



Jeb Bush
Governor

Department of Environmental Protection

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

Colleen M. Castille
Secretary

ENVIRONMENTAL RESOURCE PERMIT

PERMITTEE:

U.S. Army Corps of Engineers
c/o Mr. Richard Bonner
Deputy District Engineer - Project Management
Jacksonville District
701 San Marco Boulevard
Jacksonville, Florida 32207-8175

Permit No.: EI 0238833-002

Date of Issue: June 16, 2005

Expiration Date: June 16, 2010

County: Highlands and Okeechobee

Project: Kissimmee River Restoration,

Reach 4 Backfill

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 continue backfilling portions of the C-38 Canal as part of environmental restoration of the Kissimmee River ecosystem. This project includes construction works associated with back-filling 10,000 feet of the C-38 canal at the lower portion of Pool B (Reach 4). This includes the filling of approximately 64 acres of the canal to create a shallow marsh in its place, construction of project access and canal crossings, the excavation of a new river channel through an existing spoil mound to establish a connection to the historic river upstream of the backfill, and the removal of three existing navigable sheet pile weirs within Reach 4 of the C-38 Canal. The C-38 Canal, Kissimmee River and its floodplain wetlands are designated Class III water bodies pursuant to Rules 62-302.400 and 62-302.600, F.A.C. This project will result in approximately 90 acres of direct temporary construction impacts to wetlands and other surface waters. The impacted areas and portions of the spoil mounds will be restored to natural grade resulting in a total of approximately 155 acres of floodplain wetland creation. Additional benefits will be realized in the adjacent flood-plain marsh where the 28,800-acre Kissimmee River Restoration Project will result in restoration of a total of 7,875 acres of historic wetland habitat within the Pool B reach of this project.

The excavation of a new river channel is required to reestablish the historic river connection, which will allow for diversion of flows upstream of the backfill. This will be accomplished by dredging a small segment of the river channel at the southern end of the west spoil mound, which will reconnect an oxbow from the original construction of C-38. In addition,

the removal of a culvert structure and levee across the historic river on the south side of Avon Park Bombing Range is also required.

The backfilling of the C-38 will be accomplished by using fill material from the spoil mounds located along the east side of the Canal, and using additional material in a spoil mound located west side of C-38, upstream of the backfill. As part of dredging material at the spoil areas, the mounds will be scraped down to natural wetland grade, which includes filling of the original dredge dewatering ditches that surrounds the spoil mounds.

The 10,000 feet of backfilling will begin from the northern end of the Phase 1 (station 1880+00) to approximately 2,000 feet north of Weir 1 (station 1980+00). Weir 1, and two additional navigable sheet pile weirs east of Avon Park Bombing Range, will be removed. These weirs are located on C-38 at stations 1960+00, 2094+00, and 2164+00, weir 1, 2, and 3 respectively.

The project will re-establish flow to the historic oxbows of the River by constructing a 4,000 foot gap in the northern end of the spoil mound located on Avon Park Bombing Range from station 2095+00 to 2135+00. This gap is needed to maintain existing levels of flood protection within the Kissimmee River Basin. To haul material across C-38 from the western spoil mound to the eastern side, an earthen crossing will be constructed at the north end of the backfilling area with eight twelve-foot diameter culverts or similar hydraulic area. In addition, contract 13A will include the removal of the remaining 250 feet of levee along the southern boundary of Avon Park Bombing Range and associated culvert structures (four 72-inch stop log risers and catwalk).

ACTIVITY LOCATION:

The project is located in Pool B of the Lower Kissimmee basin along the C-38 canal, within Class III waters, Townships 33 and 34 South, Ranges 31 and 32 East, in Highlands and Okeechobee Counties. A portion of the work (west of the C-38) will be performed from the spoil area east of the Avon Park Bombing Range. The remainder of the work will be to the east and south of the Avon Park Bombing Range. The main access to the site will be from Micco Bluff Road (east side of C-38). Secondary access will be provided through Avon Park Bombing Range but will not be available once the gap is finalized in the northern part of the Avon Park Bombing Range spoil mound.

