



# Florida Department of Environmental Protection

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

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Jonathan P. Steverson  
Secretary

## ENVIRONMENTAL RESOURCE PERMIT

**PERMITTEE:**

**U.S. Army Corps of Engineers, Jacksonville District**  
701 San Marco Blvd.  
Jacksonville, FL 32207-0019

**ATTENTION:**

**Mr. Eric Summa**  
Chief, Planning Environmental Branch

**Permit Number:** 0336292-001

**Project:** Kissimmee River Restoration

**Phase:** Reach 2 Backfill, Contract 10

**County:** Okeechobee and Highlands

**Date of Issue:** 12/08/2015

**Construction Phase Expiration Date:** 12/08/2020

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### PROJECT LOCATION

The activities authorized by this permit are located within, along, and adjacent to the C-38 Canal and in Pools C and D of the Kissimmee River Basin. The project area is northwest of the U.S. Highway 98 Bridge crossing of the C-38 Canal and can be accessed from the south by U.S. Highway 98 via Locks Access Road and from the north by County Road 68 to Chandler Ranch Road. The project area is located in Class III Waters and within Sections 1, 16, 26, 27, and 36, Township 35 South, Range 32 East; Sections 31 and 32, Township 35 South, Range 33 East; Section 1, Township 36 South, Range 32 East; and Sections 5-7, Township 36 South, Range 33 East in Okeechobee and Highlands Counties.

### PROJECT DESCRIPTION

The U. S. Army Corps of Engineers (Permittee/Corps) is authorized to backfill approximately 34,000 linear feet of the C-38 Canal within Reach 2. The backfilling will start approximately 1,900 linear feet north of the U.S. Highway 98 Bridge crossing and continue north approximately 34,400 linear feet and stopping just short of the terminus of the Reach 1 backfill (see Figure 1). A plug will be installed at the southern end of the backfilling location. The material used for the backfill of the C-38 Canal will be taken from the existing dredged material on the adjacent banks of the canal. The S-65C spillway, lock tender's residence, and lock structures will be demolished during the backfilling of the C-38 Canal. The S-65C tieback levees will be degraded and the S-65CX structure on the Kissimmee River will be removed. The project will permanently and temporarily impact approximately 2,917 acres of wetlands and other surface waters and restore over 7,405 acres of Kissimmee River floodplain in Pools C and D.

The Kissimmee River Restoration (KRR) Project is a congressionally authorized undertaking sponsored by the Corps and the South Florida Water Management District (District), the local sponsor. The project encompasses restoring over 40 square miles of the Kissimmee River floodplain ecosystem, including 43 miles of meandering river channel and 27,000 acres of wetlands. The widespread benefits achieved by the change in drainage pattern to be accomplished by the project include rehydration of the floodplain, increased nutrient uptake within the floodplain, and revitalization of the oxbow system.

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## **AUTHORIZATIONS**

### **Kissimmee River Restoration Project, Reach 2 Backfill, Contract 10 Phase**

#### Environmental Resource Permit

The Florida Department of Environmental Protection (Department/FDEP) has determined that the activity qualifies for an Environmental Resource Permit. Therefore, the Environmental Resource Permit is hereby granted, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.), and Chapter 62-330, Florida Administrative Code (F.A.C.).

#### Sovereignty Submerged Lands Authorization

This activity is located on sovereign submerged lands owned by the State of Florida. It therefore also requires authorization from the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) pursuant to Article X, Section 11 of the Florida Constitution, and Section 253.77 F.S.

As staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) under Sections 253.002, F.S., the Department has determined that the activity qualifies for and requires a Letter of Consent, as long as the work performed is located within the boundaries as described and is consistent with the terms and conditions herein.

The proposed project activities are located within the described boundaries of Board of Trustees Easement No. 29173 and Lease No. 4099. A letter of consent requiring that work performed pursuant to this permit be located within the boundaries described herein and with all necessary conditions, has been issued to the South Florida Water Management District as the local sponsor for the Reach 2 Backfill Phase of the Kissimmee River Restoration Project.

