve the project purpose is constructed. We recommend the following: a shoulder design width that achieves the project purpose, however, is the minimum width necessary to provide safety; the Corps would support the maximum utilization of traffic separators or barriers in lieu of grassed medians to reduce roadway width; the least amount of additional impervious so that the drainage design would require only the minimum amount of wetlands or natural areas for stormwater retention or detention areas; the Corps recommends the roadway be adjacent to residential development, and have the stormwater treatment facilities provide a buffering effect to the remaining onsite wetlands and natural uplands.

Thank you for providing us this opportunity to comment on the PD&E study. If you have any questions regarding this letter, please contact Garrett Lips at the letterhead address or by telephone at 561-472-3519.

Sincerely,



Garrett Lips  
Project Manager

Cc:

Ann Broadwell, FDOT District 4 Environmental Administrator  
John Wrublik, USFWS Vero Beach  
Brandon Howard, NMFS West Palm Beach  
Ron Miedema, EPA West Palm Beach



## Florida Department of Transportation

RICK SCOTT  
GOVERNOR

3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309

ANANTH PRASAD, P.E.  
SECRETARY

July 2, 2012

Mr. Larry Williams  
Field Supervisor  
South Florida Ecological Services Office  
U.S. Fish and Wildlife Service  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

Attn: John Wrublik

Dear Mr. Wrublik:

**SUBJECT: SR 7 Extension Project Development and Environment (PD&E) Study  
SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)  
Palm Beach County, Florida  
Federal Aid Project No.: 4752-030-P  
Financial Project ID No.: 229664-2-22-01  
Efficient Transportation Decision Making (ETDM) Number: 8127**

The Florida Department of Transportation (FDOT) is in receipt of your letter dated February 29, 2012 for the project referenced above. In this letter, you commented on the findings of the Endangered Species Biological Assessment (ESBA) submitted on January 18, 2012. The FDOT has been reviewing your comments and met with the U.S. Fish and Wildlife Service (Service) to discuss the findings. This meeting was held on April 19, 2012. A copy of the minutes is attached.

The letter dated February 29, 2012 commented on four key areas: eastern indigo snake; Everglade snail kite; wood stork; and the corridor selection process for the PD&E study. Our response to each section is found below.

### **Eastern Indigo Snake**

The FWS letter stated that it concurred with the determination that the project “*may affect, but is not likely to adversely affect*” the eastern indigo snake. The FDOT will follow the Service’s *Standard Protection Measures for the Eastern Indigo Snake* during construction of the project.

## **Everglade Snail Kite**

The Service notes that **“potential adverse effects include the loss of foraging habitat for the snail kite within the project footprint.”** Approximately 20 percent (28.04 acres) of the wetlands within the right-of-way is native herbaceous marsh, which is the preferred foraging habitat for the snail kite. The existing vegetation, topography, and hydrology do not encourage the presence of the snail kite in the vast majority (80 percent) of the project footprint. The footprint section located east of Ibis is largely defined by dense areas of exotic species (Brazilian pepper and Melaleuca) alternating with linear canals that are too narrow and overgrown for snail kite foraging, and too deep for the snail kite’s food source. Much of the herbaceous marsh in this area occurs along the eastern edge of the right-of-way (see attached figure – aerial with herbaceous marsh highlighted). In addition, the marsh habitat was improved through the removal of exotic and nuisance vegetation by the City of West Palm Beach. As FDOT further develops a minimization typical section, it appears that a large portion of this habitat will not likely be directly impacted by the construction of the final roadway design. The minimization typical section will be included in the request for Formal Consultation that will be submitted to FHWA next week. From the Ibis service entrance to North Lake Boulevard, there is an existing two-lane road that is 0.75 miles in length and 80 feet wide. The presence of the segment of SR 7 does not appear to disturb the snail kites using Grassy Waters Preserve.

Marsh habitat located within the project right-of-way south of the M Canal exhibits a more natural hydroperiod. As such, the water levels within the marshes in this section of the right-of-way are substantially lower during the January through May nesting season (which equates to the dry season in Florida) than in Grassy Waters. Since the PD&E study began in 2005, no snail kite use of these marshes has been documented. Apple snail eggs have been observed, but their presence could be considered rare. No adult apple snails or empty shells have been observed in or near these marshes.

The FDOT has recently completed two wetland-dependent bird surveys which also documented snail kite activity within the project right-of-way: one in October-November of 2011 and one during the 2012 snail kite nesting season. During these surveys, a minimum of four different locations were visited each day over a series of days in order to document any wetland-dependent bird activities. The nine initial observation locations were established based upon knowledge of prior snail kite nesting/foraging locations, and the presence of suitable habitat for foraging by wetland-dependent birds.

In addition, ecologists visited other areas within the project right-of-way as time permitted.

During the November 2011 survey, snail kites were observed foraging and perching east of the existing FDOT right-of-way, within Grassy Waters Preserve, toward the northern end of the project corridor. The observed snail kite foraging areas were in the vicinity of two snail kite nesting sites that were previously identified by FWS. These nests were no longer present. The observed snail kites were documented a minimum of 350 feet from the eastern limit of the SR 7 corridor right-of-way. The 2012 nesting season survey produced similar results. Both a male and female snail kite were observed near the corridor, where the Grassy Waters Preserve meets the M Canal. The two snail kites were observed over multiple days using the same four marsh foraging areas. The westernmost foraging area was located an estimated 250 feet from the eastern limit of the project right-of-way. It is likely that the two observed snail kites were a mating pair, however no mating, nesting, or nest building behaviors were observed. A nest location was not identified.

No snail kites, snail kites nests, or foraging was observed in the project right-of-way during either of the two wetland dependent bird surveys. Due to the hydrologic regime, vegetative structure, substrate composition, and lack of appropriate open space of wetlands within the SR 7 right-of-way, it is highly unlikely that these areas provide adequate foraging and/or nesting habitat for snail kites. No nests were observed at any time during the field surveys.

The Service goes on to say that **“Moreover, the project will likely result in disturbance to snail kites located east of the project site within wetlands of the Pond Cypress Natural Area and Grassy Waters Preserve. The disturbance will result from construction-related activities and motor vehicles and human activity on the roadway following construction.”**

Please note that no snail kites have been observed or documented within the Pond Cypress Natural Area (confirmed through field reviews and feedback from the managers of the Pond Cypress Natural Area). Habitat located east of the project right-of-way along Ibis is more suitable for snail kite foraging and nesting than the wetland habitat located within the right-of-way. In the areas where snail kites have been observed foraging and nesting, the habitat consists of loosely vegetated open water marshes that contain vegetation clumps internal to the marsh. In addition, there is woody vegetation surrounding these areas where snail kites have been observed perching. In some

portions of the project, these open marshes border the project right-of-way. During construction, standard protection measures and monitoring programs, as approved by the Service, will be followed during construction for the snail kites observed within the Grassy Waters Preserve. The FDOT has prepared a Draft Snail Kite Management Plan for the construction phase of the project (presented as Appendix F of the Endangered Species Biological Assessment) and will commit to monitoring by a qualified biologist to insure that the bird's activities are not negatively affected.

The following statement was also provided: **“Little is known regarding the effects of roads on snail kite foraging and nesting, although snail kites could respond to the disturbance by avoiding the project area or otherwise altering their behavior.”**

It should be noted that members of this local subpopulation of snail kites are routinely observed along the existing Northlake Boulevard corridor that bifurcates Grassy Waters, perched in adjacent trees and foraging near the roadway. In addition, snail kites are observed near both the Beeline Highway and Northlake Boulevard. In addition, they routinely roost on Solid Waste Authority property, near a waste to energy plant which emits noise at all hours. If the Service so chooses, FDOT is committed to funding a research project through one of the universities to determine the long term effects of roads on snail kite activities and nesting for this local snail kite population. This would allow the Service, FHWA and FDOT to further develop Standard Construction Provisions for Snail Kites to be used on future transportation improvement projects.

This statement was made regarding the potential loss of foraging and nesting habitat: **“Consequently, the disturbance resulting from the project could result in the loss of foraging and nesting habitat for the snail kite, and may ultimately reduce the breeding success of snail kites in the project area.”**

Construction of the SR 7 Extension project will not change the hydrology of the Grassy Waters Preserve – an important factor for the stability of the snail kite's habitat. The existing vegetation within the project footprint is defined by exotics and not supportive of snail kite habitat. Efforts are underway to reduce the overall typical section. If successful, exotics could be removed from the unused portion of the right-of-way and could provide a net gain in foraging habitat for the snail kite.

Finally, the section on the Everglades snail kite concluded with the following request: **“Please provide a detailed habitat compensation plan indicating how the FDOT intends to minimize the project's adverse effects to the snail kite. As discussed**

**in our meeting with the FDOT on October 28, 2011, we recommend the FDOT acquire and provide for the long-term management and protection of currently unprotected snail kite habitat. A potential option includes acquisition of lands within the Vavrus Ranch site.”**

The FDOT has conducted a preliminary evaluation of several mitigation options and will continue to pursue options that also serve to provide snail kite habitat and/or protect currently unprotected habitat. The attached table identifies mitigation options that could provide suitable habitat for the snail kite in order to ensure success of the overall wetland mitigation strategy. The FDOT will continue to coordinate with FWS to insure that the habitat compensation plan adequately provides for the future protection of the snail kite.

#### **Wood Stork**

The Service “**recommends the applicant replace wetlands lost due to the action. The compensation plan should include a temporal lag factor, if necessary, to ensure wetlands provided as compensation adequately replace the wetland functions lost due to the project. Moreover, wetlands offered as compensation should be of the same hydroperiod , and located within the CFA of the affected wood stork colony.**” The FDOT agrees with this request. The FDOT has been coordinating with the South Florida Water Management District and U.S. Army Corps of Engineers and other agencies about possible mitigation strategies to offset any impacts to wetlands and affected species.

The Service also recommends that “**For projects that impact 5 or more acres of wood stork foraging habitat, the Service requires a functional assessment be conducted using our “Wood Stork Foraging Analysis Methodology” on the foraging habitat to be impacted and the foraging habitat provided as mitigation.**” The FDOT agrees with this request. A functional assessment will be conducted as part of the mitigation plan.

The Service also made the following request: “**The ESBA discussed potential options to compensate for the project’s impacts to wetlands and wood stork foraging habitat. However, a final wetland mitigation plan has not yet been provided. Please provide a detailed wetland mitigation plan that fully compensates for the loss of wood stork foraging habitat resulting from the project.**” FDOT is submitting an evaluation matrix of wetland mitigation options for this project. Further discussions regarding wetland mitigation will be conducted with all ETAT members.

Finally, the Service requested clarification on the following: **“Appendix D of the ESBA currently provides a functional assessment, based on the Service’s Methodology, of 41.43 acres of wetlands that will be impacted by the project. However, on page 2 of the ESBA the wetland impacts of the project are estimated to be 100.82 acres. Please note the Service generally considers all wetland types, including forested wetlands, as suitable foraging habitat for the wood stork. Therefore, please revise your current functional assessment of wood stork foraging habitat to include all of the 100.82 wetlands to be affected by the project.”** For the wood stork foraging habitat assessment, we included acreages for the herbaceous marshes (exotic and native dominated) and ditches (non-M Canal) within the right-of-way. We did not include hydric pine or shrub wetlands because many of these areas are extremely thick and include exotic species. In addition, during six years of observations, wood storks have not been observed utilizing these habitats along the corridor. However, the FDOT will revise the analysis as requested.

### **Fish and Wildlife Resources**

The Service noted that, **“during the planning and development of this project, an alternative for the section of proposed roadway from the M-Canal to Northlake Boulevard located immediately west of the Ibis Golf and Country Club was proposed. However, the FDOT did not carry forward the “west of Ibis” alternative for consideration. The Service has strongly supported and recommended that the FDOT adopt the “west of Ibis” alternative throughout the project development process.”**

Both agency and public input was an integral component of the corridor selection process. The corridor selection process involved considerable discussion from all stakeholders involved. The corridor located to the west of Ibis (Corridor 1) would have resulted in significant impacts to the community, including the potential for 107 residential property impacts and relocations to Rustic Lakes and Ibis Golf & Country Club. The decision to pursue this corridor would have elevated the amount of controversy, adding many more years to the study process and potentially resulting with the selection of the No-Build option. The Rangeline corridor (Corridor 4) received a dispute resolution rating during the ETDM process from the permitting agencies. The conclusion reached from the permitting agencies about the Rangeline was that it was not permissible. A meeting was held with all the permitting agencies on November 9, 2006 to discuss the ETDM screening results. The agencies strongly opposed Corridor 4 due to the bifurcation of the natural areas. After the meeting, the FDOT decided to abandon Corridor 4. This led to the selection of Corridor 3. Corridor 3 did not receive a

Mr. Larry Williams  
July 2, 2012  
Page 7

dispute resolution rating. This corridor minimized community impacts and provided the best alternative for avoiding adverse effects to wetlands and the natural environment. Corridor 3 does not bifurcate the natural area formed by the Pond Cypress Natural Area and the Grassy Waters Preserve and is located adjacent to existing development. If a fatal flaw is identified for Corridor 3, then other options would be considered.

On June 5, 2007, a Corridor Announcement Meeting was held to inform the public and agencies of the recommendation to continue with Corridor 3 and the No-Build Alternative through the remainder of the PD&E Study. This meeting was held using a formal, Public Hearing format where a presentation was given and participants were invited to make public statements at the microphone.

### **Conclusion**

During the meeting on April 19, 2012, the Service stated that a formal consultation will be required for this project on issues related to the Everglade snail kite. The FDOT is currently preparing the letter and supporting materials to initiate this process. The information requested during the meeting will be provided to assist the Service in its analysis.

Sincerely,



Ann Broadwell  
District Environmental Administrator

cc: Joseph Sullivan, Federal Highway Administration  
Garett Lips, U.S. Army Corps of Engineers  
Patrick Glass, P.E., Florida Department of Transportation



## SR 7 EXTENSION PD&E STUDY FPID No. 229664-2-22-01 MEETING MINUTES

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<b>SUBJECT:</b>	Coordination meeting with the US Fish and Wildlife Service
<b>DATE AND TIME:</b>	April 19, 2012 from 10:30 a.m. to 11:30 a.m.
<b>LOCATION:</b>	Fish and Wildlife Service Office – Vero Beach
<b>ORIGINATED BY:</b>	Beatriz Caicedo-Maddison, P.E.
<b>RECORDED BY:</b>	Michael Garau, P.E.
<b>PARTICIPANTS:</b>	John Wrublik, (FWS), Victoria Foster (FWS), Craig Aubrey (FWS), Darla Fousek (FWS), Beatriz Caicedo-Maddison (FDOT), Ann Broadwell (FDOT), Richard Young (FDOT), Sandy Scheda (Scheda), Greg Juszli (Scheda), Michael Garau (Jacobs)

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A coordination meeting was held between the Florida Department of Transportation (FDOT) and the US Fish and Wildlife Service (FWS) to discuss the letter from FWS to FDOT dated February 29, 2012. A PowerPoint presentation was used to guide the discussion and address some of the comments raised in the letter. A copy is attached.

Below are the comments and discussion items made during the meeting:

1. Beatriz provided an overview of the corridor selection process and why FDOT proceeded with Corridor 3. Victoria asked if FDOT could go back to Corridor 1. Beatriz responded that the decision was based on community and agency involvement. In addition, FDOT does not own the right-of-way through Corridor 1. Ann added that Corridor 3 was not disputed during the ETDM process and that until a fatal flaw has been identified, FDOT will continue with this corridor.
2. An overview of the proposed typical section was provided. Previously, the typical section showed the full use of available right-of-way. There is 320 feet available between the Ibis community and the Grassy Waters Preserve. The current typical now shows the need for less right-of-way as the amount of width needed for drainage has been reduced. This results in a savings of approximately 36 acres along the section between the M-Canal and Northlake Blvd.
3. Ann and Sandy discussed the results of the snail kite survey conducted last fall and preliminary results from the survey in-progress. So far, no snail kite nests have been observed in 2012 by the project team near the FDOT right-of-way line.
4. Ann presented the mitigation options for the project. Victoria asked if FDOT would be able to set up an FDOT-only mitigation bank on Vavrus. The FWS would like to see Vavrus or Mecca in conservation. Sandy added that the team will need to assess the top wetland mitigation options in terms of snail kite habitat and that more regional snail kite data is needed. Ann will send an email to John requesting this information.
5. Victoria stated that the FWS will need to have an internal meeting to discuss possible engineering options that would make this project more acceptable. The FWS would then provide their ideas to FDOT for consideration. Richard Young stated that any engineering options that they wanted to provide would be appreciated and they were left with copies of cross sections for mark-up purposes.

6. Victoria asked if there was a limit on the amount of commitments that can be made for the design. Ann and Richard responded that any request will be considered. Victoria stated that formal consultation will be required.
7. Information needed for formal consultation includes new drawings and new wetland impact numbers.

Meeting adjourned at 11:30 a.m.





**LEGEND**

-  Project ROW
-  Snail Kite Habitat
-  6410 - Emergent Marsh



Data Source: Scheda field-observed data  
Image Source: 2009 true color aerial 1ft



**Mitigation Options Summary**  
**SR 7 Extension PD&E Study**  
**Federal Aid Project No. 4752-030-P**  
**Financial Project ID No. 229664-2-22-01**  
**ETDM No. 8127**

Mitigation Site	Project Description	Owner	Permit Nos.	Habitat Type	Potential Acreage Available	Potential Credits Available	SR 7 Direct Impact Acreage <sup>D</sup>	SR 7 Direct Impact Functional Loss <sup>D</sup>	SR 7 Estimated Secondary Impact Functional Loss <sup>S</sup>	Estimated Cost per Credit	USACE Credit Availability	Wood Stork Availability	Credit	Snail Kite Habitat Suitability
Bluefield Ranch Mitigation Bank	Mitigation bank located in St. Lucie County. Bank is outside of service area and drainage basin. FDOT previously purchased 120 credits. Only 93.47 credits have been used, therefore 26.53 credits remain that are already paid for. Credit availability as of June 2011.	Private	SFWMD: 56-00002-M ACOE:SAJ-2000-02935	Herbaceous / Forested Wetland	Unknown	850	113.90	76.49	16.96	Unknown	Yes	No	No certified wood stork credits.	Yes
Dupuis	Nearly 22,000 acre management area. Serves as a FDOT ROMA for wetland impacts. As of June 2011, approximately 571 credits are available that FDOT previously funded. Site located outside of the project's drainage basin. May be more suitable to offset impacts associated with smaller projects that FDOT and the Turnpike Enterprise may have in the Work Program.	SFWMD	Agreement between SFWMD and FDOT; ACOE permit pending	Herbaceous / Forested Wetland	Unknown	571	113.90	76.49	16.96	Unknown	Yes	Yes		Limited
Gentle Ben Ranch	Privately-owned parcels located on the southeast corner of PGA Blvd and SR 710. Mitigation through restoration of pasture land and borrow pits is possible. Site provides regional value given its location in relation to other protected areas. Using this site may result in FDOT being the property owner which goes against FDOT's core missions. FDOT would have to purchase land and arrange transfer of ownership to another entity (likely Palm Beach County).	Private	Not Yet Permitted	Herbaceous / Forested Wetland	337	Unknown	113.90	76.49	16.96	Unknown	N/A	N/A		Yes
Grassy Waters Preserve	The City of West Palm Beach has previously conducted wetland restoration for mitigation credit in Grassy Waters. Additional restoration/enhancement is planned. The amount or acreage needing restoration/enhancement is currently unknown. Landowner currently seems unwilling to use site as mitigation for SR 7.	City of West Palm Beach	TBD	Herbaceous / Forested Wetland	Unknown	Unknown	113.90	76.49	16.96	Unknown	TBD	TBD		Yes
Loxahatchee Mitigation Bank	Mitigation bank located in Palm Beach County. Bank is within service area but outside of drainage basin. Bank may not have same assemblage of habitats as those being impacted. Wetland credit availability listed as of May 2011.	SFWMD (operated by Tetra Tech)	FDEP: 140969-001 ACOE:SAJ-1997-07816	Herbaceous Marsh	Unknown	30	41.13	30.70	12.23	\$100,000	Yes	No	Bank has certified herbaceous wetland credits and has completed the wood stork foraging analysis. ACOE informed the Bank that credits could not be sold as certified Wood Stork credits.	Yes
				Forested Wetlands	Unknown	36	72.77	45.79	4.73	\$110,000	Yes			
Mecca Slough	Previously permitted 353-acre wetland restoration site. The parcel contains approximately 2,000 acres of former agriculture land that can be restored to wetland. The permitted site plan can be modified to suit mitigation needs for SR 7 and may afford an opportunity for future FDOT projects. Site may provide fill needed for the project, which would provide cost savings to FDOT. Project has regional significance in that it connects other natural areas that are in Palm Beach County greenways plan. County would need to be co-applicant on permit modification request. Could be a similar JPA arrangement between FDOT and County as the seagrass mitigation at Snook Island.	Palm Beach County	SFWMD: 50-08699-P ACOE: SAJ-2004-2859	Herbaceous Marsh	154	51.3	41.13	30.70	12.23	\$32,500	Yes	No	Permitted prior to wood stork rule.	Yes; Could be redesigned to create more
				Forested Wetlands	78*	26.0	72.77	45.79	4.73	\$32,500	Yes			
Parcel 20.04	Previously constructed wetland mitigation site owned by a private developer. Site is already built and functioning as a wetland; no lag time, no risk. Site directly abuts state-owned lands (Johnathan Dickinson State Park). The developer is looking for a sole-source buyer to purchase the portion of the site that is not needed as mitigation for previous impacts. Regulatory agencies are currently working on how to permit site bifurcation. Using this site may result in FDOT being the property owner which goes against FDOT's core missions. Donating the land to the State after purchase may be possible given its adjacency to state-owned lands.	Private	SFWMD: 43-01374-P ACOE: SAJ-2002-01929	Herbaceous Marsh	TBD	2 <sup>&amp;</sup>	41.13	30.70	12.23	Unknown	Yes	No	Permitted prior to wood stork rule.	Yes
				Forested Wetlands	TBD	18 <sup>&amp;</sup>	72.77	45.79	4.73		Yes			
Pine Glades North PROMA	Previously constructed pine flatwood and wetland restoration area. As permitted, credits are to only be used for Palm Beach County projects. It is likely the site can only be used for impacts on Palm Beach County right-of-way.	Palm Beach County	SFWMD: 50-08231-P ACOE: SAJ-2007-04122	Herbaceous / Forested Wetland	615	See below <sup>§</sup>	113.90	76.49	16.96	\$86,250	Yes	No	County is permitting wood stork credits at Pine Glades West first, then moving to the North Site. North should have more credits than West.	Yes
Pine Glades West PROMA	Previously constructed pine flatwood and wetland restoration area. As permitted, credits are to only be used for Palm Beach County projects. It is likely the site can only be used for impacts on Palm Beach County right-of-way.	Palm Beach County	SFWMD: 50-08187-P ACOE permit pending	Herbaceous / Forested Wetland	1872	130 <sup>§</sup>	113.90	76.49	16.96	\$86,250	Yes	Yes	Currently permitting wood stork credits, completed the foraging analysis and will have approx 706.22 kg of credits in three hydroperiod zones	Yes
Rangeline	Preservation of existing wetland habitat within the Rangeline. Minor enhancement activities would enhance the overall wetland quality and landscape support of the surrounding wetland preserve areas. USACE does not view right-of-way preservation as mitigation.	FDOT	N/A	Herbaceous Marsh	34.19	3.42	41.13	30.70	12.23	Unknown	N/A	N/A		Yes
				Forested Wetlands	51.35	5.14	72.77	45.79	4.73					
R.G. Reserve Mitigation Bank	Mitigation bank located in Martin County. Bank is outside of service area and drainage basin. Credit availability as of October 2011.	Private	SFWMD: 43-00001-M No ACOE Permit	Herbaceous / Forested Wetland	Unknown	36	113.90	76.49	16.96	Unknown	No	TBD		Yes
Treasure Coast Mitigation Bank	Mitigation bank located in St. Lucie County. Bank is outside of service area and drainage basin. Credit availability listed as of June 2011.	Private	SFWMD: 56-00004-M ACOE: SAJ-2001-04445	Herbaceous / Forested Wetland	Unknown	80	113.90	76.49	16.96	Unknown	Yes	Yes		Yes
Vavrus Ranch	Large parcels that may be available for purchase. Restoration of pastureland or enhancement of existing wetlands are possible mitigation options. Utilization of northern portion may offer the most ecological benefit. All wetland jurisdictional lines on the property were previously established by USACE. FDOT has contacted the property owner to determine if they are willing sellers in this matter; at this time, the owners are not willing to sell.	Private	Not Yet Permitted	Wetland Preservation	2100**	667.0	113.90	76.49	16.96	Unknown	N/A	N/A		Yes
				Wetland Restoration	2000 <sup>#</sup>	280.0	113.90	76.49	16.96	Unknown				

D = Direct impact acreage and functional loss includes impacts to the vegetated linear ditches (FLUCFCS 5100, NWI: PABHx)  
S = Estimated functional loss from secondary impacts is based on worst-case typical section impacts up to 300 ft from the right-of-way.  
\* = The 78 acres of forested wetland acres available equals the permitted 28 acres of forest wetland restoration and the permitted 50-acre open water refugia that could be modified into a forested wetland restoration.  
\*\* = Existing wetland acreage available in the Vavrus-owned parcels per SFWMD FLUCCS data. The acreage will need to be ground-truthed for accuracy.  
# = Restoration acreage denotes the existing pasture land that is located in a corridor that could connect the JW Corbett Management Area to the Loxahatchee Slough through Mecca Flowway.  
& = Approximate number of credits available. The exact number of credits for sale is currently being negotiated with the regulatory agencies.  
§ = Credits available once all phases of restoration are complete.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Florida Division

545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Phone: (850) 553-2200  
Fax: (850) 942-9691 / 942-8308

[www.fhwa.dot.gov/fldiv](http://www.fhwa.dot.gov/fldiv)

August 7, 2012

*Sent to FWS  
Aug 9, 2012*

In Reply Refer To:  
HDA-FL

Ms. Victoria Foster  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

Attention: John Wrublik

**RE: Florida Department of Transportation  
SR 7 Corridor Extension Project Development and Environment Study  
From SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)  
FPID No. 229664-2-22-01  
FAP No. 4752-030-P  
ETDM No. 8127  
Palm Beach County**

Dear Ms. Foster:

The Florida Department of Transportation (FDOT) prepared an Endangered Species Biological Assessment and previously submitted the document to the U.S. Fish and Wildlife Service (Service) for the above referenced project. In your letter dated February 29, 2012, you concurred with all effect determinations made by the FDOT with the exception of the wood stork and the Everglade snail kite. Since the February 29, 2012 letter, FDOT has held a Public Hearing and new typical sections have been developed for the project. The Federal Highway Administration (FHWA) is requesting formal consultation for the wood stork and everglade snail kite and the information requested in the letter is attached to this submittal.

### **Wood Stork**

The FDOT made a determination of 'may affect, but not likely to adversely affect' for the wood stork (*Mycteria americana*); however, you stated that the Service does not have enough information to provide concurrence or non-concurrence with the FDOT's determination. Two additional items of information were requested by the Service before a determination could be made: (1) a detailed wetland mitigation plan; and (2) a revised functional assessment for wood stork foraging habitat. These two items are addressed below and within Attachments 1 and 2 to this letter.

- **Detailed Wetland Mitigation Plan (Attachment 1)**

Several suitable wetland mitigation options have been identified which will offset the proposed impacts to wood stork foraging habitat. The options are shown within Attachment 1. The FDOT is currently working to narrow the list so that the remaining options can be explored in more detail.

- **Revised Functional Assessment for Wood Stork Foraging Habitat (Attachment 2)**

The reviewed functional assessment for the wetland impact area is attached for your review and consideration. A similar assessment for the wetland mitigation plan will be provided when a specific plan is selected from the options that have been reviewed with your office.

### Everglade Snail Kite

The FDOT made a determination of 'may affect, but not likely to adversely affect' for the Everglade snail kite (*Rostrhamus sociabilis plumbeus*); however, you have proposed a 'will likely adversely affect' determination based upon the information provided. The FDOT has continued its coordination with the Service by holding a joint meeting on April 19, 2012 to discuss the potential impacts to the Everglade snail kite and how these anticipated impacts may be offset. As a follow-up to this meeting, the FDOT has:

- completed a thorough evaluation of the quality of the wetlands to be impacted;
- requested and received the full GIS data set for snail kite nesting over the past several years (this information was used to conduct further evaluation of all potential wetland mitigation options for their suitability to offset anticipated affects to the snail kite);
- completed the FDOT project specific 2012 nesting season survey of suitable habitat adjacent to the proposed project right-of-way;
- reviewed and summarized local data and research related to the West Palm Beach snail kite occurrence, counts, nesting, and demographics;
- reviewed and summarized snail kite roosting site data received from the Solid Waste Authority of Palm Beach County (SWA);
- reviewed City of West Palm Beach snail kite nesting and observation data provided by the City's attorney; and,
- developed a variety of proposed actions to reduce the local anticipated affects to the snail kite and offset the regional loss of wetland habitat that is available for use by the snail kite, including the development of a reduced typical section.

This information is summarized in the sections below and the related attachments.

### **Description of Reduced Typical Section**

The original typical section proposed in the draft documents included four lanes separated by a 42 foot wide median and showed full use of the right-of-way. The proposed typical section parallel to the Ibis Golf and Country Club and Grassy Waters Preserve was 320 feet. This has been reduced to 180 feet. The major minimization efforts included a revised drainage system and the reduction of the center median from 42 feet to 22 feet. After crossing the M canal, the same 180 foot typical section will be used. The original and reduced typical sections are illustrated within **Attachment 3**.

