



Jeb Bush  
Governor

# Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Colleen M. Castille  
Secretary

## ELECTRONIC CORRESPONDENCE

January 27, 2006

### ENVIRONMENTAL RESOURCE PERMIT

APPLICANT:	PROJECT NAME:
U.S. Army Corps of Engineers	Kissimmee River Restoration, CSX Railroad
c/o Mr. Richard Bonner	File No: 28-0238833-001
Deputy District Engineer – Project Manager	County: Highlands and Okeechobee County
Jacksonville District	
701 San Marco Boulevard	
Jacksonville, Florida 32207-8175	

---

This permit is issued under the authority of Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). The activity is not exempt from the requirement to obtain an Environmental Resource Permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

#### ACTIVITY DESCRIPTION:

The purpose of the project is to modify the existing CSX railroad by providing an elevated single tract railroad bridge that will allow restoration of the historic Kissimmee River channel near the boundary between Highlands and Okeechobee County as shown in Figure 1 (attached). The historic riverbed will be re-established through the existing railroad embankment by dredging a channel to recreate the historic riverbed. In order to allow for continued operation of the existing railroad system, a temporary detour track will be constructed immediately north of the existing track. The project is part of the U.S Army Corps of Engineers Kissimmee River Restoration Project and is designed to comply with both the hydraulic and navigational requirements that have been identified for this project.

The modifications also involve increasing the elevation of the existing track in and adjacent to the proposed bridge crossing to establish the required boat clearance. The existing railroad embankment and culverts were placed over the original riverbed in 1962. The project will also include the construction of a temporary detour track to the north of the existing causeway, in order to allow rail traffic to bypass the construction at reasonable operating speeds. The fill that will be used for this project is spoil material excavated out of the C-38 canal. Once

the bypass tract is no longer needed, the spoil material will be placed back on the spoil mound to be used in the backfilling of the C-38 canal.

The project will reestablish flows to the Kissimmee River once the oxbow is restored to its natural alignment and existing culverts under the old railroad crossing are removed. This will provide for improved conveyance down the natural oxbow, improved hydrology, and improved water quality conditions by providing aeration to water in the southern oxbow. Approximately 11.32 acres of wetlands will be impacted as part of the construction. Upon completion of construction most of the impacted area will be restored once the temporary bypass has been removed and grades have been re-established. No additional wetland mitigation is proposed because reconnecting the hydraulics of the historic Kissimmee River will restore the conditions for the natural development of several thousand acres of historical wetlands and natural habitat north and south of CSX railroad.

**ACTIVITY LOCATION:**

The project is located 0.55 mile southeast of the grade crossing at C.R. 721 and 0.75 mile northwest of Canal C-38 at the historic Kissimmee River between Highlands and Okeechobee Counties, Florida.

This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

This permit also constitutes certification of compliance with water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this proprietary authorization has been reviewed in accordance with Chapter 253 and Chapter 18-21, Section 62-343.075, F.A.C.

As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity is within the boundaries described in Lease No. 4099 to the South Florida Water Management District, to restore the Kissimmee River in cooperation with the U.S. Army Corps of Engineers.

You are hereby advised that authorizations also may be required by other federal, state, and local entities. This authorization does not relieve you from the requirements to obtain all other required permits and authorizations.

The above named permittee is hereby authorized to construct the work shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof. This permit is subject to the limits, conditions, and

locations of work shown in the attached drawings, and is also subject to the attached 11 General Conditions and 12 Specific Conditions, which are a binding part of this permit. You are advised to read and understand these drawings and conditions prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these drawings and conditions prior to commencing the authorized activities. Failure to comply with all drawings and conditions may constitute grounds for revocation of the permit and appropriate enforcement action.

The Corps agrees to construct the project in accordance with the provisions of this permit and associated documentation. To the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t), the Corps' agreement to construct the project in accordance with the provisions of this permit and supporting documentation is an enforceable condition of this permit.

**GENERAL CONDITIONS:**

1. All activities approved shall be implemented as set forth in the drawings incorporated by reference and in compliance with the conditions and requirements of this document. The Corps shall notify the Department in writing of any anticipated changes in:
  - a) operational plans;
  - b) project dimensions, size or location;
  - c) ability to adhere to permit conditions;
  - d) project description included in the permit;
  - e) monitoring plans.