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 requires a SSL for the use of those lands, pursuant to Chapter 253.77, F.S. Sovereign Submerged Land Lease No. 4099 issued to the South Florida Water Management District for restoration of the Kissimmee River Project 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 14 General Conditions and 9 Specific Conditions what are a binding part of this permit. You are advised to read and understand the 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 the permit application and supporting documentation. To the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t), the Corps' compliance with the assurances set forth in the permit application and supporting documentation agreement to construct the project in accordance with the provisions of the permit application 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 significant deviation from this authorization prior to implementation so that the Department can determine whether a

modification is required. If the Department determines that a deviation is significant, then the Corps or the local sponsor, as appropriate, shall apply for and obtain the modification prior to its implementation.

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 description of and cause of noncompliance; and the period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and 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 law to the extent that federal sovereign immunity has been waived under 33 U.S.C. 1323 and 1344(t).
3. The Corps shall obtain any applicable licenses or permits, 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. Projects shall not proceed until any other required permits or authorizations have been issued by the responsible agency.
4. Nothing herein conveys title to land or water, constitutes State recognition or acknowledgment of title, or constitutes authority for the use of sovereign land of Florida seaward of the mean high-water line, or, if established, the 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 conveys to the Corps or creates in the Corps any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the Corps or local sponsor, or convey 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 on 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 are discovered at any time on the project site, the Corps shall immediately notify the State Historic Preservation Officer; and if a significant deviation is necessary, shall also notify the Department.
11. Within a reasonable time after completion of project construction or a periodic maintenance dredging event, 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.
12. All of the conditions in this permit, both general and specific, are enforceable to the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t).
13. To the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t), the Corps agrees to comply with all applicable Florida law, including but not limited to Department rules.
14. The Corps agrees to retain and make available all records, notes, monitoring data, and other information relating to the construction or operation of this permitted source in accordance with the Freedom of Information Act, 5 U.S.C. § 552 et seq.

SPECIFIC CONDITIONS:

1. **Authorized Construction:** This permit authorizes construction of the Kissimmee River Restoration Project Contract 13A, Reach 4 Backfill in accordance with the Plans and Specifications submitted to the Department on April 26, 2005 and May 2, 2005. The project shall be implemented in accordance with the attached Master Development Plan (Revised on May 13 2005, by COE).
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, Florida Fish and Wildlife Service Commission and the U.S. Fish and Wildlife Service. 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.
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 in accordance with Sections 01355 of the Technical Specifications for this project. Turbidity barriers/curtains or other appropriate measures shall be installed and anchored to the bottom in the C-38 Canal just north (downstream) of the working phase of the backfill. Additional curtains are required downstream of each weir during the removal work, and at the bypass channel to meet state water quality standards during construction.
5. **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. Compliance Sample(s): In the Kissimmee River and/or C-38, at a point no greater 150 meters down current from the excavation /dredge or point of discharge and in the direction of any visible plume.
 2. Background Sample(s): One background sample station, at the Weir 3 location or at least 200 meters up current from the excavation/dredge or point of discharge and outside of any turbidity generated by the project.
- 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. The reports shall also contain the following information:

1. Permit application number;
2. Dates and time of sampling and analysis;
3. A statement describing the methods used in collection, handling, storage and quality control methods used in the analysis of the samples;
4. A map indicating the sampling locations and plume configuration, if any;
5. A statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data;
6. Results of the analyses;
7. A description of any factors influencing the construction operation or the sampling program. Reports shall be furnished daily even when no sampling is conducted. When sampling is not conducted, a brief statement shall be given in the report explaining the reason for not conducting the sampling.
8. State plane coordinates (x and y) shall be provided for all sampling stations.

C. Monitoring reports shall also include the following information for each sample that is taken:

1. Depth of water body
2. Depth of sample
3. Antecedent weather conditions
4. Water temperature, C degrees (heavy metal and ammonia analysis only).
5. Water sample location
6. Wind direction and velocity
7. 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.