***Detailed Habitat Description & Impact Summary as it pertains to the Everglade Snail Kite***

***Required Foraging, Nesting and Roosting Habitat*** - Everglade snail kite habitat consists of fresh water marshes and the shallow vegetated littoral zones of lakes. Preferred habitat generally is a marsh consisting of open water areas and loose vegetation with emergent plant species such as spike rush (*Eleocharis cellulosa*) and maidencane (*Panicum hemitomon*) along with patches of sawgrass (*Cladium jamaicense*) and cattail (*Typha* spp.) where apple snails can be found. Appropriate foraging habitat is a combination of low profile marsh intermixed with shallow (0.2-1.3 m deep) open water that is relatively calm. Clear water is required in order for the snail kites to visually search for apple snails. Nearly continuous flooding of the marshes is required in order to sustain apple snail populations that will in turn sustain foraging snail kites (USFWS Multi-Species Recover Plan). Nesting habitat is similar and nesting usually occurs over water, in small trees or vegetation clumps generally less than 10 m in height. Trees selected for nesting include willow (*Salix caroliniana*), cypress (*Taxodium* spp.), melaleuca (*Melaleuca quinquenervia*), sweetbay (*Magnolia virginica*), swamp bay (*Persea borbonia*), pond apple and dahoon holly (*Ilex cassine*). Shrubs for nesting include wax myrtle (*Myrica cerifera*), cocoplum, buttonbush (*Cephalanthus occidentalis*), Sesbania, elderberry (*Sambucus canadensis*), and Brazilian pepper (*Schinus terebinthifolius*). Nesting may also occur in clumps of herbaceous vegetation such as sawgrass, cattail, bulrush (*Scirpus* spp.), and reed (*Phragmites australis*). Suitable nesting substrate must be close to the foraging habitat; therefore, extensive areas of woody vegetation are generally considered unsuitable for nesting. Roosting is generally also over open water and in willow, melaleuca, or cypress. However, the vegetation at roost sites is the taller vegetation in the area.

***Snail Kite Habitat within the Project Area*** - North of the M Canal, marsh habitat located east of the project right-of-way, within the Water Catchment Area (WCA), is more suitable for snail kite foraging and nesting than the marsh habitat located within the right-of-way. In the areas within the WCA where snail kites have been observed foraging and nesting, the habitat consists of loosely vegetated open water marshes that contain vegetation clumps internal to the marsh. In addition, there is woody vegetation surrounding these areas where snail kites have been observed perching. In some areas, these open marshes border the project right-of-way. Hydrology within the roughly 11,425-acre WCA is controlled, which is beneficial for the apple snail, and more apple snails were observed here in comparison to other marsh habitats within and adjacent to the project corridor. However, the surface water in the WCA is subject to withdrawal as needed because it is the primary drinking water source for the City of West Palm Beach (City). Water levels have become critically low during the dry season

in 2010 and 2011, and the City reverted to other water sources when water levels became too low. In addition, the WCA receives substantial amounts of surface and stormwater runoff from Northlake Boulevard, Ibis Golf and Country Club, the M Canal, and Baywinds. Changes in species and structure of vegetation at the outfall areas (such as large stands of dense cattail) are evidence of elevated nutrient conditions from these inputs. Large stands of nuisance vegetation indicative of high nutrient inputs have been chemically treated within the WCA, just east of the Ibis outfall. The more dense emergent vegetation in these areas is not suitable habitat, and the nutrient inputs could eventually decrease water clarity which would affect the snail kite's foraging ability. Therefore, even in the WCA where snail kites are known to forage and nest, there is competing interest for this water. The various management strategies that govern the water uses (drinking water versus snail kite) can be conflicting. Based on these observations, the vegetation transition trends indicate that nutrient inputs could negatively affect the snail kite.

Marsh habitat located south of the M Canal is generally less suitable for snail kite foraging and nesting. These systems exhibit a more natural hydro-period fluctuation and have been observed to dry down to very low water levels (including no water) during the dry season. During the wet season, the emergent vegetation within the marshes is denser, and there is less open water. Based on numerous field observations since 2006 the occurrence of apple snails and eggs in this area seems much lower. The Palm Beach County Pond Cypress Natural Area preserve manager has observed snail kites in the general area, but has not observed them actively foraging or nesting within Pond Cypress Natural Area (personal communication). This is consistent with FDOT observations over the past six years.

**Proposed Impacts** - The existing vegetation, topography, and hydrology within the vast majority of the project footprint does not encourage the presence of the snail kite. The right-of-way north of the M Canal contains an existing two-lane road that serves the east side of the Ibis Golf and Country Club. This road is 0.75 miles in length and 80 feet wide, and lies within County-owned right-of-way that is positioned between the existing FDOT right-of-way to the east and Ibis to the west. The stormwater runoff from this road currently goes west into the Ibis stormwater system. In the future condition, all stormwater runoff will travel to ponds located within the right-of way, then to the west and south through existing stormwater systems. No stormwater will outfall to the WCA.

Approximately 20 percent, or 28.04 acres, of the proposed corridor right-of-way is native herbaceous marsh (FLUCFCS 6410), which is the preferred foraging and nesting habitat for the snail kite (**Attachment 4, Figure 1**). If the proposed right-of-way in the vicinity of the M-Canal crossing is included, there is a total of 31.93 acres of marsh. Of the total marsh acreage, 55 percent, or 15.53 acres occurs north of the M Canal, adjacent to known snail kite foraging and nesting areas within the WCA. In this northern section of right-of-way, a long north-south canal has been previously excavated, and the resulting berm lies adjacent to it. These corridor right-of-way wetland habitats are largely defined by dense areas of exotic species (including Brazilian pepper and *Melaleuca*, within former hydric pine) alternating with linear canals, berm, and some marsh. The linear canals are too narrow and overgrown for snail kite foraging, and too

deep for the snail kite's food source. Much of the herbaceous marsh in this area occurs along the eastern edge of the right-of-way. The areas mapped as marsh vary in terms of vegetation type, vegetation density, proliferation of exotics, and depth; therefore, it is only a subset of these marsh areas, 9.78 acres, that is appropriate for snail kite foraging and nesting (**Attachment 4, Figure 2**). In addition, approximately 3 acres of this marsh habitat within the right-of-way was improved through the removal of exotic and nuisance vegetation by the City to create more suitable habitat. **Figure 3 of Attachment 4** depicts the snail kite habitat within the limits of construction for the reduced typical section, and these areas total 0.98 acres. Construction of the reduced typical section would result in a 90 percent decrease in impacts to snail kite habitat.

**Comparison of Direct Impact to Herbaceous Marsh (6410) and Snail Kite Habitat**

	Marsh Impacts Original Alternative (ac)	Snail Kite Impacts Original Alternative (ac)	Marsh Impacts Reduced Typical Alternative (ac)	Snail Kite Impacts Reduced Typical Alternative (ac)	Percent Marsh Impact Acreage Reduction	Percent Snail Kite Impact Acreage Reduction
North of M Canal	15.53	9.78	4.35	0.98	72%	90%
South of M Canal	16.40	0.00	8.77	0.00	46%	n/a
<b>Total</b>	<b>31.93</b>	<b>9.78</b>	<b>13.12</b>	<b>0.98</b>	<b>59%</b>	<b>90%</b>

### **Results of Recent FDOT Wetland-Dependent Bird/Snail Kite Surveys**

The FDOT recently completed two wetland-dependent bird surveys which also documented snail kite activity within the project right-of-way. One was completed in October-November of 2011 and the other during the 2012 snail kite nesting season (March-April). During these surveys, a minimum of four different locations were visited each day over a series of days in order to document any wetland-dependent bird activities. The nine initial observation locations were established based upon knowledge of prior snail kite nesting/foraging locations, and the presence of suitable habitat for foraging by wetland-dependent birds. In addition, ecologists visited other areas within the project right-of-way as time permitted.

During the November 2011 survey, snail kites were observed foraging and perching east of the existing FDOT and County right-of-way, within the WCA, toward the northern end of the project corridor. The observed snail kite foraging areas were in the vicinity of two snail kite nesting sites that were previously identified by the Service. These nests are no longer present. The observed snail kites were documented a minimum of 350 feet from the eastern limit of the SR 7 corridor right-of-way. The 2012 nesting season survey produced similar results. Both a male and female snail kite were observed near the intersection of the project right-of-way and M Canal. The two snail kites were observed over multiple days using the same four marsh foraging areas. The westernmost foraging area was located an estimated 250 feet away from the eastern limit of the project right-of-way. It is likely that the two observed snail kites were a mating pair, however no mating, nesting, or nest building behaviors were observed. See **Attachment 5** for a detailed description of survey methodology and results from the 2012 nesting season survey.

No snail kites, snail kite nests, or foraging was observed in the project right-of-way during either of the two wetland dependent bird surveys. Due to the hydrologic regime, vegetative structure, substrate composition, and lack of appropriate open space of wetlands within the SR 7 right-of-way, it is highly unlikely that these areas provide adequate foraging and/or nesting habitat for snail kites. No nests were observed at any time during the field surveys. Researchers have determined that snail kites prefer to nest near foraging areas that they frequently utilize. If this is the case, the most likely location for a future nest site during this nesting season is a minimum of 1,000 feet east of the SR 7 right-of-way, in the vicinity of the four observed foraging areas documented during 2012 nesting season survey.

#### **Review of Pertinent Collateral Data**

FDOT reviewed several journal articles, reports, and data sets related to the history of the snail kite population in Florida. Historically, snail kites were known to nest as far west as the Wakulla River in Florida. However, their current distribution is limited to within central and south Florida. They are known to frequent six large freshwater wetland systems, and these systems are generally considered to represent their current range. They include the Upper St. Johns drainage (East Orlando Wilderness Park, Blue Cypress Water Management Area, St. Johns Reservoir, Cloud Lake, Strazzulla, and Indrio Impoundments), Kissimmee Chain of Lakes (Lake Pierce, Lake Tohopekaliga, East Lake Tohopekaliga, Cypress Lake, Lake Hatchineha, Lake Marion, Lake Marian, Lake Kissimmee, Tiger Lake, Lake Arbuckle, Lake Istokpoga), Lake Okeechobee (and surrounding wetlands), Loxahatchee Slough (West Palm Beach Water Catchment Area, Pal-Mar Water Conservation District, and within borrow pits on SWA property), the Everglades (Loxahatchee National Wildlife Refuge, including WCAs 1-3, Shark River Slough, Taylor Slough, C-111 basin west of US 1), and the Big Cypress basin (Lostmans and Okaloacoochee sloughs, Hinson Marsh and the East Loop and Corn Dance of Big Cypress National Preserve). In addition, there are smaller wetland systems that snail kites are known to frequent. The snail kite was listed as endangered in 1967 due to extremely low population levels that were considered to be further jeopardized based upon increasing impacts to fresh water marshes which provide their apple snail food source. Critical habitat was designated for the snail kite in 1977. The SR 7 project will not affect any critical habitat. Although a priority nesting area is located within the portion of the City's WCA no snail kites were observed within 250 feet of the project right of way.

The Florida population of snail kites is considered to be a single population that is generally spatially structured throughout the breeding habitat areas noted above. Kites can move throughout the entire range, and often do move in response to changing water levels and availability of food. While the population increased markedly since first being listed, it is considered to have declined in recent years, from approximately 3,400 birds in 1999 to 662 individuals in 2009. Within this trend there are periods of noted decline which correspond to severe regional droughts within the southern portion of the kite's range. Snail kite production from the Lake Okeechobee and Everglades regions has declined since 1999. Without reasonable juvenile recruitment, the population in these southern regions is considered to be an aging population that will have decreased breeding capacity. In recent years, there has been a strong shift in kite nesting toward

the Kissimmee Chain of Lakes. Researchers raise concern about this shift because the exotic apple snails are more prevalent in this region, which may affect the survival of juvenile kites fledged in this region.

The proposed SR 7 Extension project is located within the Loxahatchee breeding unit for the snail kite, and kites are known to forage, nest, and roost within the wetlands located to the east and north of the project right-of-way. The majority of this population segment inhabits the wetlands of the WCA, SWA site, and other adjacent marsh systems (**Attachment 6**). Annual nest survey information is available from both the City of West Palm Beach (through their attorney, Claudio Riedi of Tew Cardenas LLP) and from the USFWS GIS data of nesting for the State of Florida. Both data sets are reported in the table below. The source of the discrepancies in the 2005-2006 data is unknown.

**Annual Nest Survey**

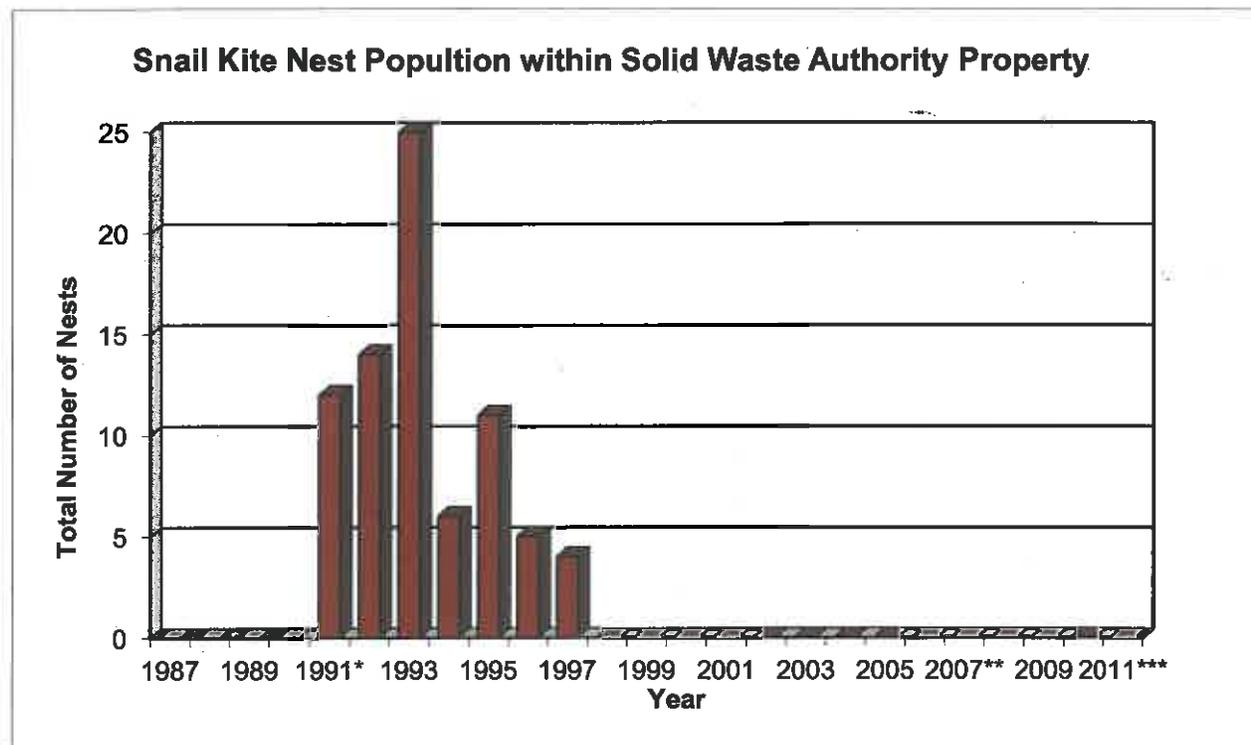
YEAR	# NESTS (City of WPB)	# NESTS (USFWS GIS)
1997	-	2
1998	-	3
1999	-	0
2000	3	3
2001	0	0
2002	0	0
2003	3	3
2004	1	1
2005	36	18
2006	8	4
2007	0	0
2008	0	0
2009	0	0
2010	11	11
2011	6	6

The number of annual kite nests can be observed from the table to be highly variable, and research suggests nest numbers in any one area can be variable due to the kite's response to water levels, availability of food, and ability to visually search for food.

The SWA property contains a shell excavation pit roughly 40 acres in size that contains 24 spoil islands consisting of overburden material laid out in rows averaging 5 meters in width. Dominant vegetation is exotics including Brazilian pepper, Australian pine, and Melaleuca. The shell pit was created in the early 1960s, and was inherited by SWA when they purchased the property. The shell pit has been the site of roosting and nesting wetland-dependent birds for several decades. SWA has been collecting nest and roost data since 1987. Kites have nested on the SWA property at the shell pit for seven consecutive years, from 1991-1997. In 1995, wood storks were observed nesting

in the shell pit for the first time, and as the number of wood stork nests increased, the number of snail kite nests decreased (Mary Beth Morrison, personal communication). At the same time that the number of snail kite nests declined within the SWA shell pit, the number of snail kite nests started to increase in the WCA.

The SWA shell pit has been an active roost site for snail kites from 1987 (since monitoring began) to present, and the SWA has collected roost information monthly using dawn-dusk surveys. The survey data for snail kites has shown this area to be an important refuge, particularly during times of drought and water draw-downs within the adjacent WCA.



*Chart provided courtesy of the Solid Waste Authority (SWA) of Palm Beach County*

### **Other FDOT Proposed Impact Minimization Ideas**

In addition to a reduced typical section, various other ideas have been discussed to minimize impacts to the snail kite and other wildlife. These ideas have included the elimination of all roadway lighting (except at the intersections) and the installation of fencing, both of which the FDOT has committed to previously. In addition, the FDOT will consider the following:

- Installation of a tree/shrub buffer at an appropriate location within the typical section, and adjacent to all natural areas. The purpose of the buffer would be to force roadway flyovers for birds to a greater height, and to minimize the effects of automobile lighting on wildlife.

- Design and planting of wet detention ponds to mimic marsh conditions that are preferred by the snail kite. Even though we may not want to encourage foraging from stormwater ponds, the presence of similar habitat represents additional buffer for the known foraging areas.
- Removal of all nuisance vegetation from native vegetation areas within the right-of way.
- Funding of a research project that is designed to examine the effect of roadways on snail kite utilization of adjacent habitats. Other research needs could also be considered.

If you have any questions, please contact Ms. Ann Broadwell with FDOT District Four at (954) 777-4325, or myself at (850) 553-2248. You may also contact the consultant Project Manager, Mr. Michael Garau with Jacobs Engineering, at (954) 246-1230.

Sincerely,

Joseph Sullivan  
Federal Highway Administration

### List of Attachments

Attachment 1	Mitigation Options Summary with Suitability to Wood Stork Noted
Attachment 2	Revised Functional Assessment for Wood Stork Foraging Habitat
Attachment 3	Original and Reduced Typical Sections
Attachment 4	Freshwater Marsh/Snail Kite Habitat within the Project Limits
Attachment 5	2012 Survey Results
Attachment 6	Regional Snail Kite Overview Map

### References

Bennetts, R. E. and W. M. Kitchens. 1997a. The demography and movement of snail kites in Florida. Final report. Florida Cooperative Fish and Wildlife Research Unit, National Biological Service, U.S. Department of the Interior; Gainesville, Florida.

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Martin, J., J.D. Nichols, J.E. Hines and W.M. Kitchens. 2006. Multiscale patterns of movement in fragmented landscapes and consequences on demography of the Snail Kite in Florida.

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Rumbold, D.G and M.B. Mihalik. 1994. Snail kite use of a drought-related habitat and communal roost in West Palm Beach, Florida: 1987-1991. Florida Field Naturalist 22(2): 29-68.

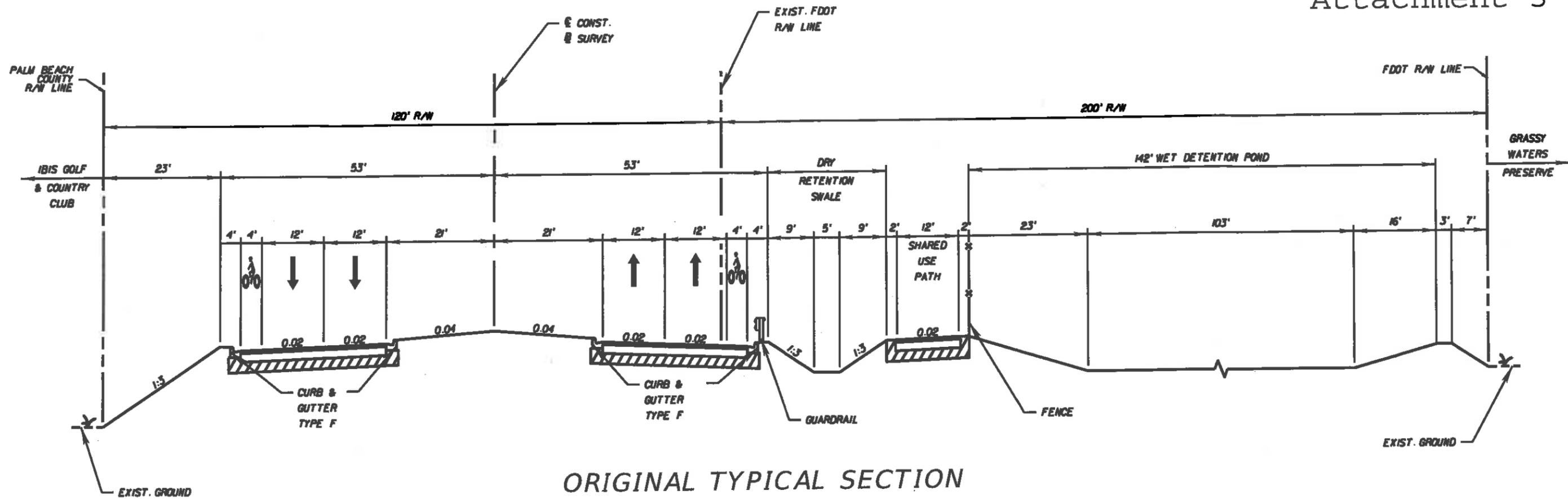
U.S. Fish and Wildlife Service. 1986. Everglades snail kite (*Rostrhamus sociabilis plumbeus*) revised recovery plan. Pages 4-291 through 4-323 of the Multi-Species Recovery Plan for South Florida.

Mitigation Site	Project Description	Owner	Permit Nos.	Habitat Type	Potential Acreage Available	Potential Credits Available	SR 7 Direct Impact Acreage <sup>D</sup>	SR 7 Direct Impact Functional Loss <sup>S</sup>	SR 7 Estimated Secondary Impact Functional Loss <sup>S</sup>	Estimated Cost per Credit	USACE Credit Availability	Wood Stork Availability	Credit	Snail Kite Habitat Suitability
Bluefield Ranch Mitigation Bank	Mitigation bank located in St. Lucie County. Bank is outside of service area and drainage basin. FDOT previously purchased 120 credits. Only 93.47 credits have been used, therefore 26.53 credits remain that are already paid for. Credit availability as of June 2011.	Private	SFWMD: 56-00002-M ACOE:SAJ-2000-02935	Herbaceous / Forested Wetland	Unknown	850	113.90	76.49	16.96	Unknown	Yes	No	No certified wood stork credits.	Yes
Dupuis	Nearly 22,000 acre management area. Serves as a FDOT ROMA for wetland impacts. As of June 2011, approximately 571 credits are available that FDOT previously funded. Site located outside of the project's drainage basin. May be more suitable to offset impacts associated with smaller projects that FDOT and the Turnpike Enterprise may have in the Work Program.	SFWMD	Agreement between SFWMD and FDOT. ACOE permit pending	Herbaceous / Forested Wetland	Unknown	571	113.90	76.49	16.96	Unknown	Yes	Yes		Limited
Gentle Ban Ranch	Privately-owned parcels located on the southeast corner of PGA Blvd and SR 710. Mitigation through restoration of pasture land and borrow pits is possible. Site provides regional value given its location in relation to other protected areas. Using this site may result in FDOT being the property owner which goes against FDOT's core missions. FDOT would have to purchase land and arrange transfer of ownership to another entity (likely Palm Beach County).	Private	Not Yet Permitted	Herbaceous / Forested Wetland	337	Unknown	113.90	76.49	16.96	Unknown	N/A	N/A		Yes
Grassy Waters Preserve	The City of West Palm Beach has previously conducted wetland restoration for mitigation credit in Grassy Waters. Additional restoration/enhancement is planned. The amount or acreage needing restoration/enhancement is currently unknown. Landowner currently seems unwilling to use site as mitigation for SR 7.	City of West Palm Beach	TBD	Herbaceous / Forested Wetland	Unknown	Unknown	113.90	76.49	16.96	Unknown	TBD	TBD		Yes
Loxahatchee Mitigation Bank	Mitigation bank located in Palm Beach County. Bank is within service area but outside of drainage basin. Bank may not have same assemblage of habitats as those being impacted. Wetland credit availability listed as of May 2011.	SFWMD (operated by Tetra Tech)	FDEP: 140969-001 ACOE:SAJ-1997-07816	Herbaceous Marsh	Unknown	30	41.13	30.70	12.23	\$100,000	Yes	No	Bank has certified herbaceous wetland credits and has completed the wood stork foraging analysis. ACOE informed the Bank that credits could not be sold as certified Wood Stork credits.	Yes
				Forested Wetlands	Unknown	36	72.77	45.79	4.73	\$110,000	Yes			
Mecca Slough	Previously permitted 353-acre wetland restoration site. The parcel contains approximately 2,000 acres of former agriculture land that can be restored to wetland. The permitted site plan can be modified to suit mitigation needs for SR 7 and may afford an opportunity for future FDOT projects. Site may provide fill needed for the project, which would provide cost savings to FDOT. Project has regional significance in that it connects other natural areas that are in Palm Beach County greenways plan. County would need to be co-applicant on permit modification request. Could be a similar JPA arrangement between FDOT and County as the seagrass mitigation at Snook Island.	Palm Beach County	SFWMD 50-08899-P ACOE: SAJ-2004-2859	Herbaceous Marsh	154	51.3	41.13	30.70	12.23	\$32,500	Yes	No	Permitted prior to wood stork rule.	Yes; Could be redesigned to create more
				Forested Wetlands	78*	26.0	72.77	45.79	4.73	\$32,500	Yes			
Parcel 20.04	Previously constructed wetland mitigation site owned by a private developer. Site is already built and functioning as a wetland; no lag time, no risk. Site directly abuts state-owned lands (Johnathan Dickinson State Park). The developer is looking for a sole-source buyer to purchase the portion of the site that is not needed as mitigation for previous impacts. Regulatory agencies are currently working on how to permit site bifurcation. Using this site may result in FDOT being the property owner which goes against FDOT's core missions. Donating the land to the State after purchase may be possible given its adjacency to state-owned lands.	Private	SFWMD: 43-01374-P ACOE: SAJ-2002-01929	Herbaceous Marsh	TBD	2 <sup>§</sup>	41.13	30.70	12.23	Unknown	Yes	No	Permitted prior to wood stork rule.	Yes
				Forested Wetlands	TBD	18 <sup>§</sup>	72.77	45.79	4.73		Yes			
Pine Glades North PROMA	Previously constructed pine flatwood and wetland restoration area. As permitted, credits are to only be used for Palm Beach County projects. It is likely the site can only be used for impacts on Palm Beach County right-of-way.	Palm Beach County	SFWMD: 50-08231-P ACOE: SAJ-2007-04122	Herbaceous / Forested Wetland	615	See below <sup>§</sup>	113.90	76.49	16.96	\$86,250	Yes	No	County is permitting wood stork credits at Pine Glades West first, then moving to the North Site. North should have more credits than West.	Yes
Pine Glades West PROMA	Previously constructed pine flatwood and wetland restoration area. As permitted, credits are to only be used for Palm Beach County projects. It is likely the site can only be used for impacts on Palm Beach County right-of-way.	Palm Beach County	SFWMD: 50-08187-P ACOE permit pending	Herbaceous / Forested Wetland	1872	130 <sup>§</sup>	113.90	76.49	16.96	\$86,250	Yes	Yes	Currently permitting wood stork credits, completed the foraging analysis and will have approx 706.22 kg of credits in three hydroperiod zones.	Yes
Rangeline	Preservation of existing wetland habitat within the Rangeline. Minor enhancement activities would enhance the overall wetland quality and landscape support of the surrounding wetland preserve areas. USACE does not view right-of-way preservation as mitigation.	FDOT	N/A	Herbaceous Marsh	34.19	3.42	41.13	30.70	12.23	Unknown	N/A	N/A		Yes
				Forested Wetlands	51.35	5.14	72.77	45.79	4.73					
R.G. Reserve Mitigation Bank	Mitigation bank located in Martin County. Bank is outside of service area and drainage basin. Credit availability as of October 2011.	Private	SFWMD: 43-00001-M No ACOE Permit	Herbaceous / Forested Wetland	Unknown	36	113.90	76.49	16.96	Unknown	No	TBD		Yes
Treasure Coast Mitigation Bank	Mitigation bank located in St. Lucie County. Bank is outside of service area and drainage basin. Credit availability listed as of June 2011.	Private	SFWMD: 56-00004-M ACOE: SAJ-2001-04445	Herbaceous / Forested Wetland	Unknown	80	113.90	76.49	16.96	Unknown	Yes	Yes		Yes
Vavrus Ranch	Large parcels that may be available for purchase. Restoration of pastureland or enhancement of existing wetlands are possible mitigation options. Utilization of northern portion may offer the most ecological benefit. All wetland jurisdictional lines on the property were previously established by USACE. FDOT has contacted the property owner to determine if they are willing sellers in this matter, at this time, the owners are not willing to sell.	Private	Not Yet Permitted	Wetland Preservation	2100**	667.0	113.90	76.49	16.96	Unknown	N/A	N/A		Yes
				Wetland Restoration	2000 <sup>§</sup>	280.0	113.90	76.49	16.96	Unknown				

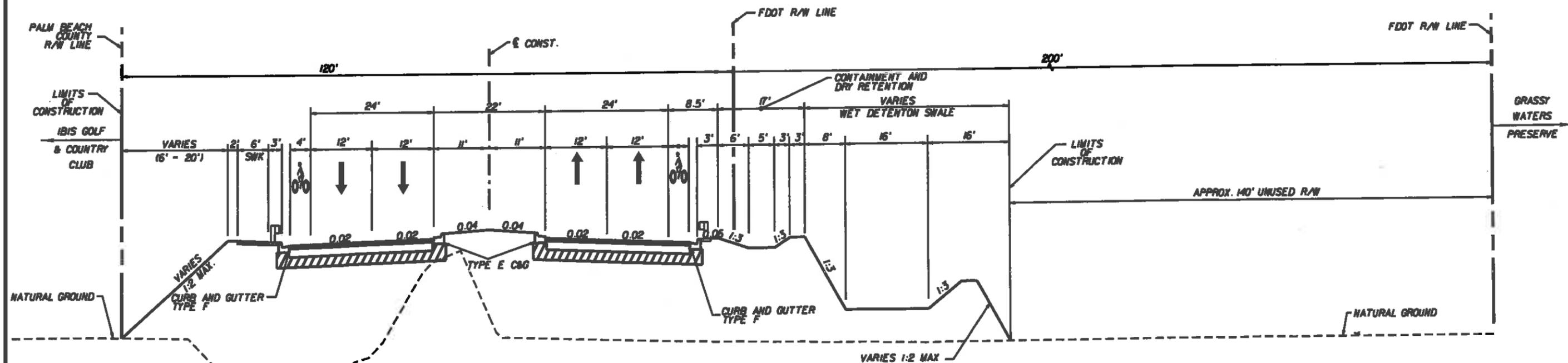
D = Direct impact acreage and functional loss includes impacts to the vegetated linear ditches (FLUCFCS 5100, NWM: PABHx)  
 S = Estimated functional loss from secondary impacts is based on worst-case typical section impacts up to 300 ft from the right-of-way.  
 \* = The 78 acres of forested wetland acres available equals the permitted 28 acres of forest wetland restoration and the permitted 50-acre open water refugia that could be modified into a forested wetland restoration.  
 \*\* = Existing wetland acreage available in the Vavrus-owned parcels per SFWMD FLUCCs data. The acreage will need to be ground-truthed for accuracy.  
 # = Restoration acreage denotes the existing pasture land that is located in a corridor that could connect the JW Corbett Management Area to the Loxahatchee Slough through Mecca Flowway.  
 § = Approximate number of credits available. The exact number of credits for sale is currently being negotiated with the regulatory agencies.  
 § = Credits available once all phases of restoration are complete.