If the Department determines that a modification to the permit is required then the Corps shall apply for and obtain the modification. Department approval of the modification shall be obtained prior to implementing the change, unless the change is determined by the Department to reduce the scope of work from that authorized under the original permit, and will not effect compliance with permit conditions or monitoring requirements.

2. If, for any reason, the Corps does not comply with any condition or limitation specified herein, the Corps shall immediately provide the Department with a written report containing the following information:
  - a) a description of and cause of noncompliance;
  - b) the period of noncompliance, including dates and times;
  - c) impacts resulting or likely to result from the non-compliance;
  - d) steps being taken to correct the non-compliance; and
  - e) the steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Compliance with the provisions of this condition shall not preclude the Department from taking any enforcement action allowed under state or federal law with respect to any non-compliance.

3. The Corps shall obtain any applicable licenses, permits, or other authorizations which may be required by federal, state, local or special district laws and regulations. Nothing herein constitutes a waiver or approval of other Department permits or authorizations that may be required for other aspects of the total project.
4. Nothing herein conveys to the Corps or creates in the Corps any property right, any interest in real property, any title to land or water, constitutes State recognition or acknowledgment of title, or constitutes authority for the use of Florida's sovereign submerged lands seaward of the mean high-water line or an established erosion control line, unless herein provided, and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State.
5. Any delineation of the extent of a wetland or other surface water submitted as part of the application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this authorization or a formal determination under section 373.421(2), F.S., provides otherwise.
6. Nothing herein authorizes any entrance upon or activities on property which is not owned or controlled by the Corps or local sponsor, or conveys any vested rights or any exclusive privileges.
7. This document or a copy thereof, complete with all conditions, attachments, modifications, and time extensions shall be kept at the work site of the authorized activity. The Corps shall require the contractor to review this document prior to commencement of the authorized activity.
8. The Corps specifically agrees to allow Department personnel with proper identification, at reasonable times and in compliance with Corps specified safety standards access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of this document and with the rules of the Department and to have access to and copy any records that must be kept; to inspect the facility, equipment, practices, or operations regulated or required; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance. Reasonable time may depend on the nature of the concern being investigated.
9. At least forty-eight (48) hours prior to the commencement of authorized activity, the Corps shall submit to the Department a written notice of commencement of activities indicating the anticipated start date and the anticipated completion date.

10. If historic or archaeological artifacts such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time on the project site, the Corps shall immediately stop all activities which disturb the soil and notify the Department and the State Historic Preservation Officer.
11. Within a reasonable time after completion of construction activities authorized by this permit, the Corps shall submit to the Department a written statement of completion. This statement shall notify the Department that the work has been completed as authorized and shall include a description of the actual work completed. The Department shall be provided, if requested, a copy of any as-built drawings required of the contractor or survey performed by the Corps.

### **SPECIFIC CONDITIONS:**

1. **Authorized Construction:** This permit authorizes construction of the Kissimmee River Restoration Project CSX Railroad Bridge (Contract No. DACW17-02-D-0008) in accordance with the Final (100%) design Submittal Plans submitted to the Department on June 6, 2005 and September 06, 2005. A copy of this permit will be kept on site at all times until construction is complete.
2. **Instructions to Contractors.** The permittee shall ensure that the permit conditions are explained to all construction personnel working on the project and shall give a copy of this permit to each contractor and subcontractor before the authorized work begins. Prior to construction, the permittee shall schedule a pre-construction meeting and invite the contractor(s), and representatives from the U.S. Army Corps of Engineers, the Department, and other environmental regulatory agencies. The Department shall receive at least two weeks' notice of the meeting. The proposed construction schedule shall be provided at the pre-construction meeting and submitted to the address below.
3. **Address.** Reports and notices submitted to the Department in accordance with this permit shall be submitted to the Department's Southeast District office, Water Resource Management and Environmental Planning, Attn.: Inger Hansen, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida, 33401, telephone number (561) 681-6709. Electronic submittals can be by e-mail addressed to [inger.hansen@dep.state.fl.us](mailto:inger.hansen@dep.state.fl.us).
4. **Construction Best Management Practices.** At all times during the construction, the permittee shall use best management techniques for erosion and sedimentation control. All graded areas shall be stabilized and vegetated immediately after construction to prevent erosion. The permittee shall take all reasonable precautions to minimize the suspension and transport of soils, levee materials, and roadway materials into waters adjacent to or downstream of the construction site. When working within or immediately adjacent to existing surface waters of the Kissimmee River and its tributaries, turbidity barriers/curtains or other appropriate measures shall be installed and anchored in the riverbed to prevent turbidity from escaping from the areas being dredged or other work-areas.