#### Coastal Zone Management

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

#### Water Quality Certification

This permit also constitutes a water quality certification under Section 401 of the Clean Water Act, 33 United States Code of Federal Regulations (U.S.C.) 1341.

#### Other Authorizations

You are advised that authorizations or permits for this activity may be required by other federal, state, regional, or local entities including but not limited to local governments or municipalities. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

The activity described may be conducted only in accordance with the terms, conditions and attachments contained in this document. Issuance and granting of the permit and authorizations herein do not infer, nor guarantee, nor imply that future permits, authorizations, or modifications will be granted by the Department.

## **REASONABLE ASSURANCES**

In issuing this permit, the Department finds that the Permittee has provided reasonable assurances based on the following documents listed by Department document number:

1. U.S. Army Corps of Engineers, Kissimmee River Restoration Project Reach 2 Backfill Phase Environmental Resource Permit Application and associated materials, FDEP File No. 0336292-001 (July 7, 2015)
2. United States Department of the Interior, Fish and Wildlife Service, Biological Opinion (August 31, 2007)
3. United States Department of the Interior, Fish and Wildlife Service, Amended Biological Opinion (August 2, 2012)
4. United States Army Corps of Engineers, Jacksonville District, Engineer Regulation 405-1-12, Chapter 12 – Real Estate Roles and Responsibilities for Civil Works: Cost Shared and Full Federal Projects – May 1998 (April 4, 2013)

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5. U.S. Army Corps of Engineers, Kissimmee River Restoration Project Plans for Construction of C-38 Reach 2 Backfill (submitted July 7, 2015)
6. U.S. Army Corps of Engineers, Kissimmee River Restoration Project Reach 2 Backfill Phase Response to Informal Request for Additional Information-1, FDEP File No. 0336292-001 (July 29, 2015)
7. U.S. Army Corps of Engineers, Wetland Assessment Report and Uniform Mitigation Assessment Method (August 5, 2015)

The Permittee agrees to construct the project in accordance with the provisions of this permit, permit application, and the approved documentation on file with the Department.

#### **PERMIT CONDITIONS**

The activities described herein must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The limits, conditions, and locations of work shown in the drawings on file with the Department**
- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to beginning the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings herein. If you are using a contractor, the contractor also should read and understand these conditions and drawings prior to beginning any activity. Failure to comply with these conditions, including any mitigation requirements, shall be grounds for the Department to revoke the permit and authorization and to take appropriate enforcement action.

#### **SPECIFIC CONDITIONS - PRIOR TO ANY CONSTRUCTION**

1. **Addresses.** Reports, plans and notices submitted to the Department in accordance with this permit, unless otherwise specified, shall be submitted to the Department's Office of Ecosystem Projects (OEP), 3900 Commonwealth Boulevard, MS 24, Tallahassee, Florida, 32399-3000, telephone number (850) 245-2228. Electronic copies of reports and notices required by this permit shall also be sent to [RPPS\\_Comp@dep.state.fl.us](mailto:RPPS_Comp@dep.state.fl.us).
2. **Instructions to Construction Personnel and/or Contractors.** The Permittee shall ensure that training be provided regarding the identification and avoidance of harming, harassing, or killing State and Federal listed species and that the conditions contained within this permit, are explained to the contractor/sub-contractor working on the project. A copy of this permit shall be provided to each contractor and subcontractor before the authorized work begins. Prior to execution of each contract and subsequent construction activities, the Permittee shall schedule a pre-construction meeting for attendance by the contractor(s), and representatives from the Corps, the Department, the District, and other environmental regulatory agencies. The Department shall receive at least two weeks' notice of the meeting. Within 30 days from the Notice-to-Proceed to the contractor or upon Permittee's approval of a proposed construction schedule, whichever occurs first, the Permittee shall provide the proposed construction schedule to the Department at the addresses specified in Specific Condition No. 1. Any modified schedules shall be provided to the Department.
3. **Construction and Maintenance Best Management Practices (BMP).** The Permittee shall submit a BMP Plan to the Department for review and approval to the addresses specified in Specific Condition No. 1 at least 30 days prior to the pre-construction meeting referenced in the Specific Condition No. 2 and prior to construction of each feature or phase and including implementation of each contract. Acceptable BMP Plan formats may include Erosion Control Plans, Storm Water Pollution Prevention Plans (SWPPP), or an Environmental Protection Plan. Modifications to the BMP Plan may necessitate further review and approval by the Department. The BMP Plan shall describe the methods used to protect environmental resources, including State and Federal listed species, cultural resources, wetlands, and water quality as a direct result of construction activities. Upon installation of the erosion controls identified in this/these plan(s), the Permittee shall contact the Department to determine whether inspections of the installed controls are necessary. At a minimum, the plan shall include strategies and procedures to be implemented and maintained at all times during construction and maintenance activities to:

- A. prevent negative impact(s) to State and Federal listed species and the habitats and habitat characteristics that support them;
  - B. prevent negative impact(s) to prehistoric or historic artifacts, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement;
  - C. minimize or eliminate project generated turbidity, including details regarding the use of sediment controls to minimize the suspension and transport of soils, levee materials, and roadway materials into waters adjacent to or downstream of the construction site;
  - D. prevent negative impacts to adjacent wetlands, including but not limited to, the installation of best management practices and other equipment for the demarcation of adjacent and onsite wetlands;
  - E. prevent the transport of any material into wetlands and surface waters outside of the authorized construction footprint both during and after completion of the construction; and
  - F. limit the extent of clearing and grubbing such that impacts to native vegetation, either within or immediately adjacent to the project area shall be minimized or avoided.
4. **Real Estate.** Prior to contract award, documentation shall be submitted by the Permittee confirming that the Corps, Jacksonville District, is in compliance with Engineer Regulation 405-1-12, Chapter 12 – Real Estate Roles and Responsibilities for Civil Works: Cost Shared and Full Federal Projects – May 1998 (April 4, 2013), which confirms that all real estate interests necessary for the construction of the project have been provided by the District to the Corps. Construction activities shall not be permitted to commence on properties where real estate authorizations have not been obtained. The Corps shall send to the Department the BCOE certification or alternatively the right-of-way(s), leases, easements, land certifications by the local sponsor or other legal agreements that authorize the Permittee to perform the activities described herein at least seven (7) days prior to award of the solicitation for construction or operational activities.
  5. **Project Benefit Analysis:** A Uniform Mitigation Assessment Method (UMAM) was conducted on May 5, 2015 to assess the impact that the project construction will likely have on wetlands and evaluate the benefits of the project once construction is complete. According to the Kissimmee River Project, Contract 10 Wetland Assessment Report, submitted August 5, 2015 and the project benefits analysis, the future habitat and ecological functions of this project will be greater than the impacts to existing habitats and ecological wetland/surface water caused by the construction of the project. Therefore, mitigation for this project shall not be required.
  6. **Adjacent and Interior Wetlands.** 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 Permittee shall notify the Department's environmental compliance staff in writing upon completion of installation the barriers and schedule an inspection of this work. The barriers shall remain in place until all adjacent construction activities are complete. Where appropriate, interior wetland areas may also be fenced off to prevent encroachment and disturbance during construction.
  7. **Water Quantity and Flooding Impacts.** The Permittee shall be responsible for ensuring that each of the project features are constructed, maintained, and operated so as to not adversely affect adjacent lands with regards to water quantity and/or flooding.
  8. **NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities and Generic Permit for Discharge of Ground Water from Dewatering Operations.** The issuance of this Permit does not constitute coverage under the National Pollutant Discharge Elimination System (NPDES) Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) pursuant to Rule 62-

621.300(4)(a), F.A.C., or from the discharge of groundwater resulting from construction-related dewatering activities pursuant to Rule 62-621.300(2)(a), F.A.C., incorporated by reference in the CGP. If the project activities require either of these generic permits, the Permittee must adhere to all conditions within such permits.