ORIGINAL TYPICAL SECTION



REDUCED TYPICAL SECTION

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION				
ROAD NO.	COUNTY	EDTM NO.	FEDERAL AID PROJECT NO.	FINANCIAL PROJECT ID

SR 7 TYPICAL SECTION

FIGURE NO.



**LEGEND**

- Existing ROW
- Proposed ROW
- 6410 Emergent

0 600 1,200 2,400 Feet

▲ N

Data Source: Scheda field-observed data  
Image Source: 2009 black and white aerial 1ft

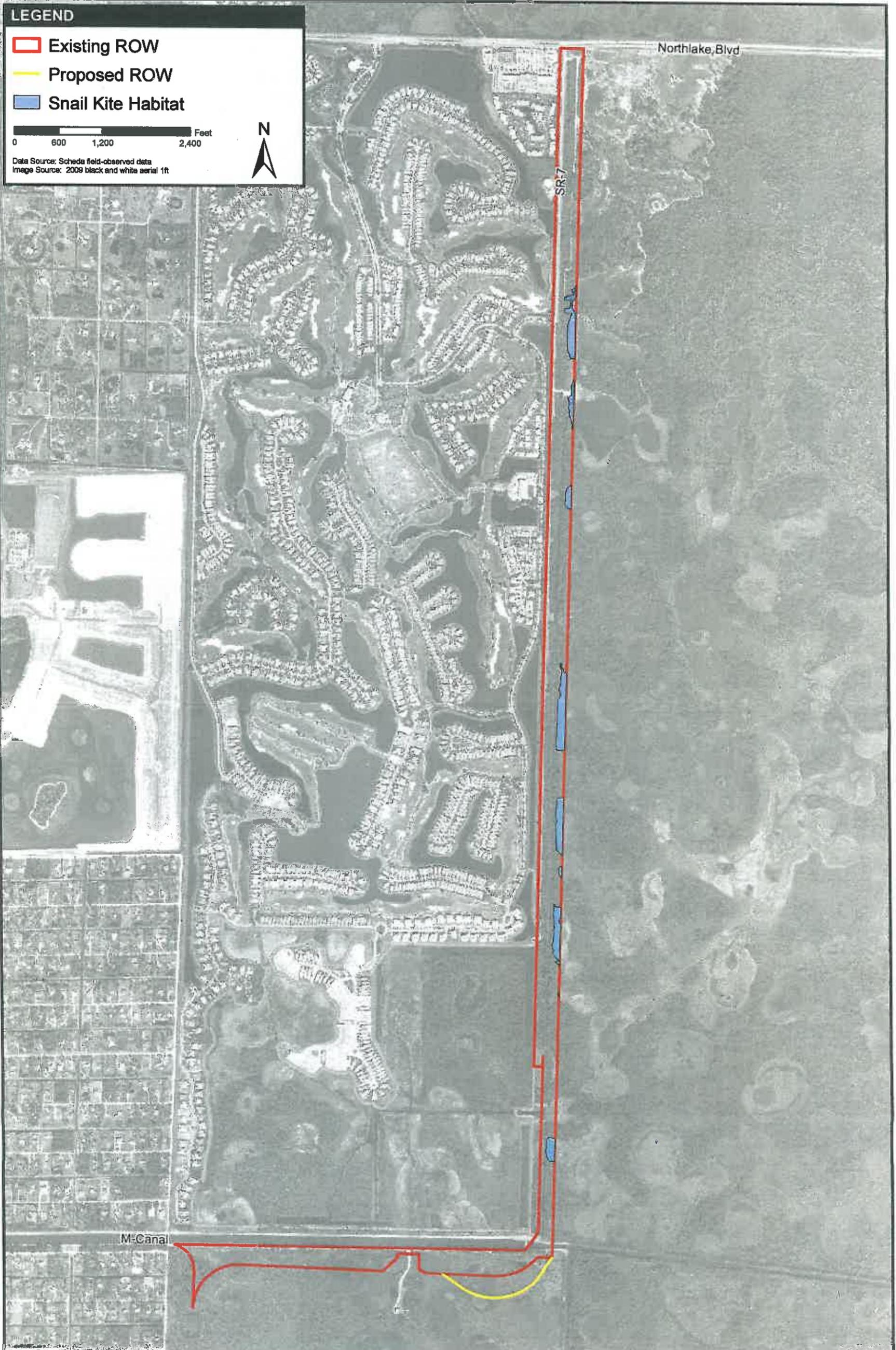
**LEGEND**

- Existing ROW
- Proposed ROW
- Snail Kite Habitat

0 600 1,200 2,400 Feet



Data Source: Scheda field-observed data  
Image Source: 2009 black and white aerial 1ft





## MEMORANDUM

TO: Ann Broadwell, FDOT  
FROM: Greg Juszli, Scheda Ecological Associates, Inc.  
RE: Results Summary – 2012 Snail Kite Nesting Season Survey  
SR 7 Corridor Extension, Palm Beach County  
FM No.: 229664-2-22-01  
DATE: May 22, 2012

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The purpose of this memorandum is to document the results of the 2012 snail kite (*Rostrhamus sociabilis plumbeus*) nesting season survey that was conducted in and adjacent to the SR 7 Corridor Extension right-of-way between the M Canal and Northlake Boulevard.

A total of 50 hours of onsite field surveys were conducted during the months of March and April, 2012. Field surveys were typically conducted between the hours of 7:00 am and 12:00 pm EDT, however one event was conducted in the afternoon (April 17, 2012, 4:00-7:45pm). Included in this memorandum are a detailed narrative of snail kite observations, descriptions of observed foraging areas and perches, maps showing the locations of all monitoring stations and observed snail kites, and field data logging all wading, migratory and common birds observed during each field day.

### Documentation of Field Time

**Table 1** lists the dates that the six (6) snail kite surveys were conducted. The table also includes information on which of the nine (9) pre-determined monitoring stations were visited, whether snail kites were observed on that date, monitoring station locations for each snail kite observation (if applicable), and weather conditions. The nine (9) monitoring station locations were selected because each occurs at a large, open marsh area. The monitoring stations were the same as those used in the October-November 2011 survey. The station locations are depicted in **Figure 1**. On most occasions, two (2) Scheda biologists, each with avifaunal survey experience, conducted the field surveys. On only one occasion was a single biologist used (March 30, 2012).

### Field Snail Kite Observations

During the field surveys, numerous observations of wading and wetland-dependent bird species were made. Snail kites were observed during four (4) of the field survey dates

and at two (2) monitoring stations (Stations 3 and 6). All snail kites were observed east of the SR 7 project right-of-way (Figure 1). No snail kites were observed within the project right-of-way. The snail kite observations are detailed as follows:

- April 3, 2012 - At 7:50 am, a female snail kite was observed flying north over the marsh at an elevation of about 30 feet above the water's surface. This sighting was southeast of Monitoring Station 3 and an estimated 500 feet east of the eastern limit of the SR 7 right-of-way. The snail kite flew over the marsh in a linear path to the north at relatively fast speed. No foraging or perching was observed. This was the only snail kite sighting for the day. The closest previously documented snail kite nest to this snail kite's location was an estimated 1,800 feet to the northwest.
- April 12, 2012 - At 8:14 am a female snail kite was observed perched in a pine tree to the east of Monitoring Station 6. The snail kite perch was located an estimated 650 feet east of the SR 7 right-of-way. For approximately the next 60 minutes, the female snail kite foraged for apple snails in the marsh east of Monitoring Station 6. It flew to the surface of the marsh multiple times and after retrieving apple snails, it repeatedly flew to three (3) different perch sites to feed. One perch was a pine tree along the east edge of the marsh (where it was initially observed). The other perches were in pine trees located along the northern edge of marsh, the closest being an estimated 250 feet from the SR 7 right-of-way's eastern limit. Typically, the female snail kite would hover over the marsh for 1-2 minutes, retrieve its apple snail prey, then perch and feed for 6-8 minutes. At approximately 8:47 am, a vocalization from another snail kite was heard further to the east of the female's foraging area. At 9:08am, another vocalization was heard. The Scheda biologist travelled further east in an attempt to identify the second snail kite. A male snail kite was observed perched on a dead pine tree an estimated 1,100 feet east of the SR 7 right-of-way. The male snail kite flew further east and out of view behind a hydric pine stand as soon as the biologist spotted it. The biologist returned to his position at Monitoring Station 6 to find that the female snail kite was no longer foraging. Neither the female nor the male were observed for the remainder of the survey time that day. The closest previously documented snail kite nest to the observed female snail kite foraging area is located an estimated 1.5 miles to the northeast, in the central portion of Grassy Waters Preserve.
- April 17, 2012 - At 7:23 pm a male snail kite was observed perched on a melaleuca tree to the southeast of Monitoring Station 6 and an estimated 650 feet from the SR 7 right-of-way. The male remained perched at this location until 7:35pm when it flew off to the east. The male flew over a hydric pine stand located about 1,000 feet to the east of its perch site and out of sight of the Scheda biologists. It was not observed during the remainder of the survey. At

approximately 7:40pm, a snail kite vocalization was heard within a few hundred feet of the male snail kite's observed perch site southeast of Monitoring Station 6. The vocalization was only heard once and no individual could be identified. It is uncertain whether this was the observed male or another snail kite. The closest previously documented snail kite nest to the observed male snail kite perch site is located an estimated 1.5 miles to the northeast, in the central portion of Grassy Waters Preserve.

- April 18, 2012 – Beginning at 7:32 am and spanning to the end of the survey after 12:00pm, both a male and female snail kite were observed southeast of Monitoring Station 6. The male snail kite was observed first, perched on a melaleuca tree an estimated 750 feet west of the SR 7 corridor right-of-way. It was foraging for apple snails in the marsh located to the south of its perch site. It repeatedly circled over the marsh for 1-2 minutes, retrieved an apple snail, then fed on it at the perch site for another 3-6 minutes. The female snail kite was first observed at 8:06 am. It flew from the east onto a small melaleuca tree on the east edge of the marsh, directly east of Monitoring Station 3. It foraged in the marsh directly east of Monitoring Station 6, utilizing multiple perch sites, until about 9:05 am, when it flew off the east. The female's foraging area was the same area that was documented during the April 12, 2012 survey. At 9:12 am, the male snail kite moved from the marsh it was foraging at into the foraging area used by the female. The male foraged for about 30 minutes, then it flew off to the east. At 9:56 am, both the male and female snail kites were observed perched on pine tree branches on the northeast edge of a marsh located an estimated 1,200 feet southeast of Monitoring Station 6 (an estimated 1,000 feet from the SR 7 right-of-way). The Scheda biologists travelled further east into this marsh to continue their observations. Over the next two hours, both the male and female snail kites continued to forage and perch, but moved further and further east as time passed. By 12:00pm, the snail kites were spending a lot of time perched in pine trees on the edge of a marsh located over 2,000 feet from the SR 7 right-of-way.

No snail kite nests were observed near any of the foraging areas located to the east and southeast of Monitoring Station 6. Scheda biologists did not observe any foraging, flight, or nest building behavior demonstrating that either the male or female were flying to/from a nest.

### **Analysis of Habitat Adequacy**

Foraging habits, presence of habitat readily available and appropriately fitting for snail kite foraging and nesting, apple snail densities, hydrology and direction of last movement should be considered when analyzing the snail kite habitat quality. Snail kite use alone does not reflect relative habitat quality among sites or within a site over time (Darby et al. 2006). The highly nomadic Snail kite has tendencies to move to multiple

wetlands within their range in any given year (Bennetts and Kitchens 1997). During field time spent onsite snail kites were observed perched, circling, hovering and diving down to the surface of the marsh (photo below). In a study on Lake Kissimmee and in WCA 3A, kites were shown to have daily flight distances of 2 to 5 km (Darby et al. 1997). When observed during this nesting season survey, the snail kites foraged in four (4) large, connected, open marsh areas located 250-2,000 feet east of the SR 7 right-of-way (Figure 2). The observed snail kites tended to fly over the hydric pine habitat to the east of the easternmost foraging area. It is possible that foraging is also occurring in marshes located further east in Grassy Waters Preserve.

The vegetation in the four (4) marsh foraging areas was relatively similar: high densities of spikerush (*Eleocharis* sp.) with some sawgrass (*Cladium jamaicense*), cattail (*Typha* sp.), and invasive torpedo grass (*Panicum repens*). A large portion of the easternmost foraging area had recently been treated for exotic species as much of the vegetation was dead. Despite this, the snail kite continued to use the marsh as foraging habitat. In a study conducted by Bennetts et al. (2006) snail kites captured fewer snails in areas where emergent vegetation was dense and snail densities were high compared to more open habitat with similar or low snail densities. This may have been the case for the easternmost foraging area.



The hydrologic regime within the four (4) observed marsh foraging areas was conducive to the growth and reproduction of apple snails. Scheda biologists reported the presence of many empty snail shells both within and along the periphery of the marsh foraging areas (photo to right). In addition, apple snail eggs were relatively abundant in the observed foraging areas. Other marshes in the survey area had relatively low abundance of apple snail eggs. These areas included the marshes surrounding Monitoring Stations 4 and 5 (south of the M Canal), and the marshes adjacent to Stations 1 and 2.



Water levels in the observed snail kite foraging areas typically ranged from 1-2 feet deep, with some areas over 3 feet deep (particularly in the airboat paths). Much of the Grassy Waters Preserve marsh habitat adjacent to the SR 7 project corridor had similar hydrologic conditions. Only the marshes south of the M Canal exhibited reduced water depth (typically 2-12 inches). During the past two decades scientific research has shown a shift in snail kite distribution indicating decreased use of areas experiencing nearly continuous inundation (Bennetts and Kitchens 1997). This is contradictory to what was observed adjacent to the project corridor during this nesting season survey as no snail kites were observed south of the M Canal where water levels are not controlled and marshes have a relatively shorter hydroperiod compared to Grassy Waters Preserve.

Although a snail kite was observed near Monitoring Station 3 toward the northern end of the project corridor, the snail kite was flying over the marsh and not observed foraging on it. Only one observance was made near Monitoring Station 3, and no snail kites were observed around Stations 1 and 2. This is in contrast to the previous snail kite survey conducted in October-November 2011, where snail kites were observed foraging in the marshes surrounding Stations 1-3. Snail kite nests were also previously documented near Stations 1 and 2 (Bennetts and Kitchens 2000). Scheda biologists observed relatively less apple snail eggs in the marshes surrounding Stations 1 and 2. It is possible that previously nesting mating snail kite pairs may have over-foraged these marshes. The resulting lack of food source could have forced the mating pair to relocate to another area.

No snail kites were observed south of the M Canal in marshes surrounding Monitoring Stations 4 and 5. Water levels in these were less than 1-foot deep. The marshes tend to dry down during the dry months of winter and early spring. Snail kites have a tendency to move to areas where water levels are higher than their natal region (Dreitz et al. 2004). Therefore if fledgling snail kites were born from nests documented in Grassy Waters Preserve (Bennetts and Kitchens 2000; state dispersal of juveniles from the natal wetland within their first year was 81%), where water levels are controlled (relatively deeper with a longer hydroperiod), they would be less likely to nest near wetlands with a shorter hydroperiod.

At no time were snail kites observed closer than 250 feet from the eastern limit of the SR 7 right-of-way, whether perched or foraging. Hydrology, marsh vegetative structure, and evidence of adequate apple snail food source are limited in the wetlands within the SR 7 corridor right-of-way. The majority of the wetlands within the SR 7 right-of-way are forested or shrub-dominated habitat, which is not suitable for snail kite foraging. Approximately 13 acres of herbaceous marsh is located within the SR 7 right-of-way north of the M Canal, however much of this acreage occurs in small pockets which is not ideal foraging habitat. Snail kites prefer large, continuous, open marsh areas to search for snails. In addition, much of the wetland acreage within the SR 7 right-of-way is separated from Grassy Waters Preserve by a canal and berm system that prevents

hydrologic connectivity. Therefore, the hydrologic conditions, as well as the wetland vegetation structure, are much different and far less functional, than in Grassy Waters Preserve marshes. Apple snails and snail eggs were extremely limited in the SR 7 right-of-way and no snail kites or snail kite nests were observed.

### **Summary and Conclusions**

Due to the hydrologic regime, vegetative structure, substrate composition and lack of appropriate open space of wetlands within the SR 7 right-of-way, it is highly unlikely that these areas provide adequate foraging and/or nesting habitat for snail kites. Although marsh areas within the right-of-way are contiguous to larger systems located to the east (in some areas), snail kites were never observed utilizing wetland habitat within the project corridor during both this nesting season survey and the October-November 2011 survey. Snail kites observed during this survey occurred near the southwest corner of Grassy Waters Preserve (where the preserve meets the M Canal). Both a male and female were observed, however no signs of mating, nesting, or nest building were documented. Neither the male nor female snail kite were observed closer than 250 feet from the SR 7 corridor right-of-way. No nests were observed at any time during the field surveys. It has been documented that snail kites prefer to nest near foraging areas that they frequently utilize. If this is the case, the most likely location for a late season nest site to occur is a minimum of 1,000 feet east of the SR 7 right-of-way, near the center of the four (4) observed foraging areas.

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- Bennetts, R. E., P. C. Darby, and L. B. Karunaratne. 2006. Foraging habitat selection by Snail Kites in response to prey abundance and vegetation structure. *Waterbirds* (in Press).
- Darby, P. C., P. L. Valentine-Darby, R. E. Bennetts, J. D. Croop, H. F. Percival, and W. M. Kitchens. 1997. Ecological studies of apple snails (*Pomacea paludosa* Say). U.S. Geological Survey, Biological Resources Division, Florida Cooperative Fish and Wildlife Research unit. Special Publication SJ98-SP6, Gainesville.
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Dreitz, V. J., W. M. Kitchens, and D. L. DeAngelis. 2004. Effects of natal departure and water level on survival of juvenile Snail Kites (*Rostrhamus Sociabilis*) in Florida. *The Auk* 121(3):894-903.

TABLE 1.

Date	Monitoring Stations Visited									Weather Conditions			Snail Kite Observed	Observation Site
	1	2	3	4	5	6	7	8A	8B	Temp °F	Wind	Cloud Cover		
3/22/2012	X	X	X	X	X	X	X		X	Mid 70s	ESE 5 mph	40% - Mid Level	No	N/A
3/30/2012	X	X	X					X		Low 70s	SW < 5 mph	10% - High Level	No	N/A
4/3/2012	X	X	X	X	X	X	X	X	X	Upper 70s	NE 5 mph	0%	Yes	STA. 3
4/12/2012	X	X	X	X	X	X	X	X	X	Upper 70s	SW < 5 mph	0%	Yes	STA. 6
4/17/2012						X	X	X	X	Low 80s	E 5 mph	50% - Mid Level	Yes	STA. 6
4/18/2012	X	X	X			X				Low 70s	E < 5 pph	0%	Yes	STA. 6

**LEGEND**

- Project ROW
- Scheda Observed Snail Kite Foraging Areas
- 2012 Scheda Observed Snail Kite Perch
- Observation Sites

0 1,000 2,000 4,000 Feet



Data Source: FWS and Scheda field-observed data  
Image Source: 2009 true color aerial 1ft

Northlake Blvd

SR 7

8B

8A

7

6

4

8



G:\PROJECTS\2009 SR 7 Extension\SnailKitePerch\Map2012\_location.mxd 28



**SR 7 CORRIDOR EXTENSION  
PD&E STUDY**  
Palm Beach County, Florida  
FPID# 229664-2-22-01

**SNAIL KITE OBSERVATIONS  
(SPRING 2012 SURVEY)**

Figure 1

**LEGEND**

-  Project ROW
-  Scheda Observed Snail Kite Foraging Areas
-  2012 Scheda Observed Snail Kite Perch
-  Observation Sites

0 250 500 1,000 Feet



Data Source: FWS and Scheda field-observed data  
Image Source: 2009 true color aerial 1ft

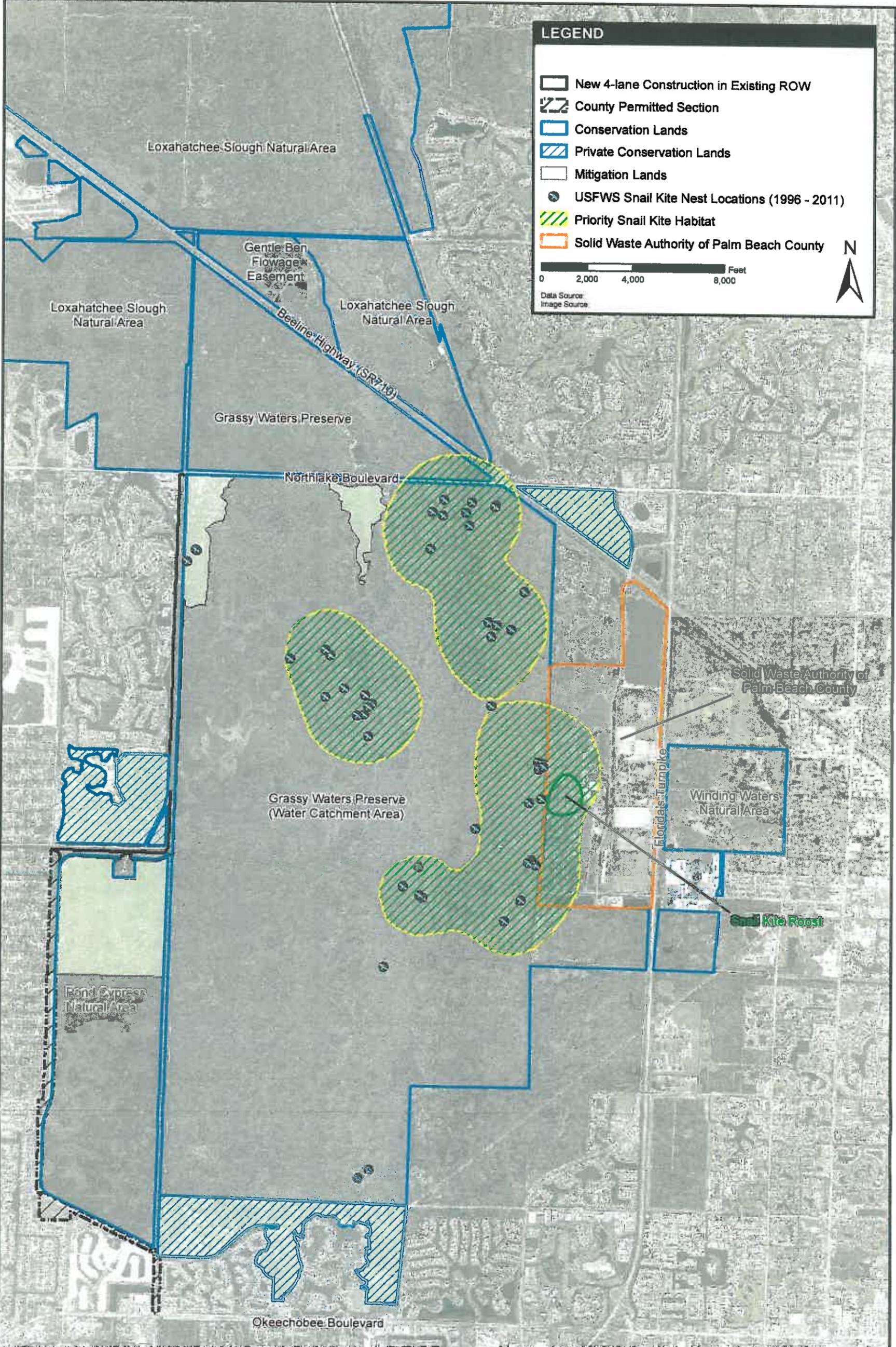
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 **SR 7 CORRIDOR EXTENSION  
PD&E STUDY  
Palm Beach County, Florida  
FPID# 229664-2-22-01**

**OBSERVED SNAIL KITE  
FORAGING AREA  
(2012 NESTING SEASON SURVEY)**

**Figure 2**



**LEGEND**

- New 4-lane Construction in Existing ROW
- County Permitted Section
- Conservation Lands
- Private Conservation Lands
- Mitigation Lands
- USFWS Snail Kite Nest Locations (1996 - 2011)
- Priority Snail Kite Habitat
- Solid Waste Authority of Palm Beach County

0 2,000 4,000 8,000 Feet

Data Source:  
Image Source:

N

0 2 12 9:53AM



**Florida Department of Transportation**

**RICK SCOTT  
GOVERNOR**

3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309

**ANANTH PRASAD, P.E.  
SECRETARY**

August 1, 2012

Mr. Joseph Sullivan  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, FL 32303

**RE: Request for Formal Consultation with U.S. Fish and Wildlife Service  
SR 7 Corridor Extension Project Development and Environment Study  
From SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)  
FPID No. 229664-2-22-01  
FAP No. 4752-030-P  
ETDM No. 8127  
Palm Beach County**

Dear Mr. Sullivan:

The Florida Department of Transportation (FDOT) is requesting that the Federal Highway Administration (FHWA) initiate formal consultation with the U.S. Fish and Wildlife Service (Service) for the above referenced project with regard to the wood stork and Everglade snail kite.

A draft letter addressed from you to the Service is attached for your use. If you have any questions, I can be reached at (954) 777-4325 or by email at [ann.broadwell@dot.state.fl.us](mailto:ann.broadwell@dot.state.fl.us).

Sincerely,

Ann Broadwell  
District Environmental Administrator



## Florida Department of Transportation

RICK SCOTT  
GOVERNOR

3400 West Commercial Boulevard  
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ANANTH PRASAD, P.E.  
SECRETARY

December 5, 2012

Ms. Leah Oberlin  
Chief, Palm Beach Gardens Section  
U.S. Army Corps of Engineers  
4400 PGA Boulevard, Suite 500  
Palm Beach Gardens, FL 33410

**SUBJECT: SAJ-2010-01514**  
**SR 7 Extension Project Development and Environment (PD&E) Study**  
**SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)**  
**Palm Beach County, Florida**  
**Federal Aid Project No.: 4752-030-P**  
**Financial Project ID No.: 229664-2-22-01**  
**Efficient Transportation Decision Making (ETDM) Number: 8127**

Dear Ms. Oberlin:

The Florida Department of Transportation (FDOT) is in receipt of your letter dated April 2, 2012 with regard to the above-referenced project. We thank you for your participation during the March 21, 2012 Public Hearing and during the multi-agency meeting on September 11, 2012 which provided clarification of the U.S. Army Corps of Engineers' (Corps) key comments. A response to the items listed in your letter is provided below.

### 1. Response to Comments on Environmental Assessment (EA):

- a. *On page XIII of the Executive Summary it states the following: "It was determined that Corridor 3 balanced the concerns and desires of the public and permitting agencies."*

*Corps Comment: The Corps has previously objected to Corridor 3 as an alternative since the proposal includes impacts to DA authorized mitigation sites (see enclosed letter dated May 27, 2010).*

**FDOT Response:** FDOT is aware of the recent concerns points raised by the Corps regarding Corridor 3. The statement made in the Executive Summary referenced the conclusion made in 2007 immediately following the corridor evaluation phase of the project. During the corridor evaluation phase, the permitting agencies expressed strong opposition to Corridor 4 and assigned a Dispute Resolution rating to this corridor. The agencies' primary concern with

Corridor 4 was the bifurcation of the Pond Cypress Natural Area and Water Catchment Area. During an Agency Corridor Workshop on March 29, 2006, the agencies could not endorse a corridor but it was clear that Corridor 4 was the least favorable. Some commented during this meeting that Corridor 3 “balances the evaluation factors” and cited the use of the existing road and roadbed east of the Ibis community as a benefit. During a meeting on July 10, 2006, the Corps reiterated their opposition to Corridor 4 and stated its willingness to explore Corridor 3 (meeting minutes and sign-in sheet attached). Later that same year during a multi-agency meeting on November 9, 2006, the permitting agencies expressed that they are more comfortable with Corridor 3 over Corridor 4 (meeting minutes and sign-in sheet attached). At the same time, the public was overwhelmingly opposed to Corridor 1 due to the high number of potential residential property impacts. Corridor 3 balanced these concerns by avoiding both the bifurcation of the natural areas and residential property impacts.