6. **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.
7. **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.
8. **Environmental Protection Plan.** Protection of Environmental Resources shall be in accordance with Section 01355 of the Contract 13 A Specifications. A copy of the contractor's Environmental Protection Plan shall be provided to the Department offices at the addresses listed in Specific Condition No. 2. The construction of the canal crossings of C-38 shall be placed so as to minimize impacts to the surrounding wetlands. Work Area Limits shall be in accordance with part 3.1.2.1 of Section 01355. 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.
9. **Gopher Tortoise Survey.** A gopher tortoise survey shall be implemented by the Contractor approximately 2-3 weeks prior to commencement of the construction. The surveys shall be conducted by a qualified gopher tortoise biologist in accordance with project specification section 01355. The survey shall be completed prior to any other construction activities. The Contractor shall keep construction activities under surveillance, management, and control to prevent impacts to gopher tortoises and their burrows. All construction personnel shall be advised that gopher tortoises are listed by the State of Florida as a Species of Special Concern and protected by the FAC, Chapter 39-27.002(4). The Contractor may be held responsible for taking, harming, or harassing the tortoises, their eggs or their burrows as a

result of the construction. The destruction of gopher tortoise burrows constitutes taking under this law except as authorized by specific permit.

- 10. Protection of Fish and Wildlife.** Protection of listed species shall be in accordance with part 3.1.5 of Section 01355 of the Project Specification. The construction sites contain nesting caracaras. Therefore, appropriate precautions must be followed to ensure construction activities do not impact this species. For the known nest tree location, construction activities must not occur until a separate permit has been issued by the U.S. Fish and Wildlife Service allowing for impacts to this nest. Otherwise, the construction must take place after the breeding season, which begins in November and continues through April.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



6/16/05

Ernie Barnett, Director

Date

Office of Ecosystem Projects

EB/KS/ih/rb

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CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit, including all copies, was mailed before the close of business on 6/16/05, to the above listed persons.



Senior Clerk

Master Development Plan (Revised on May 13 2005, by COE)

The following phases describe a general outline of the required construction procedures subject to the contractor's means and methods. Many of these modifications can be constructed concurrently depending on the contractor's manpower and equipment availability.

To perform the work the contractor will need to access the site from both sides of the basin. From the west will be through Avon Park Bombing Range and the east will require using Micco Bluff Road in conjunction with farms roads to get to the edge of the floodplain. Farm roads will need to be improved and maintained to support heavy equipment. The same will need to be done for access though Avon Park Bombing Range. The proposed sequence of construction would be:

- 1) **Contact the COE and Florida DEP to discuss any environmental concerns about the project.**
- 2) **Improve access to the site for the ability to move in heavy equipment efficiently.**
- 3) **Construct access road from the southern spoil mound along the east side of C-38 canal to the area of the crossing, avoiding damage to the wetland preserve area, and protecting some of the mature vegetation found in the area.**
- 4) **Construct canal crossing of C-38 placing culverts in the crossing. These culverts will maintain flow down C-38 and allow the contractor to access spoil material from the spoil mound along the west side of C-38. Material from the eastern or western spoil mound can be used depending on how the contractor chooses to access the site.**
- 5) **Reestablish the historic river connection through the southern end of the spoil mound on the west side of C-38. This entails removing a culvert structure and tieback levee as well as recarving the river channel through the spoil mound. A river crossing will have to be constructed across this new channel for access to the rest of the spoil mound. This crossing will have culverts designed to pass the approximate full discharge within this area.**
- 6) **Removal of all three navigable weirs within Pool B.**
- 7) **Removal of approximately 4,000 feet of the western spoil mound along Avon Park. The removal of this material will allow flood flows access to the western flood plain and allow for the current level of flood protection within the area to be maintained. This material will be stockpiled both north and south of this opening. The material will be used in a future contract for Reach 4B to construct the access road as well as provide backfill material for C-38. This work can be performed in conjunction with the backfill of C-38 but should be completed before the backfilling is within 5,000 feet of the southern end of the western spoil mound.**
- 8) **Backfilling of C-38 should proceed from south (station 1880+00) to north (1980+00). The contractor access to the site from the east side of the basin will be at approximately station 1979+00. The contractor will need to balance his cut and fill quantities in such a manner that allows him to work his way out of his eastern access point. In doing this no excess material should be left within the floodplain and that a large portion of the southern end of the western spoil mound will be left open to allow flood flows to escape from C-38.**

Note: The Contractor shall have in his/her staff a Biologist or Environmental Specialist, to protect sensitive mature vegetation and wildlife. Warning: Wetlands are sensitive environments protected by State and Federal Law. Any intentional damage to wetlands may result in fines and/or imprisonment. When working in on or over wetlands and other surface waters, the contractor shall stay only within the footprint of the project.