5. **Environmental Protection Plan.** Protection of Environmental Resources shall be in accordance with Section 01355 of the Contract No. DACW17-02-D-0008 Specifications. A copy of the contractor's Environmental Protection Plan shall be provided to the Department's representative at the preconstruction conference and to the Department offices at the addresses listed in Specific Condition No. 3.
6. **Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) Manual.** No less than 30 days prior to completion of the project, the permittee shall submit a draft OMRR&R Manual as provided in the Project Cooperation Agreement between the permittee and Non-Federal Sponsor (District) to the Department at the addresses listed in Specific Condition No. 3.
7. **Wetland Protection and Restoration.** This project is expected to result in approximately 11.32 acres of wetland impact as a result of construction related to the temporary detour track and dredging of the channel underneath the bridge. Project construction in and near wetlands or surface waters shall at all times be implemented to minimize impacts on these natural resources. Prior to the commencement of construction, the perimeter of the protected wetlands adjacent to the construction area shall be staked and fenced off with construction fencing or other effective physical barriers to prevent encroachment into the wetlands. The Contractor shall coordinate with the Contracting Officer to notify the staff of the FDEP Southeast District Office in writing upon completion of staking/fencing to set up a joint inspection of this work. Protection of existing trees shall be in accordance with the tree-protection plan referenced in the contract documents. Impacts associated with construction of the bypass track are only temporary where the track and associated infill material will be removed, and as part of this wetlands and surface waters will be restored to natural grade. It is a requirement of this permit that the Permittee schedule a final site visit with the Department to allow for inspection of the project site once the temporary works have been removed.
8. **Turbidity Monitoring.** Effective means of turbidity control, such as, but not limited to, turbidity curtains, shall be employed during all operations that may create turbidity so that it shall not exceed 29 NTU's above background. Turbidity screens may be placed and maintained around the work area. All screens, sheetpile, and other turbidity control devices may remain in place until all turbidity has subsided and meets state standards.

Turbidity monitoring equipment and personnel trained to use it shall be available on site at all times during construction that could generate turbidity. For monitoring purposes, the work area is that area defined by the turbidity curtains. The permittee shall monitor turbidity levels at least once every four hours during all operations that may create turbidity (unless monitoring data shows this to be excessive) during construction as follows.

- A. Monitoring samples shall be taken at the following locations:

1. Background Sample(s): One background sample station, at least 50 meters upcurrent of the work area, outside of containment barriers, outside any visible plume generated by the construction; and
  2. Compliance Sample(s): In the Kissimmee River, at a point no greater 150 meters downcurrent from the work area within the densest portion of any visible plume.
- B. Turbidity monitoring results shall be compiled daily and summarized quarterly (every three calendar months) by project. Beginning with the first calendar month that construction occurs that could generate turbidity in waters adjacent to the construction sites, a report containing the summarized turbidity monitoring results for each project shall be submitted quarterly to the Department at the address listed in Specific Condition No. 3. If no construction occurs that could generate turbidity during the quarterly monitoring period, the report shall be so noted. The reports shall also contain the following information:
1. Permit number;
  2. Dates and time of sampling and analysis;
  3. A statement describing the methods used in collection, handling, storage and analysis of the samples;
  4. A clear description of project activities taking place at the time of sampling;
  5. A map indicating the sampling locations; and
  6. A statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.
- C. Monitoring reports shall also include the following information for each sample that is taken:
1. Water depth
  2. Depth of sample
  3. Weather conditions
  4. Water level stage and direction of flow.