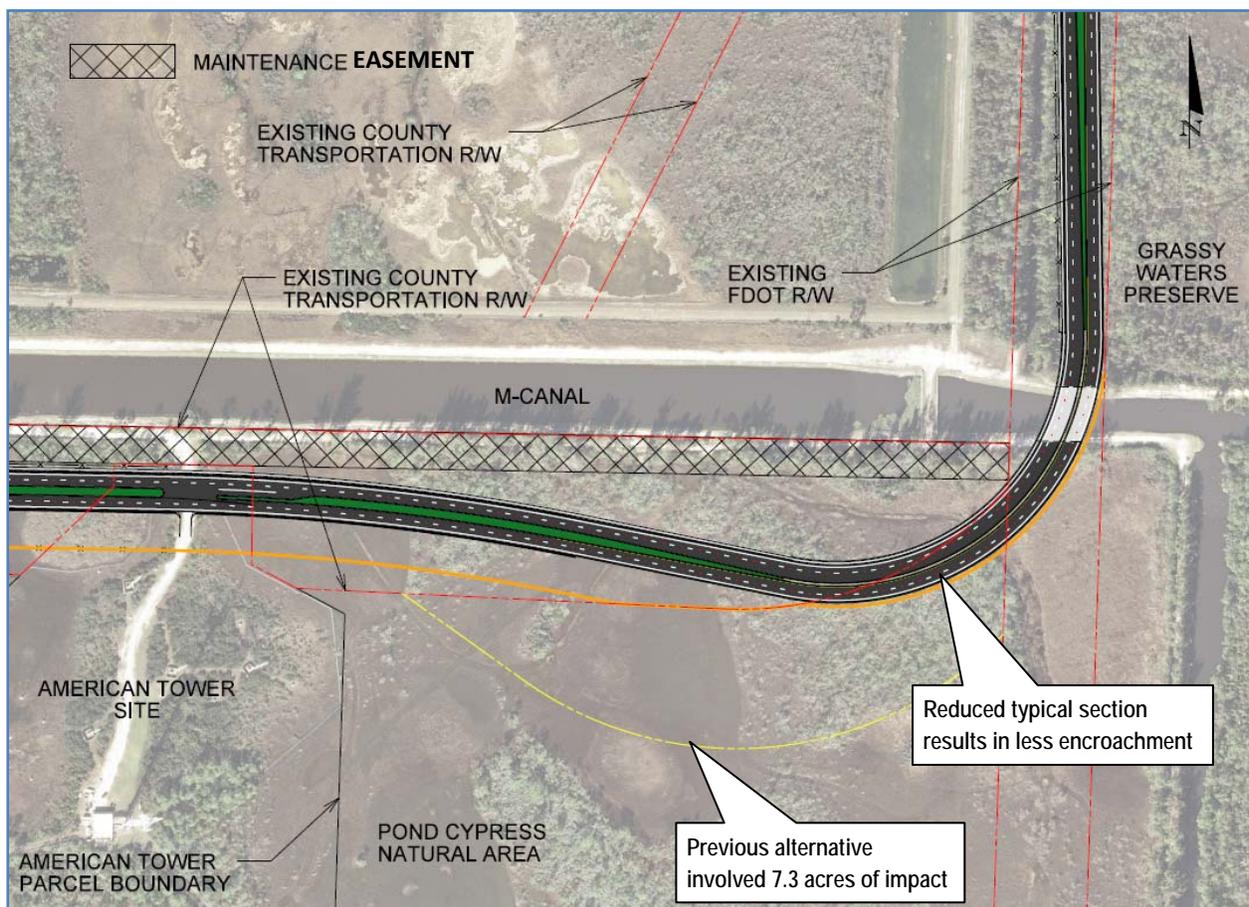
The above points reflect the comments and conclusions provided by the agencies during the corridor evaluation phase in the early stages of the project. The FDOT is aware of the Corps’ recent comments and appreciates your further clarification of these comments. The Executive Summary will be updated to reflect these comments and will also include a discussion on the restrictions with crossing over the M-Canal through Corridor 1.

- b. *On page XIV the document states: “A discussion of potential Section 4(f) resources is provided within Section 4.9. The portion of the Pond Cypress Natural Area where the straight bridge crossing option would impact served as mitigation for the County’s two lane extension of SR 7 from Okeechobee Boulevard to 60th Street. Coordination with Palm Beach County, US Army Corps of Engineers (ACOE) and South Florida Water Management District (SFWMD) has begun to determine the required amount of mitigation for this option. A significant land swap would be required.”*

*Corps Comment: The Corps has previously stated (by letter dated May 27, 2010, and personal communications) there was a high potential that the Corps would not authorize any impacts to an existing DA authorized compensatory mitigation sites. The Corps recommends the EA be revised to more accurately characterize the Corps potential to refuse future impacts to the areas or to find that the project may be contrary to the public interest as currently proposed with impacts to DA authorized mitigation sites.*

**FDOT Response:** The Environmental Assessment (EA)/Finding of No Significant impact (FONSI) will be revised to include all recent coordination activities and will reflect the Corps’ concerns. In addition, the revised document will include a discussion on the minimization of impacts. FDOT is aware of the points raised by the Corps regarding any impacts to an existing Department of the Army (DA) authorized compensatory mitigation site. Prior to the Public Hearing, the amount of encroachment into the Pond Cypress Natural Area was approximately 7.3

acres. Since the Public Hearing, the typical section has been substantially reduced to the minimum acceptable FDOT standard for this type of project. The design speed along the curve over the M-Canal was reduced from 45 MPH down to 40 MPH, also minimizing the project impact footprint. This reduced the amount of encroachment into the Pond Cypress Natural Area by 83%. The new alternative now only requires 1.25 acres of encroachment which includes 0.63 acres of permanent structure. The proposed structure over the area of encroachment will be elevated to minimize the amount of fill over existing wetlands (consisting of freshwater marsh and hydric pine) and to allow for wildlife connectivity. This vertical alignment will be reflected in the PD&E Study's plans and will also be reflected in the formal project commitments. The new alternative along the M-Canal is illustrated below.



After a meeting with the Corps on September 11, 2012, FDOT understands that it needs to demonstrate that the rationale for encroaching into the Pond Cypress Natural Area is in the public's interest and that all of the alternatives have been evaluated and all avoidance and minimization efforts have been exhausted. The EA will be updated with a discussion on the avoidance alternatives (Corridor 1 and the skewed bridge crossing option) and why they are not feasible. Minimal encroachment is still necessary to provide a safe crossing over the M-Canal. A sharper curve or T-intersection could result in less encroachment but would be

considered unsafe as these options would not meet driver expectations by introducing a sudden change in condition.

Palm Beach County, the agency with jurisdiction over the Pond Cypress Natural Area, passed a resolution on October 16, 2012 stating its support for the project and concurs that the proposed encroachment will not adversely affect the activities, features, or attributes of the property provided that an agreement is made between the County and FDOT that meets the requirements of their Conservation Lands Protection Ordinance. FDOT requests that the Corps considers the project's overall benefits to the public along with this reduction in footprint in assessing the opportunity to *authorize any impacts to an existing DA authorized compensatory mitigation site.*

**c.** *See page XV, Areas of Controversy.*

*Corps Comment: The EA document has failed to disclose the United States Fish and Wildlife Service's (USFWS) objection for any build alternative proposed east of Ibis Development. The EA should be revised to include the substantial documented concerns for the Everglades snail kite expressed in their letter dated February 29, 2012 (enclosed).*

**FDOT Response:** The letter received from the U.S. Fish and Wildlife Service (USFWS), dated February 29, 2012, was received after the EA was approved for public availability for the Public Hearing. The revised EA/FONSI will document the results of the Biological Opinion. FHWA initiated formal consultation on August 13, 2012.

**d.** *The EA states impact avoidance and minimization has occurred, but identification of the precise design measures implemented and the actual accounting of the ecological benefits due to the measures is absent. Please provide a summary of the avoidance and minimization measures (aside from other alternative corridors) and the resulting ecological benefits (i.e. acres avoided). Otherwise, the language throughout the document should be revised to state that no avoidance and minimization efforts were considered. The typical section appears to be identical to the design originally conceived at the start of the project without modification.*

**FDOT Response:** During the Public Hearing, comments were received concerning the environmental impacts of the project. In response, FDOT revised the typical section to minimize the project's footprint as much as possible. The latest proposed alternative is a result of the following avoidance and minimization measures (the attached graphic reflects a comparison between the previous alternative and the minimization alternative):

1. Reduction in the median width from 42 feet down to 22 feet from 60<sup>th</sup> Street to Northlake Boulevard (this is the minimum width allowed per FDOT design and safety standards);
2. Reduction in the size of drainage treatment areas from 175 feet down to 57 feet (combination of dry and wet treatment areas);
3. Elimination of shared used path / sidewalk on the east side of the roadway;
4. Reduction in the bridge footprint across the M-Canal resulting in less encroachment into the Pond Cypress Natural Area from 7.3 acres to 1.25 acres (with 0.63 acres of permanent structure).

Through this minimization effort, the following benefits have been achieved:

1. 44% reduction in the typical section footprint (saves 140 feet of right-way adjacent to the Water Catchment Area that could be designated as a conservation easement, the area within the right-of-way that would remain untouched is approximately 40 acres)
2. 38% reduction in impacts to total wetland acres.
3. 84% reduction in impacts to pristine wetland habitat types
4. 90% reduction in impacts to snail kite habitat
5. 83% reduction in potential encroachment to the Pond Cypress Natural Area

Part of FDOT's mitigation plan is to restore, if necessary, the remaining 140 feet of Rangeline right-of-way adjacent to the Grassy Waters Preserve and apply a conservation easement for the unused portion of the right-of-way. This would prevent any future widening to the outside. In addition, the reduced median width would prevent widening to the inside, restricting the roadway to only four lanes in the future. The EA/FONSI will be updated to include these avoidance and minimization measures.

## **2. Response to Comment on Effects on Authorized Mitigation Areas**

As discussed above, FDOT is aware of the concerns raised by the Corps regarding any impacts to an existing DA authorized compensatory mitigation site. Prior to the Public Hearing, the amount of encroachment into the 544-acre mitigation site (which makes up the northern section of the Pond Cypress Natural Area) was approximately 7.3 acres. This has now been reduced by 83% to 1.25 acres of encroachment (which includes 0.63 acres of permanent structure). The total size of the Pond Cypress Natural Area is 1,736 acres. This small amount of encroachment

is necessary to meet all safety and applicable design criteria for the curve across the M-Canal. After a meeting with the Corps on September 11, 2012, FDOT understands that it needs to demonstrate that the proposed encroachment into the Pond Cypress Natural Area is in the public's interest and that all of the alternatives have been evaluated and all avoidance and minimization efforts have been exhausted. We will continue to coordinate on this issue and will work to demonstrate a benefit that is in the public's interest as suggested. The EA/FONSI will be revised once this coordination is completed.

### **3. Response to Comments on Traffic Modeling**

This project will improve regional north-south connectivity for the western areas of Palm Beach County. This much-needed connection will provide the capacity necessary to accommodate future growth and will reduce travel times between Okeechobee Boulevard and Northlake Boulevard for those living in the Village of Royal Palm Beach, Acreage, and Ibis Golf and Country Club. Currently, the nearest efficient north-south route between Okeechobee Boulevard and Northlake Boulevard is provided four miles to the east along the Florida's Turnpike and six miles to the west along Seminole Pratt Whitney Road. Without the extension, Royal Palm Beach Boulevard, Orange Boulevard, and Coconut Boulevard will continue to be utilized as an alternative link between Okeechobee Boulevard and Northlake Boulevard. Orange Boulevard and Coconut Boulevard are two lane undivided local/residential streets that are unable to serve in this capacity.

Traffic projections show that volumes on the proposed extension will average 22,000 vehicles per day with certain segments reaching as high as 47,600 vehicles per day. At the start of the study, there were over 24,000 planned housing units in the project vicinity. That number was then reduced down to 14,000 and ultimately zero as economic conditions soured. In response, the PD&E team re-analyzed future traffic conditions to account for these changes. The project's traffic analysis was initially conducted with the 2030 travel demand model, but was subsequently conducted again using the 2035 model and long range plan to better reflect the latest assumptions related to land use and transportation needs. The result still showed a need for a 4-lane divided facility between Okeechobee Boulevard and Northlake Boulevard. Even with the recent dip in population and traffic numbers, the population of Palm Beach County is expected to grow by 32% between 2005 and 2035. Overall, the long term historical trend has shown a continuous increase in traffic and population numbers. Although short term fluctuations have occurred (and are expected to occur in the future), an increase in traffic and population is expected into the future and through the planning horizon of 2040.

### **4. Response to Comments on Feasibility Study and Alternatives**

The SR 7 Extension project alternatives are based on the Corridor Report dated 2007. This corridor study was initiated in 2005 with the evaluation of four alternative

corridors based on current conditions, all of which terminated at Northlake Boulevard. The SR 7 Extension project has a long history dating back to the 1940s when the right-of-way along the Rangeline was dedicated for transportation purposes. At one time, the extension of SR 7 was shown to go as far north as the Turnpike in Martin County. Each successive corridor evaluation scaled back the terminus of the project, taking it from the Turnpike down to SR 710 and, ultimately, Northlake Boulevard. Extending SR 7 into Martin County is no longer presented in the Palm Beach MPO's Long Range Transportation Plan (LRTP), and is therefore not a planned FDOT project. Permitting of an extension into Martin County would be extremely difficult as this option would most likely involve the bifurcation of the Loxahatchee Slough. FDOT is willing to transfer ownership of the segments of the Rangeline that are not in Palm Beach County's Comprehensive Plan or Palm Beach MPO's LRTP.

## **5. Response to Comments on Alternatives**

### ***Alternate Corridor (Adjacent to 130<sup>th</sup> Avenue):***

The FDOT reviewed the Corps' recommendation for locating the proposed roadway within the canal adjacent to 130<sup>th</sup> Avenue. This canal corridor is located two miles to the west of the project study area. Part of the Corps' recommendation is to construct the road over a culvert. Culverts are typically used for perpendicular crossings for spans that range from 3 to 12 feet. In this case, the culvert would be located underneath and parallel to the roadway for a total distance of 3 miles. This distance is not practicable for a culvert. In this case, a bridge structure would be more appropriate. However, FDOT believes that the total cost for this option would far exceed the cost for either Corridors 1 or 3. The cost for a three mile bridge alone is approximately \$183.9 million. In addition, locating the roadway within the canal would still involve right-of-way impacts as the canal is owned by the Indian Trail Improvement District. For the reasons stated above, this alternative is not viable as potential costs and impacts would be high.

### ***Discussion of the Corridors and LEDPA:***

The FDOT conducted a corridor evaluation from 2005 to 2007 as part of the current PD&E study. The purpose of the corridor study was to select a corridor for further evaluation through the PD&E study process. This evaluation involved extensive public involvement and agency coordination and participation through the Efficient Transportation Decision Making (ETDM) process. At the conclusion of the corridor study in 2007, a public meeting was held where the public expressed support for Corridor 3 (The Ibis community was, and still is, opposed to the project). Letters of support were received from the Indian Trails Improvement District, Western Communities Council, Palms West Chamber of Commerce, and numerous residents along the corridor. Further evaluation of Corridor 3 (as recommended in the corridor study) and the No-Build alternative continued through the PD&E Study and the

development of the Environmental Assessment. A summary of the corridor evaluation process is available in the Corridor Report and the Environmental Assessment.

During a multi-agency coordination meeting on September 11, 2012, the Corps requested that FDOT provide additional information regarding the evaluation of Corridors 1 and 3 to document the Least Environmentally Damaging Practicable Alternative (LEDPA). The Corps specifically referenced Cost, Technology, and Logistics as the factors that should be considered when identifying the LEDPA alternative. A discussion related to each of these factors is provided below followed by a summary matrix:

**Cost:** The construction cost for Corridor 1 is \$41.3 million compared to \$50.7 million for Corridor 3. The length of Corridor 1 is one-mile less resulting in a lower construction cost. However, Corridor 1 would result in the relocation of 35 families and impact to 100 total parcels. Right-of-way costs associated with Corridor 1 is approximately \$24.6 million. When combining construction and right-of-way costs, Corridor 1 would cost over \$14 million higher than Corridor 3; a difference of 27.5%.

**Technology:** Construction of the extension through either Corridors 1 or 3 would involve the same techniques and methods that are standard for the industry and location. Therefore, both corridors meet the criteria with regard to technology.

**Logistics:** Advancing the project through Corridor 1 would present two logistical challenges. The first challenge is the crossing over the M-Canal. The section of the M-Canal where Corridor 1 would cross is owned by the City of West Palm Beach and is protected under a Special Act by the Florida Legislature (Chapter 67-2169), which would make Corridor 1 inconsistent with State law. Section 2 of this act states that "It shall be mandatory that the City of West Palm Beach retain in perpetuity full ownership and control, without lease entailment of any nature, the water catchment area primarily for a public water supply area and for other uses by the public not inconsistent with water supply." A later amendment (Chapter 2006-359) provided the same protection to the portion of the M-Canal owned by the City of West Palm Beach, but allows the City to grant a license permitting the construction of a crossing over the canal provided that the crossing is not inconsistent with the act or applicable laws and regulations governing Class I potable water supplies and the water catchment area. The City's opposition to the project is on record and they have indicated that any crossing over the City's portion of the M-Canal would require an eminent domain proceeding (Letter to FDOT dated March 21, 2012). In addition, transferring ownership of the M-Canal within Corridor 1 would require a modification to the State law. A copy of the original State law and amendment is attached.

Along Corridor 3, the bridge crossing is located within existing FDOT right-of-way and avoids any encroachment over the portion of the M-Canal protected by State law. The original State law and subsequent amendment specifically excludes the FDOT's right-of-way over the M-Canal.

The second challenge is that Corridor 1 is considered not to be feasible given the extensive amount of residential relocations and socio-cultural impacts. Corridor 1 was highly controversial when presented to the public during the corridor evaluation phase. This corridor was met with overwhelming opposition from the public during the corridor analysis phase as it would impact 100 residential parcels and involve the relocation of 35 families. The public's opposition to this corridor is on record and is not considered feasible from a social/community perspective.

**Corridor Evaluation Matrix Table (based on the minimized typical section)**

Evaluation Factors	Corridor	
	1	3
<b>Environmental Factors</b>		
Direct Impact to Wetlands (acres)	1.2	71.2
Direct Impact to Higher Quality Wetlands (acres)	0	27.4
Impact to Existing Mitigation Sites (acres)	0	1.25
Distance from Nearest Snail Kite Nest (Based on 2012 USFWS Data)	2.3 miles	1.4 miles
Impact to Snail Kite Habitat (acres)	0	1.0
<b>Technology</b>		
Is Technically Feasible to Construct and uses Proven Technology	Yes	Yes
<b>Logistics</b>		
Consistent with State law protecting the M-Canal <sup>(1)</sup>	No	Yes
Uses Existing Transportation Right-of-Way	No	Yes
Able to use Existing Ibis Lake System for Drainage	No	Yes
Additional Right-of-Way Required for Purchase (acres)	63	1.5
Number of Parcels Impacted	100	1
Number of Residential Relocations	35	0
<b>Cost</b>		
Mitigation Cost (\$ millions)	\$0 <sup>(2)</sup>	.2 <sup>(3)</sup>
Right-of-Way Cost (\$ millions)	24.6	0.98
Construction Cost (\$ millions) <sup>(4)</sup>	41.3	50.7
Total Project Cost (\$ millions)	65.9	51.9

- (1) Special Act of the Florida Legislature (Chapters 67-2169 and 2006-359)
- (2) For Corridor 1, FDOT's Rangeline right-of-way would remain in FDOT ownership for future consideration. Dupuis would be utilized.
- (3) For Corridor 3, FDOT is willing to transfer ownership of the segments of the Rangeline that are not in Palm Beach County's Comprehensive Plan or Palm Beach MPO's LRTP and would no longer be considered for future use. Includes restoration costs to these properties ( approximately \$200,000)
- (4) Cost to construct extension through Corridor 1 is less than Corridor 3 as Corridor 1 is one mile shorter than Corridor 3 and involves less fill material.

**Corridor 3 is in the Public's Interest:** Extending SR 7 through Corridor 3 is in the public's interest for the following reasons:

- Corridor 3 would result in a beneficial effect to the quality of life for area residents as it would enhance regional connectivity and reduce travel times. An efficient roadway network also improves air quality as vehicles spend less time idling at intersections.
- Corridor 3 is in the public's interest as it would have a beneficial effect to existing conservation lands:
  - FDOT is willing to transfer ownership of the Rangeline right-of-way between Okeechobee Boulevard and the M-Canal, an area approximately 80 acres in size. Preserving this section of right-of-way is in the public's interest as it would maintain connectivity between the Pond Cypress Natural Area and Grassy Waters Preserve. For Corridor 1, this section of the Rangeline would remain under FDOT ownership for future consideration.
  - The mitigation plan for Corridor 3 would establish a conservation easement for the unused portion of right-of-way along the Grassy Waters Preserve, an area approximately 40 acres in size. Identifying this section of unused right-of-way as conservation is in the public's interest as it would create a buffer for the Grassy Waters Preserve. This, in combination with the reduced median width, would prohibit any future widening in the future. This section of the Rangeline would remain under FDOT ownership for Corridor 1.
  - FDOT is willing to transfer ownership of the Rangeline right-of-way north of PGA Boulevard. This strip of right-of-way is approximately 91 acres in size and bifurcates the Loxahatchee Slough. Preserving this right-of-way for conservation purposes is in the public's interest as it would protect the Loxahatchee Slough by prohibiting any future extension north of PGA Boulevard. A transfer of this property is not proposed under Corridor 1.
- The mitigation plan for Corridor 3 includes the removal of all exotic species within the unused portions of the Rangeline right-of-way. This includes the segments from Okeechobee Boulevard to the M-Canal (80 acres), M-Canal to Northlake Boulevard (40 acres), and PGA Boulevard to Jupiter Farms (91 acres). This not only improves wetland quality, but also opens these areas up for wildlife use.
- The public has expressed its support for Corridor 3. This includes Palm Beach County, Village of Royal Palm Beach, Indian Trails Improvement District, the Western Communities Council, Palms West Chamber of Commerce, and the general public. The public has overwhelmingly expressed its opposition to Corridor 1.

- Corridor 3 is in the public's interest as it does not involve any residential property impacts or relocations. The public's opposition for Corridor 1 is on record due to potential property impacts. Corridor 1 would result in an adverse effect to the needs and welfare of the people, possibly triggering an EIS.
- Corridor 3 is in the public's interest as it is the only corridor located within existing FDOT and/or County right-of-way preserved for transportation purposes with the exception of 1.25 acres located within the Pond Cypress Natural Area.

**6. Response to Comments on Potential Need for an Environmental Impact Statement (EIS)**

At this time, the FDOT has not identified any significant impacts to resources that would require an EIS with regard to the modified typical section along Corridor 3. Corridor 1 could result in an EIS due to the extensive number of residential relocations and level of public controversy.

## 7. Response to Recommendations for Typical Section Elements

The table below compares the Corps' recommendations to the proposed alternative.

<b>Corps Recommendation</b>	<b>FDOT Response</b>
Use of a shoulder design	The minimum shoulder width for this type of facility is 10 feet. The project proposes the use of an urban typical section with curb and gutter that requires less width than rural typical sections that use shoulders. The width of curb and gutter is typically 2 feet wide.
Use of traffic barriers in lieu of grassed medians	The use of a traffic barrier would still require an inside paved shoulder along both directions of travel. Medians provide a separation between opposing directions of travel and are essential for the safety of the facility given the volume of traffic that is expected to occur. Minimization of the median is discussed in Section 1(d) above.
Construct the roadway adjacent to residential development	Corridor 3 would already achieve this. The corridor is located adjacent to the Acreage and Ibis communities and does not bifurcate any natural areas.
Have the stormwater treatment facilities provide a buffering effect to the remaining onsite wetlands and natural uplands	The proposed alternative already achieves this. The stormwater treatment swales and ponds would be located between the roadway and the natural areas.
Compress the roadway footprint to 70 to 80 feet wide	Avoidance and minimization efforts are discussed in Section 1(d) above. A roadway footprint of 70 to 80 feet is unachievable for a 4 lane divided facility due to minimum design standards and safety considerations. State policy requires that all new facilities include 4 foot wide bicycle lanes in each direction. Curb and gutter and guardrail is also needed to maintain a safe roadway.
Maximize existing drainage facilities within the Ibis Development	As part of the Ibis development permit, Ibis is required to accept and treat 47 acres of water from the SR 7 project. FDOT will utilize the Ibis lake system, within the limits of the permit, which will reduce the project's drainage footprint – resulting in less wetland impacts.

We look forward to working with you and the Corps on this project. We will contact your office in the near future to further coordinate on this project. In the meantime, please feel free to call me if you have any other questions at (954) 777-4325.

Sincerely,



Ann Broadwell  
District Environmental Administrator

cc: Joseph Sullivan, Federal Highway Administration  
John Wrublik, U.S. Fish and Wildlife Service  
Patrick Glass, PE, Florida Department of Transportation

Attachments: Attachment I - Meeting Minutes  
Attachment II - Typical Sections  
Attachment III - Special Act by the Florida Legislature

Attachment I  
Meeting Minutes

# SR 7 CORRIDOR EXTENSION PD&E STUDY MEETING MINUTES



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**SUBJECT:** U.S. Army Corp of Engineers Coordination Meeting

**DATE AND TIME:** July 10, 2006 from 2:00 p.m. to 3:30 p.m.

**LOCATION:** ACOE Palm Beach Gardens Regulatory Office

**ORIGINATED BY:** Beatriz Caicedo-Maddison, P.E.

**RECORDED BY:** Aniruddha Gotmare, P.E.

**PARTICIPANTS:** Brandon Howard (ACOE), Myrna Lopez (ACOE), Beatriz Caicedo-Maddison (FDOT), Ann Broadwell (FDOT), Aniruddha Gotmare (EK), Sandy Scheda (SEA), Lauren Linares (SEA)

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A meeting with the U.S. Army Corp of Engineers (ACOE) was held to provide an update of the PD&E study and obtain input on the proposed corridors with regard to permitting and mitigation requirements.

## History and Project Status

Ms. Caicedo-Maddison, FDOT Project Manager, began the meeting by providing a brief overview of the project, including history, community issues, and project need. Ms. Caicedo-Maddison also provided an overview of the public involvement effort conducted under the current study. Since the start of the study, two public meetings have been held. Most recently, a Public Corridor Workshop was held on May 24, 2006. During that meeting, the four corridors were presented to public for their review. To obtain the public's input, a corridor ranking form (see attached) was distributed which allowed each person to rank the corridors in order of preference including the No-Build option. Nearly 700 forms were received. Based on the input received, Corridor 4 has significant support from the public and Corridor 1 has the least support. Ms. Caicedo-Maddison highlighted the fact that since Corridor 4 (Rangeline) received the best ranking over the No-Build option, that the public understands that there is a need for a new roadway. Due to the lack of public support and environmental impacts for Corridors 1 and 2, the FDOT recommended eliminating these corridors from further evaluation since it is not very likely that either one of these options would ever be constructed. Therefore, Corridors 1 and 2 have been eliminated from further consideration.

Between the remaining corridors Corridor 3 and Corridor 4, one will be selected for further evaluation through the PD&E process. Ms. Caicedo-Maddison stated that in order to complete the report, the FDOT will need more information to finalize the selection.

## Permit Potential / Corridor Discussion

Ms. Caicedo-Maddison opened the discussion by asking the ACOE for assistance in identifying permitting and mitigation requirements for the remaining corridors. Mr. Brandon Howard, ACOE, stated that the most permissible option was the one that was already eliminated (referring to Corridor 1). Ms. Caicedo-Maddison reiterated the results of the public rankings, specifically the results for Corridor 1. She stated that there needs to be a consensus on the accepted corridor among the public and environmental agencies. Royal Palm Beach Boulevard and Coconut Blvd are not acceptable north-south corridors. The Acreage residents prefer the Rangeline option and the Rustic Lakes community has hired an attorney and will challenge any corridor except the Rangeline.

Ms. Ann Broadwell, FDOT Environmental Administrator, indicated that the project has been loaded into the ETDM system for review and that the ACOE will have the opportunity to input their comments. The statement of findings for the County's Acreage Reliever Road permit application would also be very helpful.

Ms. Myrna Lopez, ACOE, indicated that the ACOE may not be able to provide a definite answer as to which corridor is the one that will be permitted. Mr. Howard added that the Rangeline corridor was

eliminated while reviewing the County's project since it bifurcated the whole system.

Mr. Howard indicated that the ACOE would like to consider Corridor 3. The ACOE understands the public outcry on Corridor 1, but the concern with Corridor 3 is the resulting isolation of the Ibis mitigation parcel. Mr. Gotmare asked if ACOE has any mitigation recommendations. Mr. Howard suggested using fencing and animal crossings. A fencing detail recommended by ACOE is attached to the County's permit for Persimmon Boulevard.

Mr. Howard suggested for FDOT to perform a UMAM analysis to determine the functional loss instead of an acre calculation. Secondary impacts would be 25 to 50 feet away from the toe of the slope (last piece of fill material). ACOE would look at some level of functional loss in this area of secondary impacts; however, the UMAM method does not prescribe a specific buffer. Mr. Howard continued by saying that indirect affects associated with Rangeline corridor would be intuitively higher because the ACOE must consider the bigger picture of a greenway that everyone is working hard to put together.

Mr. Howard indicated that the ACOE will document their opposition to the Rangeline through ETDM. The Rangeline option would be considered as a fatal flaw. Mr. Howard will go through the statement of findings for the Acreage Reliever Road that discusses Rangeline alignment and associated issues.

For the east-west section of Corridor 3, wildlife crossings would be preferred along with fencing. One other option would be to construct a bridge for the east-west portion. Fencing would be required along the east side of the Rangeline. Secondary and cumulative impacts should include proposed development potential.

Mr. Aniruddha Gotmare, Edwards and Kelcey Project Manager, asked about the possibility of utilizing a bridge for Corridor 4. Mr. Howard responded that he did not have enough information to provide a definite answer. Also, this alternative was never proposed as an option during the Persimmon Boulevard (Acreage Reliever Rd.) permitting process. Issues such as shading would have to be considered. Ms. Sveda also pointed out the potential cost associated with environmental containment to avoid contamination issues.

Ms. Lopez stated that the FDOT will need to document all of the environmental/wetland impacts during the corridor alternatives analysis. Ms. Lopez continued by saying that she agrees that the Rangeline is not an option. Mr. Howard will provide comments through ETDM. Ms. Alisa Zarbo, ACOE, will also be given the chance to review those comments before they are posted.

Ms. Lopez asked Ms. Caicedo-Maddison if a new road would promote future development. Ms. Caicedo-Maddison answered no. The development is already there, hence, why they call it a "reliever" road.

Mr. Howard stated that abandonment of the FDOT's right-of-way would help offset impacts. He mentioned that this statement was also made in the County's permit.

Ms. Lopez stated that all these discussions will need to be documented. It will serve as very valuable information since it is 3-5 years before the permit application.

Meeting adjourned at 3:30 p.m.