9. **Water Use Permits.** For activities that require a water use permit from the State, such as, but not limited to, construction dewatering, industrial use of surface or ground water, and public water supply wells, the Corps will require that their contractor(s) submit the required application, fees and applicable site-specific information to the District for authorization in accordance with the requirements of Chapter 40E-2, F.A.C., and as follows:
  - A. **Water Supply Wells.** For activities that require temporary use of a water supply well during construction (e.g. construction trailers), the Corps will require that their contractor(s) obtain all required permits. If the water supply well will serve permanent facilities (e.g., pump station), the Corps will direct the contractor to also submit site-specific information to FDEP OEP. Prior to transfer of the facility to the local sponsor for permanent operations, it is the local sponsor's responsibility to furnish to FDEP OEP a permit request and copies of the well permit for review and authorization by the Department under a separate action.
  - B. **Industrial Use of Surface or Ground Water.** For activities that require industrial use of surface or ground water within or adjacent to the project (e.g. soil-cement mixtures or equipment wash down), the Corps will require that their contractor(s) obtain all required permits. For larger or more complex facilities, the Corps will require the contractor, upon submission to District, a copy of the application and site-specific information is also provided to FDEP OEP.
  - C. **Construction Dewatering.** For activities that require removal of surface or ground water as part of construction, the Corps will require that their contractor(s) will obtain all required permits. If the contractor intends to commence dewatering activities under the conditions of the "No Notice" until a permit is issued, the contractor shall submit a notification to District and FDEP OEP accordingly. The Corps will require the contractor, upon submission to District, to also provide a copy of the application and site-specific information to FDEP OEP. In accordance with General Condition No. 2, the Corps shall also ensure that all proposed modifications to permitted activities proposed by their contractor(s) are submitted to District and FDEP OEP through the same process. All dewatering authorizations or modifications to existing authorizations that may be issued by the District for projects also permitted by FDEP OEP are subject to review for determination of consistency with Department rules and statutes prior to the issuance of authorization from the District.

#### **SPECIFIC CONDITIONS – CONSTRUCTION ACTIVITIES**

10. **Authorized Construction.** This permit authorizes construction of the Reach 2 Backfill, Contract 10 Phase of the KRR Project. The Permittee shall construct the project in accordance with the plans and documentation submitted by the Permittee as part of the permit application and any subsequent submittals that have been approved and are on file with the Department. Any substantial modifications to the construction plans, such as, but not limited to hydrologic modifications, or the addition/removal/modification of water control structures or changes to their location must be submitted for review and approval by the Department prior to construction and operation of such modifications. Substantial modifications shall be determined on a case-by-case basis by the Department in consultation with the Permittee.

The Permittee shall submit final plans and technical specifications, signed and sealed, to the Department for all components of the project for consistency review at least 60 days prior to initiating construction activities. Upon review of the submitted plans and specifications, the Department will determine whether a permit modification is required.

11. **Contaminated Sites and Residual Agrichemicals.** The Permittee shall coordinate with the local sponsor, the District, and the Department concerning assessment and remediation of any HTRW (hazardous, toxic, radioactive, waste) contamination. The Permittee shall coordinate with the District and Department to address HTRW contamination within the project footprint so that 1) any detrimental impacts to Threatened or Endangered species

are minimized to the maximum extent practicable and 2) state water quality standards are not violated by construction of the project and the operations covered by this permit. Any information on identification and delineation of the extent of the contamination shall be promptly provided to the Department. The Permittee shall coordinate with the District and provide any District proposed remedial action plan to redress the contamination to the Department no later than 90 days prior to the initial operation or use of the completed project, unless the Department approves an alternative schedule, whichever is earlier. All assessment and remedial activities shall be performed in accordance with applicable Federal and State law.