In the event that project-generated turbidity levels beyond the work areas exceed the standard (29 NTU's above background), project activities contributing to elevated turbidity levels shall immediately cease, and the Department shall be notified immediately. Work shall not resume until the work can be conducted in compliance with the aforementioned turbidity standard.

9. **Surface Waters.** All construction work in surface waters shall be conducted in a manner to comply with State Water Quality Standards.

10. **NPDES Stormwater Construction Generic Permit.** The issuance of this Permit does not constitute coverage under the National Pollutant Discharge Elimination System (NPDES) Generic Permit for Stormwater Discharges from Construction Activities (CGP) pursuant to Rule 62-621.300(4), F.A.C. Permittee is advised to contact the Department's NPDES Stormwater Program at (850) 245-7522 or toll free at (866) 336-6312 or to download application information at <http://www.dep.state.fl.us/water/stormwater/npdes/construction1.htm> prior to the commencement of any construction.
11. **NPDES General Permit for the Discharge of Produced Ground Water from any Non-Contaminated Site Activity.** The issuance of this Permit does not constitute coverage under the NPDES General Permit for the Discharge of Produced Ground Water from any Non-Contaminated Site Activity pursuant to 62-621.300(2), F.A.C. If any offsite discharges will occur due to construction dewatering activities, then coverage under the aforementioned General Permit may be required and the permittee is advised to review Rule 62-621.300(2), F.A.C. Before discharge of produced ground water can occur, analytical tests on samples of the proposed discharge water shall be performed to determine if contamination exists. If the analytical results comply with applicable criteria for use of the General Permit, then a short summary of the proposed activity and copy of the analytical tests shall be sent to the address in Specific Condition No. 3 within one week after discharge begins and the permittee may proceed with the project while abiding by all conditions of the General Permit.
12. **Cultural Resource Survey.** A professional cultural resource survey of the project area shall be conducted per specifications set forth in Chapter, 1A-46, F.A.C., in accordance with the Florida Department of State, Division of Historical Resources.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

 1/27/06

\_\_\_\_\_  
Kim Shugar Date  
Office of Ecosystem Projects

**KS/mcm/ih**

Electronic Copies furnished to:  
Bonner, Richard SAJ (Richard.Bonner@saj02.usace.army.mil);

January 27, 2006

Page Nine (2)

---

Cadet, Wiener SAJ ([wiener.cadet@saj02.usace.army.mil](mailto:wiener.cadet@saj02.usace.army.mil));  
Gerena, Enid SAJ ([Enid.A.Gerena@saj02.usace.army.mil](mailto:Enid.A.Gerena@saj02.usace.army.mil));  
McAdams, James J. SAJ ([James.J.McAdams@saj02.usace.army.mil](mailto:James.J.McAdams@saj02.usace.army.mil));  
Cortes, Javier SAJ ([javier.Cortes@saj02.usace.army.mil](mailto:javier.Cortes@saj02.usace.army.mil));  
Fross, Jack SAJ ([Jack.R.Fross@saj02.usace.army.mil](mailto:Jack.R.Fross@saj02.usace.army.mil));  
Wilburn, Charles R SAJ ([Charles.R.Wilburn@saj02.usace.army.mil](mailto:Charles.R.Wilburn@saj02.usace.army.mil));  
Raul Pellegrino ([rpellegr@sfwmd.gov](mailto:rpellegr@sfwmd.gov));  
Engel, Neal, Division of Historical Resources, ([nrengel@dos.state.fl.us](mailto:nrengel@dos.state.fl.us));  
[Joe.Walsh@myfwc.com](mailto:Joe.Walsh@myfwc.com)  
FDEP'S – Kevin Neal, Kim Shugar, John Outland, Temperince Morgan, Mary Murphy, Inger Hansen, Tim Rach, Robyn Begley, Shelly Yaun, Calvin Alvarez

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit, including all copies, were mailed before the close of business on 1/27/06, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

Prepared by \_\_\_\_\_.

one page attached.