SR 7 CORRIDOR EXTENSION PD&E STUDY  
 U.S. ARMY CORPS OF ENGINEERS MEETING  
 July 10, 2006



SIGN-IN SHEET

NAME	AGENCY / ORGANIZATION	E-MAIL
Beatriz Carcedo - Madolsom	FDOT	beatriz.carcedo@dot.state.fl.us
Ann Broadwell	FDOT	ann.broadwell@dot.state.fl.us
Aniruddha Gotmare	Edwards and Kelcey	agotmare@ekmail.com
Lauren Linares	Scheda Ecological	llinares@scheda.com
Brandon Howard	USACE	Brandon.Howard@sj02.usace.army.mil
Myrna Lopez	USACE	myrna.i.lopez@sj02.usace.army.mil
Sandy Scheda	Scheda Ecological	(via conf-call)

## RECORD OF MEETING - DRAFT

SR 7 Corridor Extension PD&E Study  
FPID No. 229664-2-22-01  
ETDM #8127



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**SUBJECT:** ETDM Screening Results Meeting

**DATE AND TIME:** November 9, 2006 from 10:00 AM to 12:00 PM

**LOCATION:** Palm Beach MPO Office

**ORIGINATED BY:** Beatriz Caicedo-Maddison, P.E.

**RECORDED BY:** Aniruddha S. Gotmare, P.E.  
Michael Garau, P.E.  
Sandy Scheda

**PARTICIPANTS:** Beatriz Caicedo-Maddison – FDOT, District 4  
Richard Young – FDOT, District 4  
Ann Broadwell – FDOT, District 4  
Paul Lampley – FDOT, District 4  
Gregor Sengor – FDOT, District 4 (via conference call)  
Garett Lips – FDOT, District 4 (via conference call)  
Vicki Sharpe – FDOT, Central Office (via conference call)  
Larry Barfield – FDOT, Central Office (via conference call)  
Nahir DeTizio – Federal Highway Administration (via conference call)  
George Hadley – Federal Highway Administration (via conference call)  
John Wrublik – U.S. Fish and Wildlife Service  
Alisa Zarbo – U.S. Army Corps of Engineers  
Lauren Milligan – Florida Dept. of Environmental Protection (via conference call)  
Chris Stahl – Florida Department of Environmental Protection (via conference call)  
Joe Walsh – Florida Fish and Wildlife Conservation Commission (via conference call)  
Anita Bain – South Florida Water Management District  
Tony Waterhouse – South Florida Water Management District  
Randy Whitfield – Palm Beach MPO  
Patricia Masterman – Palm Beach MPO  
Steve Carrier – Palm Beach County Engineering  
Kathleen Farrell – Palm Beach County Engineering  
Ron Robbins – Palm Beach County Environmental Resources Management  
Aniruddha Gotmare – Edwards and Kelcey  
Michael Garau – Edwards and Kelcey  
Sandy Scheda – Scheda Ecological Associates  
Lauren Linares – Scheda Ecological Associates (via conference call)

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Ms. Beatriz Caicedo-Maddison opened the meeting by thanking everyone for their attendance and participation. After self introductions, Ms. Caicedo-Maddison indicated that the goal for the meeting was to bring all the participating agencies together and present a project status update. She also wanted to present the summary of assigned ETAT degree of effects for the proposed build corridors, address concerns and to introduce a bridge and drainage concepts to minimize environmental impacts along proposed Corridor 4. Ms. Caicedo-Maddison began the power point presentation with an overview of the corridors under consideration and stated that the FDOT has asked the FHWA for concurrence to discard Corridors 1 and 2 from further consideration due to lack of public support and impacts to the Section 1 mitigation site. An aerial of the FDOT's Right-of-Way was also shown to illustrate the proximity of the

perimeter canal and berm to the FDOT's Right-of-Way. Pictures from the recent field review documenting existing conditions along SR 7 corridors were also shown during this meeting.

A summary of the public involvement effort was provided. During the last corridor public workshop, a ranking form was distributed to the public. This form provided the public with the opportunity to rank the corridors in order of preference including the no-build option. A total of 688 forms were received of which 405 listed Corridor 4 as their preferred option. Ms. Caicedo-Maddison indicated that the public is anxiously waiting for the outcome of this corridor study. Following the public involvement summary, an overview of the latest evaluation matrix was provided and she highlighted the ranking of public opinion and the ranking of the regulatory agency concurrence. The public has ranked Corridor 4 as their first choice while the regulatory agencies have ranked Corridor 4 as their 4<sup>th</sup> choice.

The remainder of the presentation focused on the ETDM process and comments. Corridor 4 received a "dispute resolution" level of effect by the U.S. Fish and Wildlife Service (USFWS) for the special designation, wetlands, and wildlife and habitat categories. One of the comments made by the USFWS regarded the concern for the bifurcation of the natural area. In response to this concern, Ms. Caicedo-Maddison stated that the FDOT has developed a bridge concept to span across a 3-mile portion of the area that borders the Water Catchment Area and the Pond Cypress Natural Area. Ms. Caicedo-Maddison then introduced Mr. Aniruddha Gotmare as Edwards and Kelcey's Project Manager for this PD&E study to further discuss the bridge option. Mr. Gotmare discussed the bridge typical section, top-down construction methods, and the drainage options. Three drainage options were developed and include (1) the recommendation to use the area below the bridge for drainage swales; (2) the recommendation to use larger ponds at intermediate locations; and (3) a closed drainage system with stormwater pumped to an offsite location. All three options will use pollution chamber, baffle walls, and/or structural BMPs to collect any oil or spills and filter/treat the stormwater before it goes to the swale areas.

Ms. Caicedo-Maddison provided an overview of the four reasons for assigning a "dispute resolution" level of effect as outlined by the ETDM manual and includes (1) project appears to be non-permittable; (2) project is contrary to a state or federal resource agency's program, plan or initiative; (3) project has significant environmental cost (which includes funding, environmental impacts, or quality of life); and (4) project purpose and need statement is disputable. Possible outcomes through the dispute resolution process were presented and include the following: (1) resolve the issue or conflict through consultation and document the resolution; (2) recommend FDOT complete an environmental or technical study for ETAT representatives to review; and (3) advance the project with conditions into the work program. She stressed that the third option is not applicable in this case since the project is already in the work program).

After the presentation, Ms. Caicedo-Maddison opened the floor for further discussion and began by asking Mr. John Wrublik the reason why he assigned a "dispute resolution" level of effect. Mr. Wrublik responded that the USFWS reviewed the County's proposal for the Acreage Reliever Road. During that time, and after extensive coordination with the permitting agencies, the alignment for the Acreage Reliever Road was moved further west. When the FDOT restarted its PD&E Study for the extension of SR 7, he expressed his surprise that Corridor 4 was under consideration again. Mr. Wrublik stated that the USFWS approved the permit for the Acreage Reliever Road with the understanding that the FDOT's Right-of-Way would become part of the mitigation plan. He also stated that a bridge option would be better than a surface roadway, but that he feels that Corridor 3 is the better option.

Mr. Steve Carrier mentioned that the use of FDOT's Right-of-Way was discussed during the initial permit coordination process as a possible mitigation option for the Acreage Reliever Road but was later taken out from the proposed mitigation plan. In order to fulfill the mitigation requirements, the County used "special reserve credits" in addition to the Section 1 property. The permit approved for Acreage Reliever Road project by the South Florida Water Management District (SFWMD) and U.S. Army Corps of Engineers (ACOE) did not include FDOT's Right-of-Way as part of the mitigation plan. Mr. Rob

Robbins added that the Right-of-Way in question was discussed at the earlier stages but was later removed and not the part of final mitigation plan for the Acreage Reliever Road.

Ms. Ann Broadwell then asked Mr. Wrublik to categorize the agency's reason for assigning a "dispute resolution" based on the four options identified by the ETDM manual. Mr. Wrublik responded that his reasons would include the second and third categories (project is contrary to a state or federal resource agency's program, plan or initiative and project has significant environmental cost).

Ms. Alisa Zarbo asked why is the FDOT is considering building two roadways (Acreage Reliever Road and proposed SR 7 Extension) and if the FDOT sees the need for two roadways. Ms. Caicedo-Maddison responded that the FDOT's and County's projects are two separate projects and FDOT as a part of the PD&E Study will investigate the proposed traffic during the PD&E process.

Mr. Randy Whitfield indicated that it was never the County's intention to extend the Acreage Reliever Road up to Northlake Boulevard. Mr. Carrier also added that they were under the assumption that the FDOT will perform that task. Ms. Zarbo stated that the ACOE thought that the Acreage Reliever Road was going to replace the need for the SR 7 extension.

Ms. Caicedo-Maddison stated that when the FDOT started the study, it was decided that commitments to the Right-of-Way could not be made until after the study is over. It is still a possibility that the Right-of-Way could be released in the future based on the final outcome of the PD&E Study.

Mr. Paul Lampley stated that the Palm Beach MPO requested FDOT to stop the project in 2000 and has since asked the FDOT in 2002 to continue with their study. Most likely, this project will be an EIS and for that reason we have to study all possible alignments. If we give up the Right-of-Way now, it will prejudice the decision.

Ms. Bain indicated that the possibility of having two roads (Acreage Reliever Road and new SR 7 extension) does create several challenges and SFWMD will have issues in permitting the new road along Corridor 4 as they stated in their letter to the FDOT.

Ms. Caicedo-Maddison then stated that the FDOT wants the flexibility to study Corridor 4 and asked if the USFWS would reduce the dispute resolution level of effect down to substantial. Mr. Wrublik responded that the FDOT could study that option if desired, but that the USFWS will not reduce the level of effect. Mr. Lampley added that the FDOT cannot study Corridor 4 until the level of effect is reduced.

Mr. Whitfield asked why the FDOT cannot consider studying Corridors 3 and 4 as part of the PD&E Study even if the USFWS has assigned a "red flag" to Corridor 4. Mr. Lampley responded that the FDOT has two options: (1) with a red flag, the FDOT has the option of studying Corridor 3 only; and (2) if the red flag is lowered to orange, then the FDOT can proceed with an analysis of Corridors 3 and 4 which will require an EIS. Ms. Nahir DeTezio indicated that the number of corridors under consideration does not determine the class of action.

Ms. Broadwell asked the County about its future management plan for the Pond Cypress Natural Area. Mr. Robbins responded that in the past, discussions have occurred to remove the berm and unite the Pond Cypress Natural Area and Water Catchment Area. Mr. Robbins also added that the Environmental Resources Management department is in favor of Corridor 3. Mr. Robbins appreciates the FDOT's effort to address the bifurcation issue, but it does not make the bridge option more compelling.

Ms. Lauren Milligan stated that DEP agrees with USFWS and SFWMD on not supporting Corridor 4. Mr. Joe Walsh added that substantial impacts are associated with Corridors 2 and 4 due to the presence of conservation lands and the potential for impacts to fish and wildlife resources. Mr. Walsh stated that the FWC is in favor of Corridor 1 but is more comfortable with Corridor 3 than Corridor 4.

Mr. Whitfield asked about the dispute resolution process. Mr. Young responded that the discussions begin at the staff level and work its way up the ranks, potentially up through the District Secretaries and ultimately the Governor. The FDOT has the option of proceeding through the dispute resolution process or dropping Corridor 4. Ms. Caicedo-Maddison added that an internal FDOT meeting has been scheduled for next week to discuss FDOT's options.

Ms. Vicki Sharpe reiterated the ETDM comments by the Department of Community Affairs (DCA) and that any corridor selected has to be consistent with the Palm Beach County Comprehensive Plan. DCA had also indicated that they are supportive of Corridor 3 as the preferred corridor due to the minimization of environmental impacts.

Mr. Lampley clarified why we are using the ETDM for this project even though the SR 7 Extension is already in the FDOT work program. He mentioned that this project was already in the work program before the ETDM process was implemented. He also indicated that due to the approval of SAFETEA-LU we are going through this ETDM process for this project.

Ms. Caicedo-Maddison asked Mr. Wrublik the status of the red flag. Mr. Wrublik responded that the level of effect will remain as a "red flag." Ms. Bain stated that she has more concern now than before about the possibility of two corridors in the project area. If Corridor 4 is selected, then one or two east-west connections will be required.

Mr. Gotmare asked if the USFWS or the SFWMD would like to make any recommendations or suggestions to the FDOT that would allow further study of Corridor 4 since the Corridor 4 has extensive public support. Mr. Wrublik responded that according to the USFWS, Corridor 3 is a better option.

Mr. Lampley asked Mr. Walsh about his opinion on Corridor 3 versus Corridor 4. Mr. Walsh responded that he could continue looking at Corridor 3. The FWC is more comfortable with Corridor 3 than with Corridor 4.

Ms. Caicedo-Maddison thanked everyone for their participation.

The meeting was adjourned at 11:15 a.m.



# SIGN-IN SHEET ETDM Meeting SR 7 CORRIDOR EXTENSION PD&E STUDY



November 9, 2006  
Palm Beach MPO Office

NAME	REPRESENTING	PHONE	E-MAIL
Sandy Scheda	SEA (sub to EK)	813-989-9600	SScheda@scheda.com.
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Beatriz Concedo Madruga			
John Wrublik	USFWS	772-562-3909 x-282	John-Wrublik@fws.gov



# SIGN-IN SHEET ETDM Meeting SR 7 CORRIDOR EXTENSION PD&E STUDY

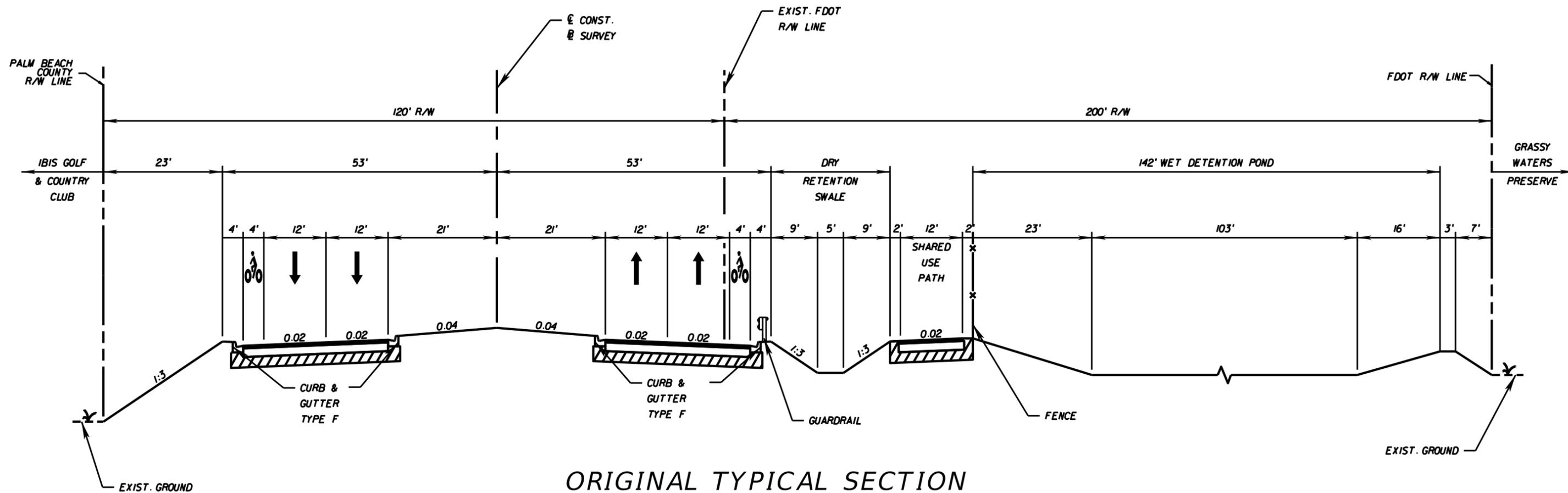


November 9, 2006  
Palm Beach MPO Office

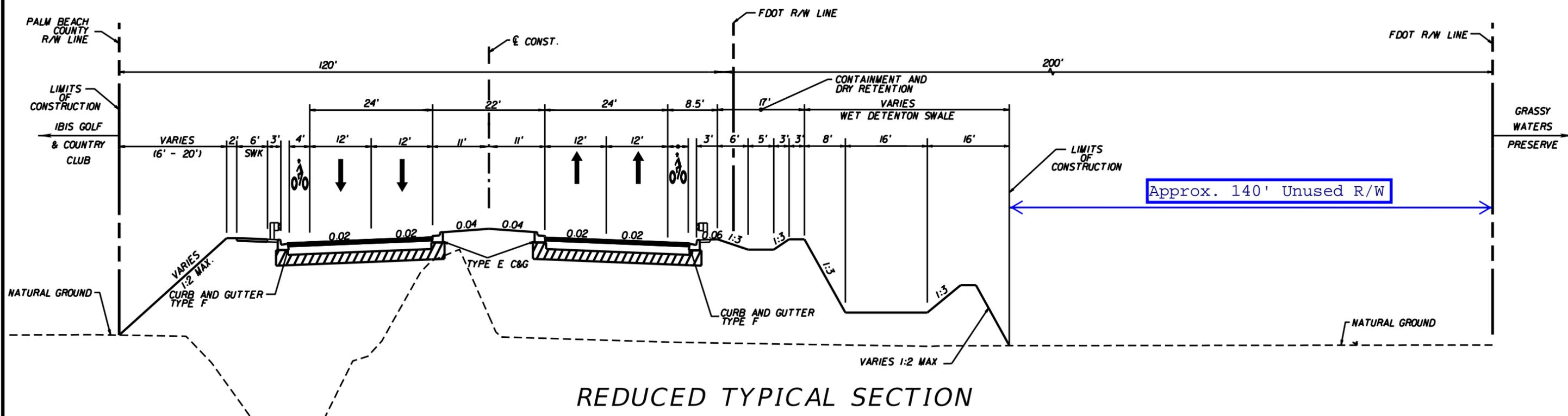
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Michael Garau	EK	561-347-7700	mgarau@ekmail.com
Aniruddha S. Gotmare	EK	-11-	agotmare@ekmail.com

# Attachment II

## Typical Sections



ORIGINAL TYPICAL SECTION



REDUCED TYPICAL SECTION

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION				
ROAD NO.	COUNTY	EDTM NO.	FEDERAL AID PROJECT NO.	FINANCIAL PROJECT ID

SR 7 TYPICAL SECTION

FIGURE NO.

**Attachment III**  
**Special Act by the Florida Legislature**

REGULAR SESSION 1967

# SPECIAL ACTS

ADOPTED BY THE  
LEGISLATURE OF FLORIDA

At its Forty-first Regular Session  
April 4th to July 14th, 1967

UNDER THE CONSTITUTION OF A. D. 1885



Published by Authority of Law  
Under the Direction of  
TOM ADAMS, SECRETARY OF STATE  
Volume II, Part Three  
1967

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mainder of this charter nor the context in which such section or part of section so held invalid may appear, except to the extent of an entire section may or part of section may be separably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

Section 24. **CONFLICTING LAWS.** All laws and parts of laws, ordinances or resolutions, insofar as they are in conflict or inconsistent with the provisions of this charter, be and the same are hereby repealed.

Section 25. This act shall take effect immediately upon its becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State August 4, 1967.

## CHAPTER 67-2168

House Bill No. 1027

AN ACT amending section 9.10 of the charter of the City of West Palm Beach, being chapter 65-2381, Special Laws of Florida, Acts of 1965, relating to alternate members of the zoning board of appeals; providing a severability clause; repealing all laws in conflict; providing an effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. Section 9.10 of the charter of the City of West Palm Beach, being chapter 65-2381, Special Laws of Florida, Acts of 1965, is hereby amended to read as follows:

Section 9.10. *Zoning board of appeals—Appointment, term, and removal.*—The zoning board of appeals shall consist of five members and two alternate members, who shall be electors of the city, shall serve without compensation, and shall be appointed by the city commission. Two members shall be appointed in 1966, two members in 1967, and one member in 1968, each for a term of three years. The alternates shall act in the absence, disability, or disqualification of a member or members and shall be appointed in 1966 for a term of two years and in 1968 and triennially thereafter for a term of three years.

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Each present member and the alternates shall hold office for the term for which he was appointed. If a vacancy occurs in the position of member or alternate, the city commission shall within twenty days therefrom fill the vacancy for the unexpired term, and an alternate may in this event be appointed as a member, whereupon the resulting vacancy in the position of alternate shall be filled as provided in this section. Any member or alternate may be removed from office by the city commission for malfeasance, misfeasance, or nonfeasance in office, or for conduct unbecoming an officer whether connected or unconnected with his official duties; provided, no member or alternate shall be removed except by vote of all except one of the membership of city commission after it shall have preferred written charges against him, served them upon him not less than twenty days prior to a hearing thereon, and held a hearing after notice of at least ten days.

Section 2. The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 3. The provisions of all acts and parts of acts, whether general, special or local, and of all municipal charters which are inconsistent with the provisions of this act are hereby repealed to the extent of such inconsistency.

Section 4. This act shall take effect immediately upon its passage and approval by the Governor or upon its becoming a law without such approval.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 2, 1967.

## CHAPTER 67-2169

House Bill No. 1028

AN ACT relating to water catchment lands owned by the city of West Palm Beach; preservation of said lands for public water supply purposes; prohibiting the sale or lease of said lands or any part thereof and requiring the city of West Palm

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Beach to retain full ownership and control of said lands in perpetuity for public water supply purposes and for other uses by the public not inconsistent with water supply purposes; prohibiting amendment to this act unless and until amendment is approved through referendum of a majority vote of the qualified electors of the city of West Palm Beach participating in such election; providing a severability clause; repealing all laws in conflict; providing an effective date.

WHEREAS, the City of West Palm Beach, Florida, owns lands in Palm Beach County, Florida, which form a catchment area for the retention and storage of ground and surface water, and

WHEREAS, this area functions as the principal source of supply of potable and domestic water used by the public served by the West Palm Beach Water Department; and

WHEREAS, the preservation of this area for its present use is vital in the public interests; NOW, THEREFORE,

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. The following described lands in Palm Beach County, Florida, owned by the City of West Palm Beach, Florida, form the West Palm Beach water catchment area, to-wit:

PARCEL ONE.

The Southwest quarter (SW $\frac{1}{4}$ ) of Section One (1) in Township forty-three South (43 S) Range forty-two East (42 E), except right-of-way of Military Trail.

Said PARCEL ONE being subject to two separate stated electrical power and communication line rights-of-way as described and conveyed in right-of-way agreement of West Palm Beach Water Company unto Florida Power & Light Company, dated June 23, 1953, recorded in Deed Book 1023, page 680, Public Records, Palm Beach County, Florida. (Less Right-of-way of Haverhill Road.)

PARCEL TWO.

The South half (S  $\frac{1}{2}$ ) of Section two (2) of Township forty-three South (43 S), Range Forty-two East (42 E), subject, how-

ever, to that certain easement from Model Land Company to Florida Power & Light Company dated September 16, 1931, to construct and operate power lines on the East side of said property.

Said PARCEL TWO being also subject to 160 ft. width electric power and communication line easement as granted by West Palm Beach Water Company unto Florida Power & Light Company by right-of-way agreement dated June 23, 1953, recorded in Deed Book 1023, page 680, Palm Beach County Public Records. (Less Right-of-way of Haverhill Road.)

PARCEL THREE.

The South half (S $\frac{1}{2}$ ) of Section three (3), Township forty-three South (43 S), Range forty-two East (42E).

PARCEL FOUR.

All that part of the hereinafter described piece or parcel of land situate in the Northeast quarter of the Northeast quarter of Section 11, Township 43 South, Range 42 East, Palm Beach County, State of Florida, to-wit: Beginning at a point on the North line of said Section 11, Township and Range aforesaid, said point being 1320 feet west of the Northeast corner of said Section 11; thence East along said North Section line of said Section 11, 1320 feet to the Northeast corner thereof; thence South along the east line of said Section 11, 660 feet to a point; thence in a Northwesterly direction 1475.7 feet, more or less, to the place of beginning, containing in all 10 acres, more or less. (Less Right-of-way of Haverhill Road.)

PARCEL FIVE.

The North half (N  $\frac{1}{2}$ ) of Northwest quarter (NW  $\frac{1}{4}$ ) of Section Twelve (12), Township forty-three South (43 S) Range forty-two East (42 E), as conveyed to West Palm Beach Water Company by Model Land Company's two deeds of July 12, 1944, recorded in Deed Book 694, page 317, and Deed Book 694, page 319, subject to right-of-way of Military Trail. (Less Right-of-way of Haverhill Road.)

Subject also to easement from Model Land Company to Florida Power and Light Company dated September 16, 1931, to con-

struct and operate power lines on west side of said North half (N 1/2) of Northwest quarter (NW 1/4) of said Section 12;

Said North half (N 1/2) of North half (N 1/2) of Northeast quarter (NE 1/4) of said section twelve (12) being also subject to 100 ft. in width electric power and communication line easement as granted by West Palm Beach Water Company unto Florida Power & Light Company by right-of-way agreement dated June 23, 1953, recorded in Deed Book 1023, page 680, Palm Beach County Public Records.

#### PARCEL SIX.

The North One-Half of the North One-Half of the Northwest One-Quarter of the Northeast One-Quarter, Section Ten, Township Forty-three South, Range Forty-two East.

#### PARCEL SEVEN.

All of Section Seventeen (17) lying South of Seaboard Air Line Railway, all of Sections Eighteen (18), Nineteen (19) and Twenty (20), all of Section Twenty-one (21) south of Seaboard Air Line Railway; all of Sections Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32) and Thirty-three (33), all being in Township Forty-two (42) South, Range Forty-two East (42 E).

#### PARCEL EIGHT.

That part of South one-half (S 1/2) of Section Sixteen (16), Township Forty-two (T 42) South, Range Forty-two (R 42) East, lying south and west of right-of-way of Florida Western and Northern Railroad Company as described in Deed Book 225, Page 160, of Palm Beach County public records, now owned by Seaboard Air Line Railroad Company.

Said PARCELS SEVEN and EIGHT being subject to easement of Palm Beach County, Florida, for public road known as Lake Park Road across said sections 16-17-18-19-20-21.

Said Sections 17-18 in said PARCEL SEVEN being also subject to agreement between West Palm Beach Water Company and Palm Beach County by Deed of February 26, 1951, recorded in Deed Book 936, page 151, permitting removal by said County of shell not exceeding 15 ft. in depth by the present level of water from said land.

Part of said Section 32 of Township 42 South, Range 42 East in said PARCEL SEVEN being subject to an estate, for his natural life, in Ike Lee, with remainder to Model Land Company, its successors and assigns, as described in Identure of August 21, 1942 between J. C. Bills, Jr. et als, parties of the first part, Ike Lee, party of the second part, and Model Land Company, party of the third part, recorded Deed Book 656, page 102, Public Records, Palm Beach County, Florida.

#### PARCEL NINE.

All of Sections Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Seventeen (17) and Eighteen (18), all being in Township Forty-three (43) South, Range Forty-two (42) East.

#### PARCEL TEN.

All of the following described lands:

Starting at the southeast corner of Section 4, T 43 S, R 40 E, proceed westerly a distance of 329.57' more or less to the point of beginning, said point being on the north R/W line of the Central and Southern Florida Flood Control District L-8 tie back canal. From said point of beginning proceed westerly a distance of 170.42' more or less to a point; thence proceed N 00° 05' 50" a distance of 339.29' more or less to a point; thence proceed easterly a distance of 170' more or less to a point; thence proceed N 00° 05' E a distance of 1,203.89, more or less to a point; thence N 45° E a distance of 467.50' more or less to a point on the east line of Section 4 T 43 S R 40 E; thence S 00° 05' W a distance of 354.16' more or less to a point; thence S 45° 00' W a distance of 113.34' to a point; thence S 00° 05' W a distance of 1,190.74' more or less to a point on the North R/W line of the Central and Southern Florida Flood Control District L-8 tie back canal; thence S 45° 08' 50" E a distance of 352.64' to the point of beginning; all the above described lands lying in Section 4 T 43 S R 40 E and containing 10.83 acres more or less.

Starting at the southwest corner of Section 3 T 43 S R 40 E proceed N 00° 05' E a distance of 1,430.16' more or less to the point of beginning. From said point of beginning proceed N 00° 05' E a distance of 354.16' more or less to a point; thence N 45° 00' E a distance of 3,550.36' more or less, to a point on

the north line of Section 3 T 43 S R 40 E; thence S 87° 46' E a distance of 340.54' more or less to a point; thence S 45° 00' W a distance of 4,032.32' more or less to the point of beginning. All of the above described lands lie in Section 3 T 43 S R 40 E and contain 21.75 acres more or less.

Starting at the southeast corner of Section 34, T 42 S R 40 E proceed northerly a distance of 80' more or less to the point of beginning; thence N 87° 46' W a distance of 2,802.44' more or less, to a point; thence S 45° 00' W a distance of 108.97', more or less to a point on the south line of Section 34 T 42 S R 40 E; thence N 87° 46' W a distance of 340.54' more or less, to a point; thence N 45° 00' E a distance of 449.51' more or less to a point; thence S 87° 46' E a distance of 2,902.00' more or less to a point; thence southerly a distance of 250.19' more or less to the point of beginning; said described lands containing 18.52 acres more or less and lie wholly in Section 34 T 42 S R 40 E. Starting at the southwest corner of Section 35, T 42 S R 40 E proceed northerly a distance of 80' more or less, to the point of beginning; thence proceed northerly a distance of 250' more or less to a point; thence proceed S 87° 46' E a distance of 5,262.93' more or less to a point; thence N 88° 37' E a distance of 12.87' more or less to a point; thence proceed southerly a distance of 250' more or less to a point; thence proceed S 88° 37' W a distance of 3.12' more or less to a point; thence proceed N 87° 46' W a distance of 5,272.68' more or less to the point of beginning; all above described lands lying in Section 35 T 42 S R 40 E and containing 30.2 acres, more or less.

Starting at the southwest corner of Section 36 T 42 S R 40 E, proceed northerly a distance of 80' more or less to the point of beginning; thence proceed northerly a distance of 250' more or less to a point; thence proceed N 88° 37' E a distance of 5,287.66' more or less to the southwest corner of Section 31, T 42 S R 41 E; thence proceed S 1° 41' W a distance of 250.11' more or less, to a point; thence proceed S 88° 37' W a distance of 5,281.62' more or less to the point of beginning; the above described lands lying in Section 36 T 42 S R 40 E, and containing 30.3 acres, more or less.

The north 250' of Section 6, T 43 S R 41 E.

The north 250' of Section 5, T 43 S R 41 E.