12. **Stockpiles/Soil Disposal Areas.** Vegetative and demolition debris, as well as unwanted excavated material shall be properly disposed.
13. **Construction Debris.** Prior to backfilling the C-38 Canal in the vicinity of the S-65C and S-65CX structures, the Permittee shall remove all construction debris resulting from the demolition of these water control S-65C and S-65CX structures, to a depth of at least 3 ft below the final grade, that does not meet the definition of "clean debris" specified in Rule 62-701.200(15), F.A.C.
14. **Surface Waters.** All construction work is located in Class III Waters of the State and shall be conducted in a manner to comply with State Water Quality Standards.
15. **Haul Roads and Project Access.** The Permittee intends to utilize existing roads, the C-38 Canal, and/or the historic Kissimmee River Channel for transporting equipment and materials. This permit does not authorize the construction of temporary or permanent access roads outside the project footprint.
16. **Site Stabilization.** The Permittee shall initiate stabilization measures within 7 calendar days after construction activities have temporarily or permanently ceased to prevent erosion for any portion of the site. All screens, silt fences, sheet pile, and other turbidity control devices and preventive operation procedures shall remain in place for the duration of each construction activity in an active work zone and maintained until all turbidity has subsided, the project site has been stabilized, and the turbidity level at the point of discharge from the construction or maintenance work zone to receiving waters meets state standards. Once these conditions are met, turbidity and erosion control devices shall be removed within a timely manner.
17. **Site Inspections.** Throughout the construction phase of the Project, the Department will conduct periodic site inspections to ensure permit compliance and to monitor progress. The Department will coordinate with the Construction Manager or other Permittee representative prior to performing any on-site inspections. Representatives of the Department may be accompanied by a third-party inspector and/or consultant at any time. Upon, or prior to, receipt of the written statement of completion and certification, the Department may conduct substantial and final inspections of the Project. It is anticipated that this activity may be completed in conjunction with other regulatory agencies and may be accomplished in stages as the project progresses.

#### **SPECIFIC MANATEE CONDITIONS:**

18. **Manatee Protection During Construction.** The Permittee shall comply with the following conditions intended to protect manatees from direct project effects:
  - A. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The Permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
  - B. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

- C. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- D. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- E. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922, and to FWC at [ImperiledSpecies@myFWC.com](mailto:ImperiledSpecies@myFWC.com). Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida.
- F. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the Permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shutdown of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at [MyFWC.com/manatee](http://MyFWC.com/manatee). Questions concerning these signs can be sent to the email address listed above.

#### **SPECIFIC CONDITIONS FOR OTHER LISTED SPECIES**

19. **Threatened and Endangered Species.** The Permittee shall coordinate with both the Florida Fish and Wildlife Conservation Commission (FWC) and the U.S. Fish and Wildlife Service (USFWS) for appropriate guidance, recommendations and/or necessary authorizations to avoid, minimize, or mitigate impacts to State and Federal listed species. The Permittee shall comply with applicable federal and state law with regard to State and Federal listed species and agree to consider input from and to comply with any applicable requirements of the USFWS/FWC to the extent that to do so would not create an irreconcilable conflict with the Permittee's federal responsibilities. Should a potential conflict between FWC's requirements and the Permittee's federal responsibilities be identified, the Permittee shall coordinate with all involved federal and state agencies to determine and implement reasonable alternatives, to the maximum extent practicable, in order to avoid such a conflict. The Permittee shall comply with the "Terms and Conditions" and, as appropriate, adhere to the "Conservation Recommendations" contained within the Biological Opinion (BO) dated August 31, 2007 and the amended BO dated August 2, 2012, and any subsequent consultation so as to avoid and mitigate any impacts to the species identified within.

#### **SPECIFIC CONDITIONS – CONSTRUCTION COMPLETION**

20. **Construction Completion, As-Built Certification and Record Drawings.** In accordance with General Condition No. 45 and the February 2006 Interagency Cooperative Agreement for Civil Works Projects (ICA), the Permittee shall submit a written statement of construction completion signed by a Professional Engineer, and as-built drawings or equivalent construction documentation to the Department to the addresses specified in Specific Condition No. 1. The statement of completion and certification shall be based on on-site observation of construction and review of the as-built construction drawings for the purpose of determining whether or not the work was completed in compliance with permitted plans and specifications. If there is deviation from the permitted plans, the construction completion statement shall note these deviations and may require inclusion of revised plan sheets and specifications identifying the changes. Note that major deviations may require a modification to this permit. Plans submitted to the Department shall be clearly labeled as "as-built" or "record"

drawings with one electronic copy provided in PDF format and one hard copy. The Permittee shall furnish the construction statement and record drawing information to the Department within a reasonable timeframe from substantial completion of construction.