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Beginning at the southwest corner of Section 33 T 42 S R 41 E proceed N 59° 47' E a distance of 660' more or less to a point; thence N 89° 47' E a distance of 4,720.0' more or less to a point on the east line of said Section 33, said point being 330' more or less northerly from the southeast corner of said Section 33. From the above described point proceed southerly a distance of 250' more or less to a point; thence proceed S 89° 47' W a distance of 4,490.16' more or less to a point; thence S 59° 47' W a distance of 160' more or less to a point on the south line of Section 33 T 42 S R 41 E; thence S 89° 47' W a distance of 661.58' more or less to the point of beginning; all above described land lying in Section 33 T 42 S R 41 E, containing 29.5 acres, more or less.

Beginning at the northwest corner of Section 4 T 43 S R 41 E proceed N 89° 47' E a distance of 661.58' more or less to a point; thence S 59° 47' W a distance of 500' more or less to a point; thence S 89° 47' W a distance of 229.51' more or less to a point on the west line of said Section 4; thence northerly a distance of 250' more or less to the point of beginning; all above described land lying in Section 4 T 43 S R 41 E, containing 2.57 acres more or less.

The south 330' of Section 34 T 42 S R 41 E less the south 80' thereof, containing 30.36 acres more or less.

The south 330' of Section 35, T 42 S R 41 E less the south 80' thereof, containing 30.36 acres more or less.

The south 330' of Section 36 T 42 S R 41 E less the south 80' thereof, containing 30.36 acres more or less (less R/W of State Road 7).

and the preservation thereof is hereby declared and found to be in the public interest.

Section 2. It shall be mandatory that the City of West Palm Beach retain in perpetuity full ownership and control, without lease entailment of any nature, the water catchment area primarily for a public water supply area and for other uses by the public not inconsistent with water supply.

Section 3. Any amendment to this act is prohibited unless and until such amendment is approved through referendum of

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a majority vote of the qualified electors of the City of West Palm Beach participating in such election.

Section 4. Severability clause. It is declared to be the legislative intent that, if any section, subsection, sentence, clause or provision of this act is held invalid, the remainder of this act shall not be affected.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. This act shall take effect immediately upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 2, 1967.

## CHAPTER 67-2170

## House Bill No. 1029

AN ACT establishing the West Palm Beach Downtown Development Authority as a body corporate and designating its functions as municipal; delineating the boundaries of the downtown area; prescribing the number, qualifications, term, and methods of appointment and removal of members; providing for filling vacancies in office, for service without compensation, for reimbursement of expenses, for bonding, and for personal liability in certain instances; providing for by laws and internal governance of the Authority; prescribing its functions and powers, including powers to acquire, own, lease, and dispose of property, to request the City of West Palm Beach to exercise its eminent domain power for the benefit of the Authority, to issue, sell, and provide security for revenue certificates, to borrow on short term, to fix, regulate, and collect rates and charges, to maintain offices, to employ and prescribe the duties, authority, tenure, compensation, and expense reimbursement of a director and other staff, and to exercise all necessary incidental powers; levying in each fiscal year an ad valorem property tax of one mill to finance Authority operations; providing for assess-

ment and collection thereof by the City; subject to compensation to it for services rendered to the Authority; requiring maintenance of records, budget and fiscal control; forbidding participation on behalf of the Authority by personnel financially interested in the matter involved; exempting Authority property from taxation to the extent of City property exemption; providing for succession by the City to the property and certain functions of the Authority if it ceases to exist or operate; regulating issuance of Authority revenue certificates; prescribing scope of this Act; and providing for its liberal construction, severability and effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. *Short title.*—This Act shall be known and may be cited as the "West Palm Beach Downtown Development Authority Act."

Section 2. *Definitions and rules of construction.*—Unless qualified in the text the following definitions and rules of construction shall apply hereto:

(a) "Authority" means the West Palm Beach Downtown Development Authority, hereby created, and any successor to its functions, authority, rights, and obligations.

(b) "City" and "West Palm Beach" mean the City of West Palm Beach, Florida.

(c) "City Commission" means the West Palm Beach City Commission and any succeeding governing body of the City.

(d) "Downtown" and "Downtown area" mean the area herein described and to which this Act primarily relates, including the central business district and its environs.

(e) "Herein," "hereby," "hereof," and similar compounds refer to the entire Act.

(f) "Including" shall be construed as merely introducing illustrative examples and not as limiting in any way the generality of the inclusive term.

(g) "Majority" without qualification means a majority of a quorum.

## House Bill No. 1531

An act relating to the West Palm Beach Water Catchment Area, Palm Beach County; amending chapter 67-2169, Laws of Florida, as amended; revising the legal description of the water catchment area; authorizing the licensing or permitting of certain uses within the water catchment area; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 1 and 2 of chapter 67-2169, Laws of Florida, as amended, are amended to read:

Section 1. West Palm Beach Water Catchment area described.—The following described lands in Palm Beach County, Florida, owned by the City of West Palm Beach, Florida, form the West Palm Beach water catchment area, to wit:

PARCEL ONE.

The South four hundred fifty feet (450') of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section one (1) in Township forty-three South (43 S), Range forty-two East (42 E), except right-of-way of Military Trail and Haverhill Road.

PARCEL TWO.

The South four hundred fifty feet (450') of the Southeast quarter (SE  $\frac{1}{4}$ ) and the entire Southwest quarter (SW  $\frac{1}{4}$ ) of Section two (2) of Township forty-three South (43 S), Range forty-two East (42 E), except right-of-way for Haverhill Road subject, however, to that certain easement from Model Land Company to Florida Power and Light Company dated September 16, 1931, to construct and operate power lines on the East side of said property.

Said PARCEL TWO being also subject to 160 ft. width electric power and communication line easement as granted by West Palm Beach Water Company unto Florida Power and Light company by right-of-way agreement dated June 23, 1953, recorded in Deed Book 1023, page 680, Palm Beach County Public Records. (Less Right-of-Way of Haverhill Road.)

PARCEL THREE.

The South half (S  $\frac{1}{2}$ ) of Section three (3), Township forty-three South (43 S), Range forty-two East (42 E).

Less and except Jog Road extension described as follows:

A parcel of land in Section three (3), Township forty-three South (43 S), Range forty-two East (42 E), Palm Beach County, Florida, more particularly described as follows: Commence at the southeast corner of said Section three (3); thence along the south line of said Section three (3), N 88°43'44" W for 302.06 feet to the West right-of-way line of Florida's

Turnpike, recorded in Circuit Court Minutes Book 68, page 204, of the public records of Palm Beach County, Florida; thence along said right-of-way line, N 01°54'17" E for 2,188.38 feet to the point of curvature of a curve concave to the east, having a radius of 43,121.85 feet; thence northerly, along said curve and right-of-way line to the right, through a central angle of 0°39'37" for 496.98 feet to the north line of the South half (S ½) of said Section three (3); thence along said north line, N 88°33'32" W for 215.90 feet to a non-tangent curve, concave to the west, having a radius of 885.00 feet, where a radial line bears S 71°58'11" W; thence southerly, along said curve to the right, through a central angle of 19°56'06" for 307.92 feet to a point of tangency; thence S 01°54'17" W for 2,383.63 feet to the said south line of Section three (3); thence along said south line, S 88°43'44" E for 160.01 feet to the Point of Beginning.

PARCEL FOUR.

The North four hundred fifty feet (450') of Section eleven (11), Township forty-three 43 South (43 S), Range forty-two 42 East (42 E), except right-of-way for Haverhill Road.

PARCEL FIVE.

The North four hundred fifty feet (450') of Northwest quarter (NW ¼) of Section twelve (12), Township forty-three South (43 S), Range forty-two East (42 E), as conveyed to West Palm Beach Water Company by Model Land Company's two deeds of July 12, 1944, recorded in Deed Book 694, page 317, and Deed Book 694, page 319, subject to right-of-way of Military Trail. (Less Right-of-Way of Haverhill Road.)

Subject also to easement from Model Land Company to Florida Power and Light Company dated September 16, 1931, to construct and operate power lines on west side of said North half (N ½) of Northwest quarter (NW ¼) of said Section twelve (12). 12;

PARCEL SIX.

The North half (N ½) One-Half of the North half (N ½) One-Half of the Northwest quarter (NW ¼) One-Quarter of the Northeast quarter (NE ¼) One-Quarter, Section ten (10), Township forty-three South (43 S), Range forty-two East (42 E).

PARCEL SEVEN.

All of Section seventeen (17) lying South of Seaboard Air Line Railway, all of Sections eighteen (18), nineteen (19) and twenty (20), all of Section twenty-one (21) south of Seaboard Air Line Railway; all of Sections twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32) and thirty-three (33), all being in Township forty-two (42) South (42 S), Range forty-two East (42 E).

PARCEL EIGHT.

That part of South one-half (S ½) of Section sixteen (16), Township forty-two (T 42) South (42 S), Range forty-two (R 42) East (42 E), lying south and west of right-of-way of Florida Western and Northern Railroad Com-

pany as described in Deed Book 225, Page 160, of Palm Beach County public records, now owned by Seaboard Air Line Railroad Company.

Said PARCELS SEVEN and EIGHT being subject to easement of Palm Beach County, Florida, for public road known as Lake Park Road across said sections 16-17-18-19-20-21.

Said Sections 17-18 in said PARCEL SEVEN being also subject to agreement between West Palm Beach Water Company and Palm Beach County by Deed of February 26, 1951, recorded in Deed Book 936, page 151, permitting removal by said County of shell not exceeding 15 ft. in depth by the present level of water from said land.

Part of said Section thirty-two (32) 32 of Township 42 South (42 S), Range 42 East (42 E) in said PARCEL SEVEN being subject to an estate, for its his natural life, in Ike Lee, with remainder to Model Land Company, its successors and assigns, as described in Indenture of August 21, 1942, between J.C. Bills, Jr., et als, parties of the first part, Ike Lee, party of the second part, and Model Land Company, party of the third part, recorded Deed Book 656, page 102, Public Records, Palm Beach County, Florida.

#### PARCEL NINE.

All of Sections four (4), five (5), six (6), seven (7), eight (8), nine (9), seventeen (17) and eighteen (18), all being in Township forty-three (43) South (43 S), Range forty-two (42) East (42 E).

#### PARCEL TEN.

All of the following described lands:

Starting at the southeast corner of Section 4, T 43 S, R 40 E, proceed westerly a distance of 329.57' more or less to the point of beginning, said point being on the north R/W line of the Central and Southern Florida Flood Control District L-8 tie back canal. From said point of beginning, proceed westerly a distance of 170.42' more or less to a point; thence proceed N 00° 05' 50" a distance of 339.29' more or less to a point; thence proceed easterly a distance of 170' more or less to a point; thence proceed N 00° 05' E a distance of 1,203.89', more or less to a point; thence N 45° E a distance of 467.50' more or less to a point on the east line of Section 4, T 43 S, R 40 E; thence S 00° 05' W a distance of 354.16' more or less to a point; thence S 45° 00' W a distance of 113.34' to a point; thence S 00° 05' W a distance of 1,190.74' more or less to a point on the North R/W line of the Central and Southern Florida Flood Control District L-8 tie back canal; thence S 45° 08' 50" E a distance of 352.64' to the point of beginning; all the above described lands lying in section 4, T 43 S, R 40 E and containing 10.83 acres, more or less.

Starting at the southwest corner of Section 3, T 43 S, R 40 E proceed N 00° 05' E a distance of 1,430.16' more or less to the point of beginning. From said point of beginning proceed N 00° 05' E a distance of 354.16' more or less to a point; thence N 45° 00' E a distance of 3,550.36' more or less, to a point on the north line of Section 3, T 43 S, R 40 E; thence S 87° 46' E a distance of 340.54' more or less to a point; thence S 45° 00'

W a distance of 4,032.32' more or less to the point of beginning. All of the above described lands lie in Section 3, T 43 S, R 40 E and contain 21.75 acres, more or less.

Starting at the southeast corner of Section 34, T 42 S, R 40 E proceed northerly a distance of 80' more or less to the point of beginning; thence N 87° 46' W a distance of 2,802.44' more or less, to a point; thence S 45° 00' W a distance of 108.97', more or less to a point on the south line of Section 34, T 42 S, R 40 E; thence N 87° 46' W a distance of 340.54' more or less, to a point; thence N 45° 00' E a distance of 449.51' more or less to a point; thence S 87° 46' E a distance of 2,902.00' more or less to a point; thence southerly a distance of 250.19' more or less to the point of beginning; said described lands containing 18.52 acres more or less and lie wholly in Section 34, T 42 S, R 40 E.

Starting at the southwest corner of Section 35, T 42 S, R 40 E proceed northerly a distance of 80' more or less, to the point of beginning; thence proceed northerly a distance of 250' more or less to a point; thence proceed S 87° 46' E a distance of 5,262.93' more or less to a point; thence N 88° 37' E a distance of 12.87' more or less to a point; thence proceed southerly a distance of 250' more or less to a point; thence proceed S 88° 37' W a distance of 3.12' more or less to a point; thence proceed N 87° 46' W a distance of 5,272.68' more or less to the point of beginning; all above described lands lying in Section 35, T 42 S, R 40 E and containing 30.2 acres, more or less.

Starting at the southwest corner of Section 36, T 42 S, R 40 E, proceed northerly a distance of 80' more or less to the point of beginning; thence proceed northerly a distance of 250' more or less to a point; thence proceed N 88° 37' E a distance of 5,287.66' more or less to the southwest corner of Section 31, T 42 S, R 41 E; thence proceed S 1° 41' W a distance of 250.11' more or less, to a point; thence proceed S 88° 37' W a distance of 5,281.62' more or less to the point of beginning; the above described lands lying in Section 36, T 42 S, R 40 E and containing 30.3 acres, more or less.

Less and except that portion of Sections 35 and 36, Township 42 South, Range 40 East, as described above, that lie North of the following described line:

Commencing at the northwest corner of said Section 35; thence S 00 05' 34" E, along the West line of said Section 35, 5,205.17 feet to a point lying 82.04 feet north of (as measured along said West line) the "Royal Palm Beach Colony" south line of said Section 35 and the Point of Beginning of the herein described line; thence S 87 38' 00" E, 983.00 feet; thence S 87 51' 58" E, 3,082.46 feet; thence S 87 57' 41" E, 1,210.03 feet; thence N 88 43' 01" E, 7.93 feet to a point on the East line of said Section 35, said point lying 57.90 feet north of (as measured along said East line) the said south line of Section 35 also being the West line of Section 36; thence continue N 88 43' 01" E, 779.85 feet; thence S 89 29' 30" E, 525.09 feet; thence S 89 07' 06" E, 283.89 feet; thence N 88 39' 13" E, 2,494.69 feet; thence N 88 29' 15" E, 1,207.18 feet to a point on the East line of said Section 36, said point lying 336.46 feet north of (as measured along said

East line) the said "Royal Palm Beach Colony" south line of Section 36 and the Point of Termination of the herein described line.

Said Sections are as shown on the M Canal R/W Map as recorded in Road Plat Book 6, pages 136-141, Public Records of Palm Beach County, Florida.

The north 250' of Section 6, T 43 S, R 41 E.

The north 250' of Section 5, T 43 S, R 41 E.

Beginning at the southwest corner of Section 33, T 42 S, R 41 E proceed N 59° 47' E a distance of 660' more or less to a point; thence N 89° 47' E a distance of 4,720.0' more or less to a point on the east line of said Section 33, said point being 330' more or less to a point northerly from the southeast corner of said section 33. From the above described point proceed southerly a distance of 250' more or less to a point; thence proceed S 89° 47' W a distance of 4,490.16' more or less to a point; thence S 59° 47' W a distance of 160' more or less to a point on the south line of Section 33, T 42 S, R 41 E; thence S 89° 47' W a distance of 661.58' more or less to the point of beginning; all above described land lying in Section 33, T 42 S, R 41 E, containing 29.5 acres, more or less.

Beginning at the northwest corner of Section 4, T 43 S, R 41 E proceed N 89° 47' E a distance of 661.58' more or less to a point; thence S 59° 47' W a distance of 500' more or less to a point; thence S 89° 47' W a distance of 229.51' more or less to a point on the west line of said Section 4; thence northerly a distance of 250' more or less to the point of beginning; all above described land lying in Section 4, T 43 S, R 41 E, containing 2.57 acres more or less. The south 330' of Section 34, T 42 S, R 41 E less the south 80' thereof, containing 30.36 acres, more or less.

The south 330' of Section 35, T 42 S, R 41 E less the south 80' thereof, containing 30.36 acres, more or less.

The south 330' of Section 36, T 42 S, R 41 E less the south 80' thereof, containing 30.36 acres, more or less (less R/W of State Road 7).

Section 2. Uses.—It shall be mandatory that the City of West Palm Beach retain in perpetuity full ownership and control and shall not lease or grant any license for any part of the water catchment area which is inconsistent with water supply, environmental, educational, or conservation purposes, including, but not limited to, environmental mitigation. No use of the water catchment area shall be made by the city which is inconsistent with water supply, environmental, educational, or conservation purposes, which purposes include, but are not limited to, environmental mitigation purposes. The City of West Palm Beach may grant licenses permitting the construction, installation, maintenance, and removal of crossings above, below, and across the M-Canal by water, wastewater, gas, or other utility pipes and electric or other utility lines and for the construction, expansion, extension, relocation, and maintenance of government roadways across the M-Canal, provided such crossings are not inconsistent with the uses established in this section and such crossings are not inconsistent with this act or applicable laws and regulations governing Class I potable water supplies and the water catchment area.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 12, 2006.

Filed in Office Secretary of State June 12, 2006.



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

December 12, 2012

Joseph Sullivan  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Service CPA Activity Code: 2012-CPA-0091  
Service Consultation Code: 2012-F-0079  
Applicant: Florida Department of  
Transportation  
Project: State Road 7 Extension Project  
County: Palm Beach

Dear Mr. Sullivan:

This letter serves as a follow-up to the inter-agency meeting on the Florida Department of Transportation's (FDOT) proposed State Road (SR) 7 Extension project, held at South Florida Water Management District office in West Palm Beach, Florida, on September 11, 2012. The purpose of this letter is to formally restate our concerns regarding the project to the Federal Highway Administration (FHWA).

## PROJECT DESCRIPTION

The FDOT is proposing to widen and extend SR 7 from Okeechobee Boulevard to Northlake Boulevard. The existing two-lane roadway from Okeechobee Boulevard to 60<sup>th</sup> Street will be enlarged to four lanes, and a new four-lane roadway will be constructed from 60<sup>th</sup> Street to Northlake Boulevard. The project would be located immediately west of, and adjacent to, Palm Beach County's Pond Cypress Natural Area and Grassy Waters Preserve. As currently proposed, the project will directly impact about 113.9 acres of freshwater wetlands. The project site is located in Section 19, Township 43 South, Range 42 East; Sections 1, 12, 13, 14, and 24, Township 43 South, Range 41 East; and Sections 13, 24, 25, and 36, Township 42 South, Range 41 East, in Palm Beach County, Florida.

## THREATENED AND ENDANGERED SPECIES

The Service finds the project will adversely affect the endangered Everglade snail kite (*Rostrhamus sociabilis plumbeus*)(snail kite). The snail kite population has declined significantly during recent years and may be precariously small. Recent population estimates range from about 700 (Cattau et al., 2009) to 925 individuals (S. Sneckenberger, Personal Communication 2012). The reasons for the decline are not completely understood, but low nest



success in recent years appears to be contributing to this trend. Additional contributing factors include regional droughts, decline in apple snails, and low juvenile snail kite survival. Moreover, the Service is concerned the current level of recruitment of juveniles into the breeding population may be lower than needed to maintain or increase the snail kite population.

The project will result in a variety of direct and indirect adverse effects to the snail kite. Adverse effects include the permanent loss of foraging and roosting habitat for the snail kite within the project footprint. Therefore, the project will result in a reduction in the geographic extent of the species. The operation of the roadway following construction also increases the likelihood injuries and mortalities of snail kites will occur from collisions with motor vehicles. In addition, trash and litter discarded by motorists will degrade the quality of existing snail kite habitat adjacent to the roadway. More importantly, the project will significantly increase disturbance to snail kites nesting, foraging, and roosting in wetland habitats east of the roadway footprint within Palm Beach County's Grassy Water Preserve (also known as the Water Catchment Area). Disturbance will result from construction-related activities during project construction and continue in perpetuity due to motor vehicles and human activity on the roadway post-construction. Upon completion, disturbance from motor vehicle traffic on the roadway is expected to occur 24 hours a day because the roadway is located adjacent to a highly urbanized area with a large human population.

Little is known regarding the effects of roadway-related disturbance on nesting, foraging, and roosting of the snail kite. However, habitat loss and fragmentation are major factors influencing snail kite survival (Martin et al. 2006). Snail kites are likely to respond to the disturbance by avoiding the project area or otherwise altering their behavior. Consequently, the disturbance resulting from the project will indirectly result in the loss of habitat used by the snail kite for nesting, foraging, and roosting. The amount of the habitat lost due to disturbance is difficult to quantify, but may be substantial. The Service believes habitat lost due to the direct and indirect effects of the SR 7 extension project will reduce the breeding success of snail kites in the project area and could contribute to snail kite mortality.

The Service has serious concerns regarding the Everglade snail kite population's ability to withstand the adverse effects resulting from the construction of the proposed alternative for the SR 7 extension project. Consequently, we strongly urge the FHWA to discard the proposed corridor for the project and adopt a new corridor that would minimize or eliminate adverse effects to the snail kite.

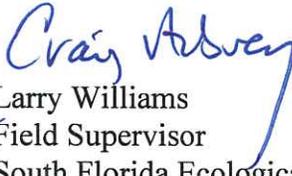
## **FISH AND WILDLIFE RESOURCES**

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare environmental impact statements (EISs) for major Federal actions that significantly affect the quality of the human environment. As discussed above, the Service notes the project will result in significant adverse effects to a critically imperiled, federally listed species, the Everglade snail kite. Moreover, the project will result in significant adverse impacts to public conservation lands

with Palm Beach County's Pond Cypress Natural Area and Grassy Water Preserve. The construction and operation of a new four-lane roadway immediately adjacent to these lands will result in a substantial increase in noise and disturbance to fish and wildlife, and will impair the aesthetic values of these conservation lands for humans. Finally, the Grassy Waters Preserve provides the drinking water for the City of West Palm Beach. Consequently, a motor vehicle accident could result in a spill of contaminants, or, at worst, toxic materials into the water supply of a large human population. In conclusion, we find the project clearly meets the definition of a major Federal action that significantly affects the quality of the human environment, thereby requiring an EIS through NEPA. Therefore, we strongly urge the FHWA to prepare an EIS for the project that fully addresses alternatives for the project. We also recommend the FHWA discard the current alternative, and adopt a preferred alternative that minimizes or eliminates impacts to fish and wildlife resources and public conservation lands.

Thank you for your cooperation in the effort to protect federally listed species. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,

  
for Larry Williams  
Field Supervisor  
South Florida Ecological Services Office

cc: electronic only  
FDOT, Fort Lauderdale, Florida (Ann Broadwell)  
FWC, Tallahassee, Florida (FWC-CPS, Traci Wallace)  
NOAA Fisheries, West Palm Beach, Florida (Brandon Howard)  
Corps, Palm Beach Gardens, Florida (Garett Lips)

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#### LITERATURE CITED

- Cattau, C.E., W.M. Kitchens, B.E. Reichert, J. Olbert, K. Pias, J. Martin, and C. Zweig. 2009. Snail kite demography. 2009 annual report to the U.S. Army Corps of Engineers. U.S. Geological Survey, Biological Resources Division, Florida Cooperative Fish and Wildlife Research Unit, University of Florida; Gainesville, Florida.
- Martin, J., J.D. Nichols, W.M. Kitchens, and J.E. Hines. 2006. Multiscale patterns of movement in fragmented landscapes and consequences on demography of the snail kite in Florida. *Journal of Animal Ecology* 2006; 75: 527-539.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Florida Division

January 31, 2013

545 John Knox Road, Suite 200  
Tallahassee, Florida 32303  
Phone: (850) 553-2200  
Fax: (850) 942-9691 / 942-8308  
[www.fhwa.dot.gov/fldiv](http://www.fhwa.dot.gov/fldiv)

In Reply Refer To:  
HDA-FL

Ms. Victoria Foster  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
1339 20th Street  
Vero Beach; Florida 32960

Attention: John Wrublik

RE: Florida Department of Transportation  
SR 7 Corridor Extension Project Development and Environment Study  
From SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)  
FPID No. 229664-2-22-01  
FAP No. 4752-030-P  
ETDM No. 8127  
Palm Beach County

Dear Ms. Foster:

Federal Highway Administration (FHWA) sent a request for formal consultation for the above referenced project to the Vero Beach Fish and Wildlife Service (Service) office on August 9, 2012. Included in the request was specific information to support your decision-making process. In a January 14, 2013 teleconference, FHWA staff asked about the status of the formal consultation. The Service replied that Requests for Additional Information (RAI) had been made of Florida Department of Transportation (FDOT) District 4. FHWA staff requested a copy of the transmitted RAI(s) from the Service. The Service subsequently provided the FHWA office an RAI dated February 29, 2012. This February RAI appears to be in response to FDOT's previous informal consultation. No additional information (such as an RAI or extension request) has been received by FHWA or FDOT in response to the August 2012 formal consultation request.

In a letter received by FHWA dated December 12, 2012, the Service requested FHWA to consider elevating this document to an Environmental Impact Statement (EIS). The project is currently being evaluated as an Environmental Assessment (EA). The purpose of the EA is to determine the significance of the potential impacts of the proposed action. At the conclusion of the EA process and based on the information available, we will determine whether to elevate this project to an EIS or determine there are no significant impacts of the proposed action through a Finding of No Significant Impact (FONSI). At this point in the process, we do not have the information available to be able to come to either conclusion.

The December 2012 letter also finds that the project “will adversely affect the endangered Everglade Snail Kite.” Is this intended to be the conclusion to the formal consultation? This is not the typical language used in a conclusion of the biological opinion nor does the letter conform to the outline of a formal consultation package provided in the section 7 handbook. Additionally, this letter does not include an incidental take statement nor does it include typical or expected information and conclusions normally presented in a biological opinion. Based on these points, FHWA does not consider the letter as satisfactorily concluding the formal consultation process.

Based on the received documents, the Service has not provided an RAI within 30 days of receipt of the August 2012 formal consultation request as noted by 50 CFR §402.14(c), nor have we received documentation from the Service providing a conclusion to requested formal consultation within 90 days of initiation or providing its biological opinion within 45 days following the initial 90-day period. Additionally, we have not received from the Service a request for an extension to complete its formal consultation or biological opinion. We respectfully request the Service promptly provide FHWA and FDOT the conclusion of the formal consultation so that we can document the findings and proceed appropriately.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Hawk". The signature is fluid and cursive, with a large initial "D" and "H".

FOR: David C. Hawk  
Acting Division Administrator

cc: Beatriz Caicedo, FDOT – District 4  
Ann Broadwell, FDOT – District 4  
Michael Lamprecht, FHWA



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

February 8, 2012

Joseph Sullivan  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Service CPA Activity Code: 2012-CPA-0091  
Service Consultation Code: 2012-F-0079  
Applicant: Florida Department of  
Transportation  
Project: State Road 7 Extension Project  
County: Palm Beach

Dear Mr. Sullivan:

The U.S. Fish and Wildlife Service (Service) has received the email dated August 7, 2012, submitted by the Federal Highway Administration (FHWA), for the project referenced above. This letter is submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

## PROJECT DESCRIPTION

The Florida Department of Transportation (FDOT) is requesting approval from the FHWA to widen and extend State Road (SR) 7 from Okeechobee Boulevard to Northlake Boulevard. The existing two-lane roadway from Okeechobee Boulevard to 60<sup>th</sup> Street will be enlarged to four lanes, and a new four-lane roadway will be constructed from 60<sup>th</sup> Street to Northlake Boulevard. The project would be located immediately west of, and adjacent to, Palm Beach County's Pond Cypress Natural Area and Grassy Waters Preserve. As currently proposed, the project will directly impact about 113.9 acres of freshwater wetlands. The project site is located in Section 19, Township 43 South, Range 42 East; Sections 1, 12, 13, 14, and 24, Township 43 South, Range 41 East; and Sections 13, 24, 25, and 36, Township 42 South, Range 41 East, in Palm Beach County, Florida.

## THREATENED AND ENDANGERED SPECIES

The project occurs within the geographic range of the endangered Everglade snail kite (snail kite; *Rostrhamus sociabilis plumbeus*) and snail kites have been observed nesting within wetlands adjacent to the project site. One active snail kite nest was documented about 530 feet east of the



project footprint in 2010, and, in 2011, three active nests were documented 161 feet, 530 feet, and 574 feet east of the project footprint, respectively.

In a letter to the Service dated January 18, 2012, the FDOT determined the project “may affect, but is not likely to adversely affect” the snail kite. By letter dated February 29, 2012, (attached) the Service advised the FDOT we could not concur with the FDOT’s determination. We also outlined additional information needed to move forward with consultation, and recommended that the FHWA request initiation of formal consultation for the Everglade snail kite in accordance with 50 CFR 402.14.

In a meeting held April 19, 2012, the Service expressed concern regarding the proposed project’s potential effects to the Everglade snail kite and urged the FDOT to revisit other alignment options. We further informed the FDOT that, should they proceed with the currently proposed alignment, the following additional information would be needed: (1) a demonstration and discussion of all possible efforts to reduce the impacts to wetlands from the proposed project; (2) an assessment and analysis of the potential impacts to snail kites in Grassy Waters; and (3) a complete proposal to offset any direct and secondary impacts to listed species, including preservation and maintenance of any proposed off-site compensation lands.

The FDOT sent a letter to the Service dated July 2, 2012, which provided some discussion of the items requested. However, specific details and proposals, such as those needed to complete our review and effects analysis, were not provided. On August 7, 2012, the FHWA transmitted a letter via email requesting the Service initiate formal consultation for the project’s effects to the snail kite. However, the formal consultation initiation did not provide any additional information above that already provided by FDOT.

An interagency meeting was held at South Florida Water Management District on September 11, 2012, at which multiple State and Federal agencies discussed remaining questions and concerns regarding the proposed project (minutes attached). The Service clearly restated our concerns with the proposed alignment and requested other alternatives be considered which would have fewer impacts to trust resources. We also reiterated that, in order to complete our consultation, full details on efforts to avoid and minimize impacts to the snail kite were needed, including a fully developed plan to offset any unavoidable impacts. Further, the Corps participated in a robust discussion on the requirements for proving that the proposed alternative was the Least Environmentally Damaging Practical Alternative.

As stated in our letter to the FHWA dated December 12, 2012, and in a conference call with the FHWA on January 14, 2013, the project, as currently designed, is likely to adversely affect the snail kite. The snail kite population has declined significantly during recent years and may be precariously small. Recent population estimates range from about 700 (Cattau et al., 2009) to 925 individuals (S. Sneckenberger, Personal Communication 2012). The reasons for the decline are not completely understood, but low nest success in recent years appears to be contributing to this trend. Additional contributing factors include regional droughts, decline in apple snails, and

low juvenile snail kite survival. Moreover, the Service is concerned the current level of recruitment of juveniles into the breeding population may be lower than needed to maintain or increase the snail kite population.

The project will likely result in a variety of direct and indirect adverse effects to the snail kite. Likely adverse effects include the permanent loss of foraging and roosting habitat for the snail kite within the project footprint. Therefore, the project will likely result in a reduction in the geographic extent of the species. The operation of the roadway following construction also increases the likelihood injuries and mortalities of snail kites will occur from collisions with motor vehicles. In addition, trash and litter discarded by motorists will likely degrade the quality of existing snail kite habitat adjacent to the roadway. More importantly, the project will likely significantly increase disturbance to snail kites nesting, foraging, and roosting in wetland habitats east of the roadway footprint within Palm Beach County's Grassy Water Preserve (also known as the Water Catchment Area). Disturbance will result from construction-related activities during project construction and continue in perpetuity due to motor vehicles and human activity on the roadway post-construction. Upon completion, disturbance from motor vehicle traffic on the roadway is expected to occur 24 hours a day because the roadway is located adjacent to a highly urbanized area with a large human population.

Little is known regarding the effects of roadway-related disturbance on nesting, foraging, and roosting of the snail kite. However, habitat loss and fragmentation are major factors influencing snail kite survival (Martin et al. 2006). Snail kites are likely to respond to the disturbance by avoiding the project area or otherwise altering their behavior. Consequently, the disturbance resulting from the project will likely indirectly result in the loss of habitat used by the snail kite for nesting, foraging, and roosting. The amount of the habitat lost due to disturbance is difficult to quantify, but may be substantial. Habitat lost due to the direct and indirect effects of the SR 7 extension project will likely reduce the breeding success of snail kites in the project area and could contribute to snail kite mortality. The impact to nesting is most concerning given the snail kite's low numbers and limited nesting success.

The Service has serious concerns regarding the Everglade snail kite population's ability to withstand the likely adverse effects of the proposed project. As such, we do not believe that FDOT and FHWA have proposed measures that adequately minimize the potential effects of the project to the snail kite. Therefore, we cannot yet initiate formal consultation on the proposed project. We strongly urge the FHWA to discard the proposed corridor for the project and adopt a new corridor that would minimize or eliminate adverse effects to the snail kite.

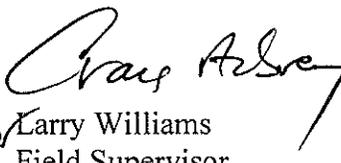
## **FISH AND WILDLIFE RESOURCES**

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare environmental impact statements (EISs) for major Federal actions that significantly affect the quality of the human environment. As discussed above, the Service notes the project will likely result in significant adverse effects to a critically imperiled, federally listed species, the

Everglade snail kite. Moreover, the project will likely result in significant adverse impacts to public conservation lands with Palm Beach County's Pond Cypress Natural Area and Grassy Water Preserve. The construction and operation of a new four-lane roadway immediately adjacent to these lands will likely result in a substantial increase in noise and disturbance to fish and wildlife, and impair the aesthetic values of these conservation lands for humans. Finally, the Grassy Waters Preserve provides the drinking water for the City of West Palm Beach. Consequently, a motor vehicle accident could result in a spill of contaminants, or, at worst, toxic materials into the water supply of a large human population. In conclusion, we believe the project clearly meets the definition of a major Federal action that significantly affects the quality of the human environment, thereby requiring an EIS through NEPA. Therefore, we strongly urge the FHWA to prepare an EIS for the project that fully addresses alternatives for the project. We also recommend the FHWA discard the current alternative, and adopt a preferred alternative that minimizes or eliminates impacts to fish and wildlife resources and public conservation lands.

Thank you for your cooperation in the effort to protect federally listed species. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,



*for* Larry Williams  
Field Supervisor

South Florida Ecological Services Office

cc: electronic only

Corps, Palm Beach Gardens, Florida (Garett Lips)

FDOT, Fort Lauderdale, Florida (Ann Broadwell)

FWC, Tallahassee, Florida (FWC-CPS)

NOAA Fisheries, West Palm Beach, Florida (Brandon Howard)

Palm Beach County, West Palm Beach, Florida (Kathleen Farrell)

District, West Palm Beach, Florida (Barbara Comny)

Enclosures

#### LITERATURE CITED

- Cattan, C.E., W.M. Kitchens, B.E. Reichert, J. Oibert, K. Pias, J. Martin, and C. Zweig. 2009. Snail kite demography. 2009 annual report to the U.S. Army Corps of Engineers. U.S. Geological Survey, Biological Resources Division, Florida Cooperative Fish and Wildlife Research Unit, University of Florida, Gainesville, Florida.
- Martin, J., J.D. Nichols, W.M. Kitchens, and J.E. Hines. 2006. Multiscale patterns of movement in fragmented landscapes and consequences on demography of the snail kite in Florida. *Journal of Animal Ecology* 2006; 75: 527-539.



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

February 28, 2013

David C. Hawk  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Service CPA Activity Code: 2012-CPA-0091  
Service Consultation Code: 2012-F-0079  
Applicant: Florida Department of  
Transportation  
Project: State Road 7 Extension Project  
County: Palm Beach

Dear Mr. Hawk:

The U.S. Fish and Wildlife Service (Service) has received the letter dated January 31, 2013, submitted by the Federal Highway Administration (FHWA), for the project proposed by the Florida Department of Transportation (FDOT) referenced above.

The Service is aware we did not request additional information on the proposed preferred alignment from the FHWA within 30 days of your letter dated August 7, 2012, which requested the Service initiate formal consultation for the project. However, we felt it was not prudent to send a request for additional information prior to the scheduled September 11, 2012, meeting to discuss the project with the FDOT, FHWA, U.S. Army Corps of Engineers, and South Florida Water Management District. At that meeting, the Service clearly stated our concerns with the proposed alignment and requested other alternatives be considered which would minimize adverse effects to the endangered snail kite (*Rostrhamus sociabilis plumbeus*) and trust resources. We reiterated these concerns in letters to the FHWA dated December 12, 2012, and February 8, 2013.

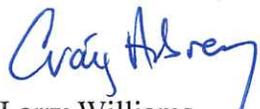
Please be aware neither of the aforementioned letters constitutes the Service's Biological Opinion nor concludes consultation on the current preferred alternative for the State Road 7 extension project. Moreover, the Service has not yet officially initiated formal consultation with the FHWA on the State Road 7 project. The Service outlined specific additional information necessary to complete the consultation request and provided this to FDOT and FHWA prior to, and in anticipation of, the request for formal consultation sent on August 7, 2012. These outstanding items were reiterated at the September 11, 2012, meeting and in our February 8, 2013, letter, and they have not yet been submitted. Therefore, the consultation time frames of 90 days to formulate our Biological Opinion on the project and an additional 45 days to provide the final Biological Opinion to FHWA have not yet begun.



We will continue to work with the FHWA and FDOT to develop a project that meets the stated transportation need while minimizing adverse effects to federally listed species and public conservation lands.

Thank you for your cooperation in the effort to protect federally listed species. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,

  
For Larry Williams  
Field Supervisor  
South Florida Ecological Services Office

cc: electronic only

Corps, Palm Beach Gardens, Florida (Garett Lips)

FDOT, Fort Lauderdale, Florida (Ann Broadwell)

FHWA, Tallahassee, Florida (Joseph Sullivan)

FWC, Tallahassee, Florida (FWC-CPS)

NOAA Fisheries, West Palm Beach, Florida (Brandon Howard)

Palm Beach County, West Palm Beach, Florida (Kathleen Farrell)

District, West Palm Beach, Florida (Barbara Comny)



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Florida Division**

May 23, 2013

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In Reply Refer To:  
HDA-FL

Mr. Larry Williams  
United States Department of the Interior  
Fish and Wildlife Service  
1339 20th Street  
Vero Beach, Florida 32960

**RE: Florida Department of Transportation  
SR 7 Corridor Extension Project Development and Environment Study  
From SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)  
FPID No. 229664-2-22-01, FAP No. 4752-030-P, ETDM No. 8127  
Palm Beach County**

Dear Mr. Williams:

The Federal Highway Administration (FHWA) is in receipt of your letter dated February 8, 2013 concerning the above referenced project. On August 7, 2012, the FHWA submitted a letter to the U.S. Fish and Wildlife Service (Service) requesting formal consultation on the project's effect on the snail kite. The information presented in the formal consultation request package included a discussion of the reduced typical section, detailed snail kite habitat description and discussion of potential impacts. That request was followed by a meeting on September 11, 2012 with the Service and other State and Federal agencies to discuss further minimization efforts.

At this time, a biological opinion has not been received, and it is our understanding that the Service needs additional items of information to respond to the request for formal consultation. This request includes a complete proposal to offset any direct and secondary impacts to listed species, including preservation and maintenance of any proposed off-site compensation lands.

Following the meeting on September 11, 2012, additional efforts to reduce the typical section were made and have resulted in the following benefits (numbers presented below are approximate):

- 56% reduction in total wetland impacts;
- 92% reduction in potential encroachment to the Pond Cypress Natural Area;
- 87% reduction to impacts related to native-dominated higher quality marshes north of the M-Canal;
- 92% reduction to impacts related to hydric pine north of the M-Canal; and
- 93% reduction to impacts related to snail kite habitat.

For the remaining unavoidable impacts, the Florida Department of Transportation (FDOT) is committed to providing mitigation and has evaluated various on- and off-site options that will provide the best solution in terms of the complex wetland habitat assemblages being impacted. A mitigation plan is enclosed for your review in advance of the meeting scheduled for June 6, 2013 at your office in Vero Beach. Key elements of this plan include the following:

- Credits from Pine Glades North Permittee Responsible Offsite Mitigation Area (PROMA) will be done through Palm Beach County as a co-applicant for impacts related to herbaceous and forested wetland impacts and wood stork impacts within the County right-of-way.
- FDOT will perform on-site restoration and enhancement of the easternmost 56 acres of unused FDOT right-of-way between the M-Canal and Northlake Boulevard for impacts within the FDOT right-of-way related to herbaceous and forested wetlands and snail kite foraging and nesting habitat.
- Mitigation for secondary forested wetland impacts within the FDOT right-of-way is proposed at Pine Glades North PROMA through a wetland credit transfer in exchange for unauthorized enhancement work conducted by the County within the FDOT right-of-way between Okeechobee Boulevard and the M-Canal.

Additional details are provided in the enclosed mitigation plan. We look forward to your comments regarding the enclosed plan as your input is needed before the plan is finalized. If you have any questions, please contact Ms. Beatriz Caicedo-Maddison with FDOT, District Four at (954) 777-4336 or myself at (850) 553-2248.

Sincerely,



Joseph Sullivan  
Federal Highway Administration

Enclosure sent via email



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

June 25, 2013

Joseph Sullivan  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Service CPA Activity Code: 2012-CPA-0091  
Service Consultation Code: 2012-F-0079  
Applicant: Florida Department of  
Transportation  
Project: State Road 7 Extension Project  
County: Palm Beach

Dear Mr. Sullivan:

The U.S. Fish and Wildlife Service (Service) has received the May 2013 Conceptual Mitigation Plan submitted by Florida Department of Transportation (FDOT) through the Federal Highway Administration (FHWA) for the project referenced above. This letter is submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

## PROJECT DESCRIPTION

The FDOT is requesting approval from the FHWA to widen and extend State Road (SR) 7 from Okeechobee Boulevard to Northlake Boulevard. The existing two-lane roadway from Okeechobee Boulevard to 60<sup>th</sup> Street will be enlarged to four lanes, and a new four-lane roadway will be constructed from 60<sup>th</sup> Street to Northlake Boulevard. The project would be located immediately west of, and adjacent to, Palm Beach County's Pond Cypress Natural Area and Grassy Waters Preserve. As currently proposed, the project will directly impact about 52.3 acres of freshwater wetlands. The project site is located in Section 19, Township 43 South, Range 42 East; Sections 1, 12, 13, 14, and 24, Township 43 South, Range 41 East; and Sections 13, 24, 25, and 36, Township 42 South, Range 41 East, in Palm Beach County, Florida.

## THREATENED AND ENDANGERED SPECIES

The project occurs within the geographic range of the endangered Everglade snail kite (snail kite; *Rostrhamus sociabilis plumbeus*) and snail kites have been observed nesting and foraging within wetlands adjacent to the project site. By letter dated August 7, 2012, the FHWA requested the Service initiate formal consultation for the project's impacts to the snail kite. In our letter to the



FHWA dated February 8, 2013, the Service stated that the FDOT and FHWA had not proposed measures that adequately minimize the potential effects of the project to the snail kite, and could not yet initiate formal consultation on the proposed project. We also requested the following information: (1) a demonstration and discussion of all possible efforts to reduce the impacts to wetlands from the proposed project; (2) an assessment and analysis of the potential impacts to snail kites in Grassy Waters; and (3) a complete proposal to offset any direct and indirect impacts to listed species, including preservation and maintenance of any proposed off-site compensation lands. On May 23, 2013, the FDOT, through the FHWA, transmitted a Conceptual Mitigation Plan dated May 2013, which contained additional information on the SR 7 Extension project. The Service has reviewed the information provided. Based on our review of the information provided, the Service notes that we still do not have enough information to initiate formal consultation at this time. The Service relayed this message to the FHWA and FDOT in a meeting at the Service's office in Vero Beach, Florida, on June 6, 2013. The following is a summary of the comments and requests made by the Service at the aforementioned meeting:

1. To further reduce the footprint of the proposed corridor, the Service requests the sidewalks be eliminated from the project as currently designed.
2. Please provide a table listing the total acreage of the project footprint, and the acreage of each habitat type (as defined by Florida Land Use and Cover Classification System [FLUCCS]) within the project footprint.
3. In the Conceptual Mitigation Plan, the FDOT considered only herbaceous marsh as providing habitat for the snail kite and indicated that the project would directly result in the loss of 0.7 acre of snail kite habitat (*i.e.*, 0.7 acre of herbaceous marsh). Forested wetland habitats within the project footprint also provide potential snail kite habitat for roosting and perching, and these will be directly lost due to the project. Moreover, other wetland types such as mixed shrub, ditches, and the littoral areas of canals can provide lower-quality foraging habitat for snail kite. The Service requests the FDOT revise their analysis of the direct effects of the project to snail kite habitat to include all snail kite habitat directly impacted by the project.
4. Please provide a detailed analysis of the indirect effects to the Everglade snail kite resulting from the project. The FDOT should also indicate how they intend to minimize these effects and compensate for the loss of habitat that could result from both the direct and indirect effects of the project. The operation of the roadway following construction increases the likelihood of injuries and mortalities of snail kites from collisions with motor vehicles. More importantly, constant motor vehicle use and human activity on the completed roadway will significantly increase disturbance to snail kites in wetland habitats east of the roadway footprint. Little is known regarding the effects of roadway-related disturbance on nesting, foraging, and roosting of the snail kite. However, habitat loss and fragmentation are major factors influencing snail kite survival (Martin et al. 2006). Snail kites are likely to respond to the disturbance by avoiding the project area or

otherwise altering their behavior. Consequently, the disturbance resulting from the project will indirectly result in the loss of habitat used by the snail kite for nesting, foraging, and roosting. The amount of the habitat lost due to disturbance is difficult to quantify, but may be substantial. The Service believes habitat lost due to the direct and indirect effects of the SR 7 extension project will reduce the breeding success of snail kites in the project area and could contribute to snail kite mortality. The impact to nesting is most concerning given the snail kite's low numbers and limited nesting success.

5. The FDOT noted Palm Beach County has treated exotic vegetation within about 22.4 acres of wetlands within the FDOT-owned right-of-way (known as the "Rangeline" right-of-way) from Okeechobee Boulevard to the M-Canal. The work was done in association with the county's treatment of exotic vegetation within the Pond Cypress Natural Area. The FDOT requested to use this wetland enhancement work to mitigate, in part, for the impacts to wetlands resulting from the project. The Service and other resource agencies were not approached regarding obtaining credit for this work prior to it being completed. As such, the use of this completed work to compensate for proposed impacts to wetlands, or the loss of wood stork foraging habitat (as discussed below), is not consistent with our mitigation policy and is not acceptable to the Service. However, the Service may consider the placement of a conservation easement on the parcel and the transfer of the lands to Palm Beach County Environmental Resource Management for incorporation into the Pond Cypress Natural Area as part of a robust habitat compensation plan to minimize the adverse effects of the project to the Everglade snail kite.
6. The FDOT has proposed to restore wetlands within the unused portion of the project footprint adjacent to the Grassy Waters Preserve and Pond Cypress Natural Area, and place these lands under a conservation easement. Any lands placed under conservation easement should list the Service as a third party with rights. Specifically, the rights would allow the Service to maintain the conservation values of the properties by enjoining any activity or use of the mitigation property that is inconsistent with the purposes of the Conservation Easement. Such activities could not go forward without written permission from the Service. The Service requests the FDOT also provide a management endowment to provide for the long term maintenance and management of these lands. Examples of template conservation easement language and typical endowment costs were provided via e-mail on June 17, 2013, to meeting attendees.
7. The Service recommends the compensation plan for the Everglades snail kite include the placement of a conservation easement on the section of the FDOT's Rangeline right-of-way from Northlake Boulevard to SR 710. We note public conservation lands occur on both sides of this portion of the Rangeline, and these lands provide important habitat for the snail kite and a variety of fish and wildlife species. Protection of the Rangeline right-of-way would alleviate concerns that future construction of a roadway in this portion of the Rangeline corridor would result in significant direct and indirect adverse impacts to adjacent conservation lands and to snail kites.

8. The Service reiterated our concerns regarding the Everglade snail kite population's ability to withstand the likely adverse effects of the proposed project. We continue to strongly urge the FHWA to discard the proposed corridor for the project and adopt a new corridor that would minimize or eliminate adverse effects to the snail kite.

### **Wood stork**

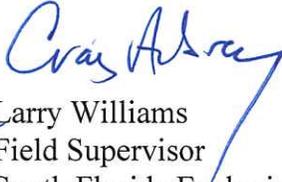
The project occurs within the Core Foraging Areas (*i.e.*, all land within 18.6 miles) of two active nesting colonies of the endangered wood stork (*Mycteria americana*). The FDOT, a Service-approved designated representative of the FHWA for informal consultations, determined that the project "may affect, but is not likely to adversely affect" the wood stork through a letter to the Service dated January 18, 2012. The Service does not have enough information to provide concurrence or non-concurrence with this determination at this time. In the Conceptual Mitigation Plan dated May 2013, the FDOT submitted a functional assessment, based on the Service's methodology, of the wood stork foraging habitat lost due to the project. The Service notes that the assessment included only 16.06 acres of the 52.91 acres of wetlands to be lost due to the project. Please be aware that Service considers all wetland habitat types as suitable foraging habitat for the wood stork, including forested wetlands, wetlands affected by exotic vegetation, and ditches and minor canals. The only types of aquatic habitat types not considered by the Service as suitable foraging habitat includes deep stormwater ponds, large lakes and reservoirs, and major canals. The Service requests that the wood stork foraging habitat assessment be revised to include all suitable wood stork foraging habitat within the project corridor. The Service also requests that a wetland mitigation plan be provided that fully offsets the biomass of wood stork forage lost due to the project.

## **FISH AND WILDLIFE RESOURCES**

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare environmental impact statements (EISs) for major Federal actions that significantly affect the quality of the human environment. As discussed above, the Service notes the project will result in significant adverse effects to a critically imperiled, federally listed species, the Everglade snail kite. Moreover, the project will result in significant adverse impacts to public conservation lands within Palm Beach County's Pond Cypress Natural Area and Grassy Water Preserve. The construction and operation of a new four-lane roadway immediately adjacent to these lands will result in a substantial increase in noise and disturbance to fish and wildlife, and will impair the aesthetic values of these conservation lands for humans. Finally, the Grassy Waters Preserve provides the drinking water for the City of West Palm Beach. Consequently, a motor vehicle accident could result in a spill of contaminants, or, at worst, toxic materials into the water supply of a large human population. In conclusion, we believe the project clearly meets the definition of a major Federal action that significantly affects the quality of the human environment, thereby requiring an EIS through NEPA. Therefore, we strongly urge the FHWA to prepare an EIS for the project that fully addresses alternatives for the project. We also recommend the FHWA discard the current alternative, and adopt a preferred alternative that minimizes or eliminates impacts to fish and wildlife resources and public conservation lands.

Thank you for your cooperation in the effort to protect federally listed species. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,

  
for Larry Williams  
Field Supervisor  
South Florida Ecological Services Office

cc: electronic only

Corps, Palm Beach Gardens, Florida (Garett Lips)

District, West Palm Beach, Florida (Barbara Comny)

FDOT, Fort Lauderdale, Florida (Ann Broadwell)

FWC, Tallahassee, Florida (FWC-CPS)

NOAA Fisheries, West Palm Beach, Florida (Brandon Howard)

Palm Beach County, West Palm Beach, Florida (Kathleen Farrell)

#### LITERATURE CITED

Martin, J., J.D. Nichols, W.M. Kitchens, and J.E. Hines. 2006. Multiscale patterns of movement in fragmented landscapes and consequences on demography of the snail kite in Florida. *Journal of Animal Ecology* 2006; 75: 527-539.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Florida Division  
September 25, 2013

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In Reply Refer To:  
HDA-FL

Mr. Larry Williams  
Field Supervisor  
South Florida Ecological Services Office  
U.S. Fish and Wildlife Service  
1339 20th Street  
Vero Beach, Florida 32960

RE: Florida Department of Transportation  
SR 7 Extension Project Development and Environment (PD&E) Study  
From SR 704 (Okeechobee Boulevard) to CR 809A (Northlake Boulevard)  
FAP No. 4752-030-P  
FPID No. 229664-2-22-01  
ETDM No. 8127  
Palm Beach County

Dear Mr. Williams:

The Federal Highway Administration (FHWA) is in receipt of your letter dated June 25, 2013 concerning the above referenced project. In this letter, a summary of the comments and requests made by the U.S. Fish and Wildlife Service (FWS) at a meeting held on June 6, 2013 was provided. The FHWA and Florida Department of Transportation (FDOT) understand that this information is necessary in order to continue and finalize the formal consultation process on the project. Below is a response to each of the items listed in the letter:

1. **FWS comment:** To further reduce the footprint of the proposed corridor, the FWS requests the sidewalks be eliminated from the project as currently designed.

**FDOT response:** The typical section presented at the Public Hearing proposed a 12-foot wide shared-use path with 2-foot wide shoulders on either side for a total width of 16 feet. As part of the minimization effort, the shared-use path was discarded and replaced by a 5-foot wide sidewalk. The combination of replacing the shared-use path with sidewalk and reducing the median width and drainage areas saves 170 feet of right-of-way (ROW).

In addition, Florida Statutes require the accommodation of bicycle and pedestrian facilities. In accordance with Section 335.065, Florida Statutes, 'bicycle and pedestrian ways shall be established in conjunction with the construction, reconstruction, or other change of any state transportation facility, and special emphasis shall be given to projects in or within 1 mile of an urban area.' An exemption is allowed under three conditions: (1) where the addition of sidewalks or bicycle lanes would be contrary to public safety; (2) when the cost would be

excessively disproportionate to the need or probable use; and (3) where other available means or factors indicate an absence of need. None of these exemptions are applicable to this project since the safety benefits for pedestrians exceed any costs associated with the sidewalk and no other pedestrian facilities exist parallel to the corridor.

2. **FWS comment:** Please provide a table listing the total acreage of the project footprint and the acreage of each habitat type (as defined by Florida Land Use and Cover Classification System) within the project footprint.

**FDOT response:** A copy of the table requested is attached.

3. **FWS comment:** In the Conceptual Mitigation Plan, the FDOT considered only herbaceous marsh as providing habitat for the snail kite and indicated that the project would directly result in the loss of 0.7 acre of snail kite habitat (i.e. 0.7 acre of herbaceous marsh). Forested wetland habitats within the project footprint also provide potential snail kite habitat for roosting and perching and these will be directly lost due to the project. Moreover, other wetland types such as mixed shrub, ditches and the littoral areas of canals can provide lower-quality foraging habitat for snail kite. The FWS requests the FDOT revise their analysis of the direct effects of the project to snail kite habitat to include all snail kite habitat directly impacted by the project.

**FDOT response:** At the suggestion of the FWS, the FDOT revised their analysis of the direct effects to include the forested habitats surrounding each herbaceous marsh. This includes forested habitats within a 100-foot buffer of each marsh habitat as discussed in the revised Conceptual Mitigation Plan.

4. **FWS comment:** Please provide a detailed analysis of the indirect effects to the Everglade snail kite resulting from the project. The FDOT should also indicate how they intend to minimize these effects and compensate for the loss of habitat that could result from both the direct and indirect effects of the project. The operation of the roadway following construction increases the likelihood of injuries and mortalities of snail kites from collisions with motor vehicles. More importantly, constant motor vehicle use and human activity on the completed roadway will significantly increase disturbance to snail kites in wetland habitats east of the roadway footprint. Little is known regarding the effects of roadway-related disturbance on nesting, foraging and roosting of the snail kite. However, habitat loss and fragmentation are major factors influencing snail kite survival (Martin et al. 2006). Snail kites are likely to respond to the disturbance by avoiding the project area or otherwise altering their behavior. Consequently, the disturbance resulting from the project will indirectly result in the loss of habitat used by the snail kite for nesting, foraging and roosting. The amount of the habitat lost due to disturbance is difficult to quantify, but may be substantial. The FWS believes habitat lost due to the direct and indirect effects of the SR 7 extension project will reduce the breeding success of snail kites in the project area and could contribute to snail kite mortality. The impact to nesting is most concerning given the snail kite's low numbers and limited nesting success.

**FDOT response:**

- The mitigation plan includes the on-site creation and restoration of wetlands within the easternmost 56 acres of unused FDOT ROW between the M-Canal and Northlake Boulevard. This proposed buffer came from the reduced typical section that saves 170 feet between the proposed limit of construction line and the Grassy Waters Preserve. Exotics will be removed and managed through regular maintenance of the site until success criteria are reached. An endowment fund will be provided by FDOT for future as-needed maintenance along with third party rights to the FWS. The cost estimate provided by the FWS for an endowment fund is equal to \$1,167 per acre.
- Impacts to snail kite foraging wetland habitat will be addressed through the wetland mitigation program as described in the attached Conceptual Mitigation Plan. Above and beyond this requirement, the FDOT will provide the conservation and protection of wetlands within existing FDOT-owned lands currently identified for transportation purposes. This includes the right-of-way from north of Okeechobee Boulevard to the M-Canal, which includes 84.5 acres of high-quality herbaceous wetlands, and the right-of-way from PGA Boulevard to Jupiter Farms, which includes 91 acres through the Loxahatchee Slough. The preservation and conservation of these parcels insures contiguity between the natural areas in perpetuity.
- The construction of the roadway will not alter the hydrology within the adjacent wetlands or within the Grassy Waters Preserve. The road would be built at a higher elevation and would not draw water away from the Preserve. This is an important consideration given that apple snails, the food source for the snail kite, are sensitive to changes in water levels.
- All stormwater will be directed to the west, away from the Grassy Waters Preserve. Therefore, direct untreated runoff will not enter the Grassy Waters Preserve and damage the potential for apple snails to thrive. There will be no affects to water quality or clarity from the proposed project.
- All wet roadside stormwater ponds have been eliminated from the project. Therefore, there will be no open water areas to attract the snail kite to the roadway envelope.
- Exotic and nuisance plants will be removed from the unused portion of the FDOT's right-of-way.
- The FDOT proposes, with additional coordination with the agencies, to include a vegetative buffer between the roadway and the Grassy Waters Preserve. This buffer should eliminate any concerns related to the potential for vehicle strikes and impacts related to vehicle headlights. With a buffer in place, any bird will be required to fly up and over the roadway and the buffer will shield light from entering the Grassy Waters Preserve. To further reduce headlight glare from entering the Preserve, a screen will be included along the proposed fence.
- The FDOT proposes to provide wildlife crossing opportunities at the M-Canal and at the Ibis Preserve outfall. The design of the crossings will be coordinated with the permitting agencies.

5. **FWS comment:** The FDOT noted Palm Beach County has treated exotic vegetation within about 22.4 acres of wetlands within the FDOT-owned right-of-way (known as the “Rangeline” right-of-way) from Okeechobee Boulevard to the M-Canal. The work was done in association with the county’s treatment of exotic vegetation within the Pond Cypress Natural Area. The FDOT requested to use this wetland enhancement work to mitigate, in part, for the impacts to wetlands resulting from the project. The FWS and other resource agencies were not approached regarding obtaining credit for this work prior to it being completed. As such, the use of this completed work to compensate for proposed impacts to wetlands, or the loss of wood stork foraging habitat (as discussed below), is not consistent with our mitigation policy and is not acceptable to the FWS. However, the FWS may consider the placement of a conservation easement on the parcel and the transfer of the lands to Palm Beach County Environmental Resource Management for incorporation into the Pond Cypress Natural Area as part of a robust habitat compensation plan to minimize the adverse effects of the project to the Everglade snail kite.

**FDOT response:** The FDOT understands that past efforts to remove exotic vegetation within the Rangeline will not be considered for mitigation credit. The mitigation plan for the snail kite will include the placement of a conservation easement on the Rangeline from north of Okeechobee Boulevard to the M-Canal.

6. **FWS comment:** The FDOT has proposed to restore wetlands within the unused portion of the project footprint adjacent to the Grassy Waters Preserve and Pond Cypress Natural Area, and place these lands under a conservation easement. Any lands placed under conservation easement should list the FWS as a third party with rights. Specifically, the rights would allow the FWS to maintain the conservation values of the properties by enjoining any activity or use of the mitigation property that is inconsistent with the purposes of the Conservation Easement. Such activities could not go forward without written permission from the FWS. The FWS requests the FDOT also provide a management endowment to provide for the long-term maintenance and management of these lands. Examples of template conservation easement language and typical endowment costs were provided via e-mail on June 17, 2013, to meeting attendees.