## **SPECIFIC CONDITIONS – MONITORING/REPORTING REQUIREMENTS**

21. **Water Quality Standards.** Under no circumstances shall the construction of the KRR Project or project component cause or contribute to violation of state water quality standards. The Permittee shall comply with all applicable state water quality standards described in Chapter 62-302, F.A.C.
22. **Data Quality.** All monitoring data required during the construction and operations of this permit shall be conducted in accordance with the following:
  - A. **Quality Assurance and Quality Control.** Sampling and monitoring data shall be collected, analyzed, reported and retained in accordance with Chapter 62-160, F.A.C. Any laboratory test required by this permit shall be performed by a laboratory that has been certified by the Florida Department of Health (DOH) under Chapter 64E-1, F.A.C., where such certification is required by Rule 62-160.300, F.A.C. The laboratory must be certified for all specific method/analyte combinations that are used to comply with this permit. The analytical method used shall be appropriate so as to determine if the sample complies with Class I and Class III surface water quality standards as specified in Chapter 62-302, F.A.C., and groundwater standards as specified in Chapter 62-520, F.A.C., whichever is more stringent. All field activities including on-site tests and sample collection, whether performed by a laboratory or another organization, must follow all applicable procedures described in the most current version of DEP-SOP-001/01. Alternate field procedures and laboratory methods may be used if they have been approved according to the requirements of Rules 62-160.220, and 62-160.330, F.A.C.
  - B. **Method Detection Limits (MDLs).** The sample collection, analytical test methods and MDLs applicable to this permit shall be performed and reported in accordance with Rule 62-4.246, F.A.C. A list of Department established analytical methods, and corresponding MDLs and practical quantification limits (PQLs), which is titled “Florida Department of Environmental Protection Table as Required by Rule 62-4.246(4) Testing Methods for Discharges to Surface Water” dated April 25, 2006, is available from the Department on request. The MDLs and PQLs as described in this list shall constitute the minimum acceptable MDL/PQL values and the Department shall not accept results for which the laboratory’s MDLs or PQLs are greater than those described above unless alternate MDLs and/or PQLs have been specifically approved by the Department for this permit. More stringent MDLs and PQLs may be necessary for specific parameters. If required, these will be identified in the permit monitoring plan.
23. **Mixing Zone.** A 150 meter temporary mixing zone for turbidity in the C-38 Canal and Kissimmee River (Class III waters) downstream of the Reach 2 Backfill, Contract 10 Phase construction work area is hereby temporarily authorized for a period not to exceed two weeks after all construction activities which may result in turbidity are completed, in accordance with Rule 62-4.244, F.A.C. A maximum of 29 nephelometric turbidity units (NTU) above background for turbidity in the C-38 Canal and Kissimmee River shall be achieved at the temporary 150 meter mixing zone boundary/boundaries in surface waters downstream of the construction work area. Failure to achieve the Class III requirements for turbidity at the 150 meter mixing zone boundary/boundaries shall result in suspension of construction within the affected work area until measures are taken to prevent future reoccurrence and turbidity levels have returned to Class III requirements. Compliance with the authorized mixing zone shall be reported in the quarterly reports required by Specific Condition No. 24.
24. **Turbidity Monitoring During Construction and Maintenance.** Effective means of turbidity control shall be employed during all construction or maintenance activities that could result in project-generated turbidity in receiving water bodies. Turbidity control measures shall be in accordance with best management practices contained in the approved BMP Plan referenced in Specific Condition No. 3. Additionally, a project specific Turbidity Control Plan for turbidity monitoring shall be submitted to the Department for review and approval at



the addresses specified in Specific Condition No. 1 at least 30 days prior to the initiation of any construction activity and at least 14 days prior to the implementation of any subsequent plan revisions. All turbidity control devices and/or preventive operation procedures shall remain in place until the turbidity level at the compliance sampling site meets state standards or as otherwise approved by the Department.

#### **Turbidity Standard**

- A. Turbidity shall not exceed 29 Nephelometric Turbidity Units (NTUs) above background in Class III receiving waters.