**FDOT response:** The FDOT understands that any lands placed under conservation easement will list the FWS as a third party with rights as discussed above. The FDOT is in receipt of the email provided on June 17, 2013 and will incorporate language in the final mitigation plan to include provisions for a management endowment.

7. **FWS comment:** The FWS recommends the compensation plan for the Everglades snail kite include the placement of a conservation easement on the section of the FDOT’s Rangeline right-of-way from Northlake Boulevard to SR 710. We note public conservation lands occur on both sides of this portion of the Rangeline, and these lands provide important habitat for the snail kite and a variety of fish and wildlife species. Protection of the Rangeline right-of-way would alleviate concerns that future construction of a roadway in this portion of the Rangeline corridor would result in significant direct and indirect adverse impacts to adjacent conservation lands and to snail kites.

**FDOT response:** The FDOT acknowledges the request made by the FWS to place the Rangeline property from Northlake Boulevard to SR 710 under a conservation easement. Although this land is under FDOT ownership, Palm Beach County has identified the use of this land for transportation purposes within its comprehensive plan. The process for removing this designation from the comprehensive plan will require an amendment from the County which may take one to two years. Once this process is complete, the FDOT can then proceed with the placement of a conservation easement as requested above. A statement to this affect will be added as a commitment within the FONSI.

8. **FWS comment:** The FWS reiterated our concerns regarding the Everglades snail kite population's ability to withstand the likely adverse effects of the proposed project. We continue to strongly urge the FHWA to discard the proposed corridor for the project and adopt a new corridor that would minimize or eliminate adverse effects to the snail kite.

**FDOT response:** The selection of Corridor 3 is a result of many years of study and coordination with the environmental agencies and public, a process that discarded other corridors. The corridor located to the west of Ibis (Corridor 1) would have resulted in significant impacts to the community, including the potential for 107 residential property impacts and relocations to Rustic Lakes and Ibis Golf & Country Club since the right-of-way along Corridor 1 would need to be acquired. Corridors further to the west, such as Coconut Boulevard, would have resulted in even more community impacts with the potential for 192 residential property impacts and relocations, and the division (or splitting) of neighborhoods within the Acreage. Past suggestions have included locating the roadway within the canal adjacent to 130th Avenue including the use of a culvert to support the roadway. However, culverts are typically used for perpendicular crossings for spans that range from 3 to 12 feet. In this case, the culvert would be located underneath and parallel to the roadway for a total distance of 3 miles. This distance is not practicable for a culvert. In this case, a bridge structure would be more appropriate. However, the cost for a 3-mile bridge alone is approximately \$183.9 million and not feasible. Corridors further west, such as these, were evaluated in the past and discarded through the coordination process. The benefit with Corridor 3 is that it minimizes community impacts by avoiding right-of-way and relocation impacts and provides the best alternative for avoiding adverse effects to wetlands and the natural environment by wrapping around existing urban development. It also meets the purpose and need by enhancing the regional network given the proximity between the Florida's Turnpike and Seminole Pratt Whitney Road.

Previous studies, dating back to 1993, have been conducted that looked at broader areas as far west as Seminole Pratt Whitney Road and as far north as Martin County. Although these past studies were driven by the same purpose to improve system linkage, the corridors were refined and modified as the limits changed. Ultimately, our current study is focused on extending SR 7 to Northlake Boulevard as directed by the Palm Beach MPO. In the past, corridors that went as far west as Seminole Pratt Whitney Road and through the Acreage were analyzed and discarded through agency workshops and input. Participants included federal and state permitting agencies, Palm Beach County staff and members from 1000 Friends of Florida and the Audubon Society. The corridors that remained either went along the western edge of the Ibis community or along the eastern edge between the Ibis community and the Grassy Water Preserve. The selection of Corridor 3 is a result of many years of study and coordination with the public and

environmental agencies, including the FWS; a process that discarded other corridors further west.

#### Wood Stork

A revised functional assessment of the wood stork foraging habitat lost due to the project was provided within the attached conceptual mitigation plan. This revised assessment incorporates the comments received from the FWS regarding the need to include all wetland habitat types.

#### Fish and Wildlife Resources

In order to finalize the PD&E for this project, the highest level of effort has been utilized to assess the impacts and all efforts to avoid, minimize and/or mitigate have been made. The proposed mitigation is above and beyond statutory requirements and addresses the concerns raised by the FWS and other stakeholders. Based on the results of the analysis, including the corridor selection, the FDOT has not identified any significant impacts when considering that the modified typical section has minimized adverse effects to wildlife and public conservation lands. As mentioned before, this includes the recommendation to locate the roadway along the west side of the existing right-of-way (along existing development), reduction in median width, reduction in drainage treatment areas, and a vegetative buffer and screen along the proposed fence to eliminate the possibility of vehicle strikes and impacts to wildlife from vehicle headlights. The combination of these efforts results in a reduced typical section that saves 170 feet of right-of-way along the Grassy Waters Preserve, an area equal to 56 acres.

With regard to the possibility of providing noise abatement measures, please note that the criteria established in 23 CFR 772 applies only to areas of frequent human use and is not intended for the application to wildlife impacts. A noise wall would only reduce noise levels for a short distance with very limited benefit. However, the proposed mitigation plan would benefit the snail kite by enhancing and restoring 56 acres along the Grassy Waters Preserve (creating higher quality habitat for the snail kite) and by converting lands currently identified for transportation purposes into permanent conservation and habitat areas.

The responses provided above and the revised conceptual mitigation plan should provide the FWS with the information necessary to continue with the formal consultation process on the Everglade snail kite. If you have any questions, please contact Ms. Beatriz Caicedo-Maddison with FDOT, District Four at (954) 777-4336 or myself at (850) 553-2248.

Sincerely,



Joseph Sullivan  
Federal Highway Administration

Enclosures



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

December 13, 2013

Joseph Sullivan  
Federal Highway Administration  
545 John Knox Road, Suite 200  
Tallahassee, Florida 32303

Service CPA Code: 2012-CPA-0091  
Service Consultation Code: 2012-F-0079  
Date Received: September 25, 2013  
Project: State Road 7 from Okeechobee  
Boulevard to Northlake Boulevard  
Counties: Glades and Hendry

Dear Mr. Sullivan:

The U.S. Fish and Wildlife Service (Service) has received the letter dated September 25, 2013, 2013, submitted by the Federal Highway Administration (FHWA), for the State Road (SR) 7 project proposed by the Florida Department of Transportation (FDOT) referenced above. Your letter included responses from the FDOT related to the Service's past requests for additional information and a Conceptual Mitigation Plan. The Service has reviewed the information provided and offers the following comments.

To quantify the amount of Everglade snail kite (*Rostrhamus sociabilis plumbeus*) habitat within the construction footprint directly lost due to the project, the FDOT considered herbaceous marsh and all forested habitat within 100 feet as suitable habitat for the snail kite. The Service believes that this approach does not adequately assess the direct loss of snail kite habitat within the construction footprint. As indicated in our past comments, forested wetland habitats within the construction footprint can provide roosting and perching habitat for the snail kite. Moreover, other wetland types such as mixed wetland shrub, ditches, and littoral areas of canals can provide lower-quality foraging habitat for the snail kite. The Service requests that the FDOT revise their analysis of the amount of snail kite habitat that will be directly lost due to the project to include all forested wetlands (e.g., hydric pine flatwood), mixed wetland shrub, ditches, and littoral areas of canals within the construction footprint. Please provide us with a copy of the revised analysis of direct effects to snail kite habitat.

The Service requested that the FDOT provide a detailed analysis of the indirect effects of the project to the Everglade snail kite. However, other than a statement indicating that the proposed roadway would not alter the hydrology of the wetlands within the Grassy Waters Preserve (GWP), an analysis of the indirect effects of the project was not provided. As indicated in our



past comments, constant motor vehicle use and human activity on the completed roadway will significantly increase disturbance in the GWP east of the roadway footprint. Although little is known regarding the effects of roadway-related disturbance on nesting, foraging, and roosting of the snail kite, the Service believes that snail kites are likely to respond to the disturbance by avoiding the project area or otherwise altering their behavior. Consequently, disturbance indirectly resulting from the project will likely result in the loss of habitat used by the snail kite for nesting, foraging, and roosting. We believe that habitat loss and degradation resulting from the project's indirect effects (*i.e.*, disturbance from operation of the roadway) will be considerably greater than the direct loss of snail kite habitat due to land clearing and road building activities in the construction footprint. Therefore, the Service again requests that the FDOT provide a detailed analysis of indirect effects of the project on the Everglade snail kite, including the amount of habitat likely to be lost or degraded.

The Service understands that it may be difficult to quantify the loss of snail kite habitat due to roadway disturbance. However, we attempted to roughly assess the effect of roadways containing at least four-lanes (such as the proposed project) on the location of snail kite nests through a GIS analysis. We reviewed our database for all records of snail kite nests in Florida and determined the distance of each nest to the nearest roadway with at least four lanes. Based on 3,733 snail kite nest records, we found that the closest distance of a snail kite nest to a roadway of four lanes or more was 523.3 feet for a nest in Water Conservation Area 2B. For the 46 records of nests within the GWP, the closest snail kite nest to a roadway with four or more lanes (North Lake Boulevard) was 814.8 feet. The results of our GIS analysis suggest that snail kites at the GWP will not nest within 800 feet of a four-lane roadway. This distance could be used to estimate the amount of nesting habitat indirectly lost or degraded due to the project by determining the acreage of snail kite nesting habitat within 800 feet of the construction footprint.

The FDOT provided a Conceptual Mitigation Plan to minimize the adverse effects of the project to the Everglade snail kite. The plan includes: the purchase of credits at the Pine Glades North Mitigation Area (PGMA); the enhancement and restoration of 56 acres of wetlands within the unimpacted portion of the existing FDOT project corridor; and the preservation of the FDOT-owned land within the Rangeline Corridor from Okeechobee Boulevard to the M-Canal (103 acres) and Rangeline Corridor from PGA boulevard to Jupiter Farms (90.6 acres).

- **PGMA** - The Service is aware that the snail kite has been observed foraging in the PGMA. However, we do not have any records or other evidence of snail kites nesting at this location (the nearest known snail kite nests have been documented approximately 3 miles northwest of the PGMA). While the Service agrees that the credits provided at the PGMA will help compensate for the loss of snail kite foraging habitat, it presently does not appear to compensate for the loss of snail kite nesting habitat.
- **On-site Wetland Restoration/Enhancement** - It appears that the 56 acres of restored/enhanced wetlands within the unimpacted portion of the FDOT project corridor will all be located within about 150 feet or less of the completed roadway. Based on our

GIS analysis discussed above, snail kites in Florida do not appear to nest within at least 500 feet of a road containing four or more lanes. Therefore, it is unlikely that these wetlands will provide nesting habitat for the snail kite. Moreover, motor vehicle noise and human activity due to the ongoing operation of the road is also likely to deter snail kites from foraging in this area. As such, it is unclear if the 56 acres of enhanced and restored wetlands within the FDOT corridor will have significant value to the snail kite, should the SR 7 project be constructed as proposed.

- **Rangeline Corridors** - The Service notes that all of the known snail kite nesting activity, and the majority of the known snail kite foraging activity, in the vicinity of the SR 7 project corridor has been documented north of the M-Canal in the GWP. The Service does not have any records of snail kites nesting within the sections of the Rangeline Corridor proposed to be conserved. Moreover, the FDOT did not provide any evidence or documentation indicating that snail kites currently nest or forage in these areas. Consequently, the value of the Rangeline Corridors as habitat for the snail kite is unclear.

As currently proposed, the Service finds that the proposed habitat compensation does not adequately minimize the adverse effects (*i.e.*, the loss of snail kite foraging and nesting habitat) of the SR 7 extension project to the Everglade snail kite. Accordingly, we request that the FDOT develop a habitat compensation plan that provides habitat useful to the snail kite and fully offsets the loss of snail kite foraging and nesting habitat due to the project.

In addition, the Service continues to request that the lands within the rangeline corridor from Northlake Boulevard to SR 710 be placed under conservation easement as part of the proposed habitat compensation plan. We understand this section of the Rangeline has been identified for transportation purposes in Palm Beach County's Comprehensive Plan, and would require the county to amend the plan, a process that may take 1 to 2 years. Consequently, the Service requests that FDOT agree to the following condition, to be included in the Service's Biological Opinion for the SR 7 Extension project:

Construction of the project will not commence until the FHWA or FDOT provide documentation from Palm Beach County to the Service that the parcel of land known as the "Rangeline Corridor from Northlake Boulevard to State Road 710" has been abandoned as a transportation corridor and placed into perpetual conservation (through transfer to a public conservation entity and/or placement of a perpetual conservation easement with the U.S. Fish and Wildlife Service granted third party rights).

Please indicate if the FHWA and the FDOT is agreeable to this condition.

Finally, there seems to be confusion regarding initiation of formal consultation by the Service on the SR 7 extension project, per section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). Per 50 CFR 402.14 (c) (4), a request to initiate formal consultation shall include "*A description of the manner in which the action may affect any*

*listed species or critical habitat and analysis of any cumulative effects.*” As indicated in this letter, the Service has not received all the information on the action needed to initiate formal consultation. Therefore, Service has not yet officially initiated formal consultation for the project, and the consultation time periods of 90 days to formulate our Biological Opinion on the project, and an additional 45 days to provide the final Biological Opinion to FHWA have not yet begun.

Thank you for your cooperation in the effort to protect federally listed species. If you have any questions regarding this project, please contact John Wrublik at 772-469-4282.

Sincerely yours,

  
for Larry Williams  
Field Supervisor

South Florida Ecological Services Office

cc:

Corps, Palm Beach Gardens, Florida (Garett Lips)  
FDOT, Fort Lauderdale, Florida (Beatriz Caicedo)  
FWC, Tallahassee, Florida (FWC-CPS)  
NOAA Fisheries, St. Peterburg, Florida (David Rydene)

**APPENDIX D-4: CORRESPONDENCE FROM LOCAL INTEREST  
GROUPS**

# Ibis Civic Committee

Ms. Beatriz Caicedo-Maddison, P.E.  
FDOT Project Manager  
3400 Commercial Boulevard  
Ft. Lauderdale, FL 33309-3421  
May 12, 2006

MAY 16 2006

## **Re: State Route 7 Extension Study Project**

Several weeks ago, I sent you a letter stating our community's opposition to the extension of State Route 7 (SR 7) along our eastern boundary. In that letter I clearly stated our concern about the potential impact this road may have on the safety of our community's water and noted the established endangered species habitat within the path of this extension.

Since that letter, we have learned that the Florida Department of Transportation's (FDOT) is considering one or more alternative routings for the SR 7 extension along Ibis' immediate western boundary. After studying this alternative and considering the likely impact such a route would have, we would like to emphatically communicate our strong opposition to such an alternative.

As we understand, one or more SR 7 extension alternatives under study would place a four (4) or six (6) lane road directly along our western boundary and parallel to our property line fencing. This prospective road would, for all intents and purposes, be in close proximity to a large number of homes in the Ibis Golf & Country Club and pass directly through existing homes in the Rustic Lakes and Bayhill Estates communities. By virtually of every reasonable measure – sound intrusion, air quality, safety, number of homes affected and cost, a western alternative would be extremely expensive and immensely disruptive to the lives, homes and quality of life for a great many residents.

The design and layout of the Ibis Golf & Country Club placed a significant number of "neighborhoods" and homes in close distance to our western boundary. The home sites purchased and the homes built along this side of Ibis were predicated on the understanding that should a SR 7 extension be built, it was NOT planned along this path. Developers and prospective home buyers may have been aware of a long discussed possible extension to SR 7 along existing county right-of-way on the eastern side. In fact, virtually all of the available maps depicted this possibility.

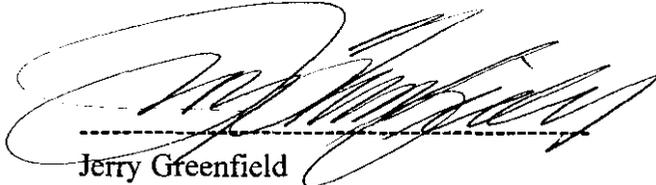
As you know, the use of "eminent domain" to acquire property and homes from existing taxpayers is extremely expensive, controversial and subject to potential prolonged litigation. A western alternative to the extension of SR 7 would, without

question, create immense disruption, economic hardship and litigation expenses. Moreover, the continuation of SR 7 beyond Northlake Boulevard, should a western alternative be chosen, would require additional property "takings" in the community of Osprey Isles and through Menorah Gardens & Funeral Chapel.

The scope of existing "SR 7 Corridor Extension PD & E" purports to address the need to alleviate current traffic loads along Royal Palm, Orange and Coconut Boulevards. Further, the study proposes to consider extending SR 7 to Northlake Boulevard to redirect this load and improve north-south movement. It is, however, worth noting, that existing traffic studies already acknowledge that travelers along Northlake Boulevard suffer a "F" Level of Service (LOS), the worst possible and considered unacceptable, between Ibis and SR 710 (the "Beeline"). Traffic moving west of Ibis currently experiences a "D" level of service. Any extension of SR 7 that terminates at Northlake Boulevard would simply move the problem of congestion to another already heavily traveled and congested route. The result would, in fact, be a "road to nowhere". By all logic, the extension of SR 7 would either have to be continued north beyond Northlake and/or an extensive widening of Northlake Boulevard will be needed.

Once again, on behalf of the over 1,800 families of the Ibis Golf and Country Club, this letter serves as our notice of strong opposition to an extension of State Route 7 along our immediate western boundary. We believe, as do many others, that a decision to extend SR 7, either on our eastern or western boundaries, is shortsighted and subject to immense taxpayer disruption and litigation. We also believe, that a north-south artery, so close to the Florida Turnpike and Interstate 95, is not an appropriate response to the needs of the of the considerable new developments west of Ibis in the current Mecca Farms, Vavrus Farms and Callery-Judge Grove sites. Consideration should be give to a north-south connection closer to Seminole-Pratt Whitney Road where traffic loads are currently lighter, service levels better and additional planned development is closer.

In summary, we respectfully request that alternative routes be considered given the expense, impact and conditions we have described. The residents of Ibis, through our governing body, are deeply concerned about an extension of SR 7 along our western and eastern boundaries.



Jerry Greenfield  
Chairman, Ibis Civic Committee

**10201Heronwood Lane West Palm Beach, FL 33412**

# RUSTIC LAKES PROPERTY OWNERS ASSOCIATION

11276 83<sup>RD</sup> Lane North • West Palm Beach, Florida 33412

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May 22, 2006

Beatriz Calcedo-Maddison, P.E.  
Office of Planning & Environmental Management  
3400 W Commercial Blvd.  
Ft. Lauderdale, FL 33309

Ref: SR7 Expansion

Dear Ms. Calcedo-Maddison:

Please let this serve as the official position letter for Rustic Lakes Property Owners Association with regard to the proposed SR7 Expansion. The Board of Directors of Rustic Lakes POA has elected to take a position in preference of the range line alternative, Corridor 4. Should further study of the range line alternative present unavoidable and uncorrectable economic impact, Rustic Lakes POA would agree to Alternative 3, provided that alternative does not exercise eminent domain.

The FDOT must consider the relevant personal and economic issues involving a Corridor 1 selection, which we oppose. Some Rustic Lakes residents will lose their homes and property, but the drastic impact will be felt by all of the homes here in the form of traffic, noise, pollution, crime and vast property value reductions. We are one of only a few equestrian communities left here in Southern Florida. Built over thirty years ago with the sweat and tears of its residents, many of the original owners still reside here. We have built our own roads and drainage system and still continue to maintain these systems, and the neighborhood, in a manner that protects our environment and the numerous animal species indigenous to our community. To acquire even one home through eminent domain in Rustic Lakes would change the nature of our enclave forever and would severely impact the environment we have worked so hard to preserve.

Irrespective of how the selection of Corridor 1 would affect the residents of Rustic Lakes, it is imperative that FDOT consider the cost involved in making such a selection. The tax dollars required to obtain a new right of way for Corridor 1 would be astronomical. Properties in Rustic Lakes average about \$1,200,000. The cost of creating a new drainage system alone is immeasurable and the new drainage would have to commence at Northlake heading south all the way to Indian Trails District at Orange Boulevard.

The Bay Hill / Stonewall project has been under contract for four years and the new residential design was just permitted. As proposed, approximately 50 lots would be lost to eminent domain and the entire project design would have to be redrawn and permitted once again. The severance damages would be incalculable.

With the addition of the homes in the Acreage that would have to be acquired, the cost for a new right of way would easily surpass \$100 million. This, plus the value of the existing right of way that would sit unused, is wasted tax dollars, much greater than any cost required to mitigate the environmental impact of using the range line alternative. The Grassy Waters Parkway report presents a viable alternative for an environmentally friendly highway. Mitigation Banks would be a reasonable consideration to counter any environmental impact should inspection of the area provide such a need.

# RUSTIC LAKES PROPERTY OWNERS ASSOCIATION

11276 83<sup>RD</sup> Lane North • West Palm Beach, Florida 33412

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We urge FDOT also to consider the purpose of this road. Western Palm Beach County currently has no emergency evacuation route. The range line alternative would provide a straight-line solution for northbound traffic. Moreover, future expansion of SR7 could easily be achieved to the Bee Line Highway, where it could not be achieved through Corridor 1 since Menorah Gardens is protected from eminent domain.

In light of the above, we believe FDOT should strongly consider the preferences of the people and fairly balance those preferences with the mitigation possibilities available to the range line alternative.

Please feel free to contact the Association with any of your questions or concerns. Our goal is to protect our homes, save taxpayers money, and avoid any law suites to stop State Road 7.

Cordially,

President <u>Donald L. Hedgcock</u>	Vice President <u>Rodney Lewis</u>
Treasurer <u>William J. Eustace</u>	Secretary <u>E. J. P.</u>
Director <u>Tim Morse</u>	Director _____
Director <u>Jan Walker</u>	Director _____
Director <u>Robert M. Klein</u>	Director _____

Transportation  
 DOT  
 (Support)  
 ↓  
 OFFICE OF THE GOVERNOR  
 CITIZEN SERVICES  
 11 FEB 25 AM 11:12



The Acreage/Loxahatchee • Greenacres • Loxahatchee Groves • Royal Palm Beach • Wellington

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 Cardinal Electric, Inc.  
 Paul Schofield  
 Village of Wellington  
 Geoff Sluggett  
 Geoffrey B. Sluggett & Associates, Inc.  
 Dennis Witkowski  
 JJ Muggs Stadium Grill  
 Alan S. Zangen  
 Alan S. Zangen, P.A.

January 31, 2011

Governor Rick Scott  
 Florida Executive Branch  
 The Capitol  
 Tallahassee, FL 32399

Dear Governor Scott:

The commencement and completion of the State Road 7 Extension from Okeechobee Blvd to Northlake Blvd has been of central concern to the Palms West Chamber of Commerce for over ten years. The Chamber's membership includes approximately eight hundred public and private organizations and individual businesses who are committed to the economic well-being of the Palm Beach County Central Western Communities.

At the Local Bill and Public Hearing of the Palm Beach County Legislative Delegation held in Wellington on January 6th, 2011 the Palm Beach County Engineer, George Webb, and FDOT Engineer Beatriz Caceido-Madison made a project-update Power Point presentation regarding the State Road 7 Extension.

Following the Engineers' project update were four presentations of support for the project that were included on the meeting's agenda and two presentations made during public comment. Support presented to the Delegation that day came from Palms West Chamber of Commerce, Economic Development Task Force, Western Communities Council, Indian Trail Improvement District, Royal Palm Beach; and Palm Beach County District Six, Commissioner Santamaria.

The scale and extent of support for the State Road 7 Extension project is impressive including:

Technical

FDOT Engineers  
 Palm Beach County Engineer

Municipalities

Greenacres  
 Loxahatchee Groves  
 Royal Palm Beach  
 Wellington

Special Districts

Acme Improvement District  
 Indian Trails Improvement District  
 Seminole Improvement District  
 Loxahatchee Groves Water Control District

Public/Private Partnership

Organizations

Western Communities Council  
 Economic Development Task Force  
 Palms West Chamber of Commerce  
 Acreage Landowners' Association

**Executive Committee**

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 Carmine Priore III  
 Florida Power & Light Company

Chairman-Elect  
 Bland Eng  
 Palms West Hospital

Past Chairman  
 John P. Spillane  
 J.P. Spillane, C.P.A., P.A.

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Doug Keip  
 Florida Public Utilities

Matti Mattioli  
 Village of Royal Palm Beach

Candace Morrow  
 BankAtlantic

Dave O'Keefe  
 Your Computer Guy

John Picano  
 South Florida Fair &  
 Palm Beach County Expositions

Rob Rabenecker  
 Chick-fil-A  
 at the Mall at Wellington Green

Denise Smith  
 Cardinal Appraisal

Joanne Stanley  
 Republic Services of Palm Beach

Robert Trepp  
 Cardinal Electric, Inc.

Paul Schofield  
 Village of Wellington

Geoff Sluggett  
 Geoffrey B. Sluggett & Associates, Inc.

Dennis Witkowski  
 JJ Muggs Stadium Grill

Alan S. Zangen  
 Alan S. Zangen, P.A.



The Acreage/Loxahatchee • Greenacres • Loxahatchee Groves • Royal Palm Beach • Wellington

Virtually every elected official of the Central Western Communities over the past ten years has supported the completion of this project. The cumulative population represented by today's elected officials supporting the State Road 7 Extension measures approximately two hundred thousand residents.

Cumulative appraised tax base of economic development value impacting the Central Western Communities by the State Road 7 Extension may be measured in the multiple billions of dollars.

In addition to the Central Western Communities' economic development impact, the Extension will be a threshold to the Glades, and Western Communities of Palm Beach County. It will increase connectivity of and to the western corridors serviced by the Florida's Turnpike and the I-95 corridor.

The final State Road 7 Extension Public Forum will be held in October or November of 2011. When FDOT confirms the time, date and place of this meeting we will forward the information to your attention. This last meeting will be the watershed for the success and final FDOT approval of the project. We are nearing the end of a long process: Every opportunity to move this project forward to FDOT and then Federal Highway Administration (FHWA) approval is immediately critical to success.

Because this project has united the Central Western Communities and the membership of the Palms West Chamber of Commerce, I ask you now to please join us in taking every possible action to support the completion of the Extension of State Road Seven to Northlake Blvd.

Please support this project with your vote in every committee associated with transportation roadways, appropriations, infrastructure improvement, economic development and public safety. If you need more information in order to fully support this project, please feel free to contact the Chamber and we will be happy to organize training regarding the history and status of this project.

Sincerely,

Carmine Priore III  
 President, Palms West  
 Chamber of Commerce

Sincerely,

Jaene Miranda  
 CEO, Palms West  
 Chamber of Commerce



**Ibis Property Owners  
Association, Inc.**

March 14, 2011

Ms. Beatriz Caicedo-Maddison, P.E.  
Florida Department of Transportation D4  
Consultant Management Office  
3400 West Commercial Boulevard  
Fort Lauderdale, FL 33309-3412

RE: PROPOSED EXTENSION OF STATE ROAD 7 FROM  
OKEECHOBEE BOULEVARD TO NORTHLAKE BOULEVARD

Dear Ms. Caicedo-Maddison:

On behalf of the Ibis Property Owners Association Board of Directors (POA), I would like to thank you again for your continued interest in hearing our voice and meeting with the representatives of our Community and Government Relations Committee (Committee).

We also want to express our appreciation for your visit to our community in January, at which you and your colleagues presented two alternative alignments for the proposed extension of State Road 7 in the combined rights-of-way along the eastern side of the Ibis community, and asked for our input. Our Committee subsequently considered the advantages and disadvantages of the alternatives and adopted the enclosed Resolution and Exhibit A.

The POA Board of Directors accepts this resolution and herewith transmits it to you as the formal position of the Ibis POA: The preferred outcome of the current PD&E study should be the "no build" option but if FDOT pursues the design and construction of the road, the preferred alignment of the road is the eastern alignment. Representatives of our Committee would be happy to discuss the detailed reasoning behind this choice at your convenience.

If the road is to be built, we would also like to reiterate our preference for the round-about alternative at the intersection with our east entrance, as communicated to you in a December 11, 2010, letter from my predecessor.

Thank you again for your continued interest in our community's concerns and perspectives in this planning process.

Respectfully,

IBIS PROPERTY OWNERS ASSOCIATION

  
Steve Silver  
President

Cc: Property Owners Association Board of Directors  
Community and Government Relations Committee

**Resolution**  
**Preferred Alternative Location of Proposed SR7 to the East of Ibis**

*Whereas*, the Florida Department of Transportation is conducting a Project Design and Environmental Study of the proposed extension of State Road 7 from Okeechobee Boulevard to Northlake Boulevard in a corridor that borders the Ibis Golf and Country Club to the south and east, and

*Whereas*, the Community and Government Relations Committee has maintained liaison with the FDOT study team with a view toward protecting the interests of Ibis property owners, and

*Whereas*, the FDOT program manager for the PD&E study has prepared two alternative conceptual designs for the location of the proposed road in the combined rights-of-way to the east of Ibis, the so-called east and west alignments, and has asked the Ibis community to advise her regarding its preference between the two, and

*Whereas*, the Community and Government Relations Committee has reviewed the two alternatives placing highest priority on the public safety of Ibis residents, employees, and guests, and

*Whereas*, the east alignment presents several advantages, including providing adequate vehicle storage to the east of the Ibis East Gate and opportunities for landscaping in and around the water retention ponds that would be installed between the east alignment and Ibis, and

*Whereas*, the PD&E study is scheduled to be completed by the end of March, 2011,

*Therefore*,

The Community and Government Relations Committee, by vote of its members, recommends to the Board of Directors of the Ibis Property Owners Association that, while the Committee believes that the “no build” option is preferable, the east alignment should be community’s preferred alternative if the road is to be built.

The Committee further recommends that the Board communicate its preferences to the FDOT PD&E Study team in writing at the earliest opportunity: first and foremost, for the “no build” option and, second, in the event that a “build” option is selected, the east alignment alternative.