#### **Sampling Protocols**

- B. Sampling and analyses shall be performed as required by Chapter 62-160, F.A.C., and in accordance with appropriate FDEP Standard Operating Procedures (FDEP-SOP), located at <http://www.dep.state.fl.us/water/sas/sop/sops.htm>. Turbidity monitoring equipment and personnel trained to use it shall be available on site at all times during construction or maintenance activities that could result in project-generated turbidity levels beyond the work area that have the potential to be discharged to a receiving water body.
- C. During construction or maintenance activities, the Permittee shall monitor turbidity levels at least twice daily for the background and compliance samples, with samples taken a minimum of once every four hours, at the locations described within the project's approved Turbidity Control Plan.
- D. For monitoring purposes, work areas are defined by the turbidity curtains.
- E. If there are multiple work areas where construction is creating a visible turbidity plume, each construction activity shall be monitored separately.

#### **Turbidity Exceedance**

- F. If monitoring reveals project-generated turbidity exceeds the Turbidity Standard authorized in this permit, the Permittee shall take the following measures:
- i. Immediately cease all work contributing to the water quality violation;
  - ii. Immediately report turbidity violations to the Department;
    - a. The Department shall be notified by phone and at [RPPS\\_Comp@dep.state.fl.us](mailto:RPPS_Comp@dep.state.fl.us) within 24 hours; and
    - b. The Permittee shall submit a turbidity exceedance report to the Department at the addresses specified in Specific Condition No. 1. The report shall include a copy of the monitoring data sheets, which indicate violation(s) and a description of the corrective actions being taken or proposed to be taken. The report shall be made to the Department as soon as normal business hours resume if violation(s) are noted after normal business hours, on holidays, or on weekends.
  - iii. The possible cause of the violation shall be identified;
  - iv. Modify work procedures that may have contributed to the violation such as installing additional turbidity or erosion protection devices; repairing any non-functional turbidity containment devices, stabilizing exposed soils, and checking calibration of the meter; and
  - v. Work shall not resume until the activities can be conducted in compliance with the turbidity standards.

Failure to report violation(s) or to follow corrective procedures before resuming work may constitute grounds for formal enforcement action.

### **Monitoring Logs and Reports**

- G. Turbidity monitoring results shall be compiled daily and summarized quarterly (every three calendar months) by project component beginning with the first calendar month in which construction or maintenance activities occur that could generate turbidity in receiving waters and continuing until all construction, dredging, stabilization and/or excavation is completed. Monitoring data with supporting documents shall be submitted to the Department quarterly, to the addresses specified in Specific Condition No. 1. If no construction activities occur that could generate turbidity and the project site has been stabilized during the entire or a specific portion of the quarterly monitoring period, this shall be noted in the report and include information regarding continuation of monitoring.
- H. Daily monitoring logs shall clearly identify the following information:
- i. Project name and current permit number;
  - ii. Dates and times of sampling and analysis;
  - iii. Name of individual collecting samples;
  - iv. Unique identification of the specific instrument unit(s) used for sample collection and analysis as required by FDEP-SOP-001/01 FT 1600 Field Measurement of Turbidity;
  - v. Measurement value and reporting units;
  - vi. Water depth;
  - vii. Depth of sample;
  - viii. Weather conditions;
  - ix. Water level stage in the canal or water body and direction of flow;
  - x. Clear description of project component activities taking place at the time of sampling that may have contributed to turbidity; and
  - xi. Signature and statement of authenticity by a properly trained individual indicating that the instrument meets the outlined specifications and has been calibrated in accordance with FDEP-SOP-001/01 FT 1600 Field Measurement of Turbidity.
- I. Quarterly reports shall include the following information:
- i. Project name and current permit number;
  - ii. Dates and time of sampling and analysis;
  - iii. For each sample that is taken:
    - a. Water depth;
    - b. Depth of sample;
    - c. Weather conditions;
    - d. Water level stage and direction of flow; and
    - e. Name of individual collecting samples;
  - iv. Statement describing the methods used in collection, handling, storage and analysis of the samples;
  - v. Summary of construction activities that have taken place (e.g., construction progress meeting minutes, SWPPP Inspection Reports, or other relevant information may be submitted to fulfill this requirement);
  - vi. Statement regarding sampling results, the net difference between compliance and background results, and whether the turbidity levels are in compliance;
  - vii. Statement of compliance/non-compliance with the requirements of Specific Condition No. 23;
  - viii. Summary of any significant compliance issues and how they were resolved;
  - ix. Statement which explains any gaps in sampling activity (e.g., contractor not onsite, work shut down due to weather conditions);
  - x. Map indicating the sampling locations and construction activity taken place during the reporting period;
  - xi. Statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data; and
  - xii. If no construction or maintenance activity occurs that could contribute to turbidity generation in receiving waters and the project site(s) are stabilized such that a rain event will not generate turbidity in

receiving waters during the entire quarterly monitoring period(s), the Permittee shall submit a written statement to the [RPPS\\_Comp@dep.state.fl.us](mailto:RPPS_Comp@dep.state.fl.us) in lieu of a quarterly report.

25. **Addition of Parameters.** If the Department has reason to believe that additional parameters exist that may cause or contribute to water quality violations in the project area, those parameters shall be added to the monitoring section of this permit as a permit modification.
26. **Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R).** The Permittee shall maintain the backfilled area until the project is turned over to the Non-Federal Sponsor of the project as provided in the Project Cooperation Agreement. Routine inspections shall be performed by the Permittee to confirm the restored area's hydraulic connections are functional.
27. **Construction Status Reports.** Construction Status Reports, which summarize progress of all maintenance activities, project components, phases and/or contracts, or Construction Meeting Minutes for the project shall be available to the Department throughout the duration of construction activities until all disturbed areas are successfully stabilized. These reports may be requested through the Project Manager, Construction Manager, or obtained at the construction meetings.
28. **Annual Reports.** The Corps shall submit an annual report to the Department detailing the construction and maintenance activities of the project during the reporting period. These reports shall be submitted to the Department no later than March 1<sup>st</sup> of each year. The Corps may request a modification to the annual report submission date, and upon approval by the Department, the Corps may modify the submission date to coincide with other reporting requirements and time periods needed for data acquisition and analysis.

At a minimum, the following information should be included in the Annual Reports:

**A. General Information.**

- i. Permit number;
- ii. Permit/Project name;
- iii. Permit administrator;
- iv. List of key contacts with contact information; and
- v. Evaluation of project success in achieving its objectives.

**B. Construction/Maintenance Summary.** During construction, a construction summary shall include, at a minimum:

- i. Construction/Inspections/Maintenance Progress;
- ii. Construction schedule;
- iii. Problems encountered during period covered;
- iv. Actions taken to address problems encountered;
- vi. Summary of monitoring results for turbidity;
- v. Modifications or changes made to infrastructure of system; and
- vi. Any additional information specifically required by the conditions of this permit or separate authorization.

**C. Implementation Schedules.** When appropriate, the Permittee shall include information on:

- i. Project optimization;
- ii. Project adaptive management;
- iii. Project design modifications;
- iv. Implementation of remedial measures in the event of noncompliance with permit conditions; and
- v. Should construction or operations be impacted due to State and Federal listed species requirements, provide a summary including the species involved, an estimate of the number of individual animals and species involved, actions taken to avoid deleterious impacts on endangered species, the effect those

actions had on compliance with any condition of this permit, and an estimate of when facility operation will no longer be impacted or constrained.

#### **SPECIFIC CONDITIONS – FACTORS IMPACTING COMPLIANCE**

29. **Factors Outside the Permittee’s Control.** In the event that non-compliance or failure of the system to perform as designed occurs for any reason other than those listed below, the Permittee shall take appropriate remedial measures.
- A. **Natural Background.** Deviations from water quality standards may occur as a result of natural background conditions, in accordance with Section 403.021(11), F.S.
  - B. **Random Variation.** The Permittee shall report any statistical uncertainty in the methodology using acceptable scientific methods.
  - C. **Other Factors.** Unavoidable legal barriers or restraints, including those arising from actions or regulations not under the control of the Permittee.
30. **Temporary Suspension of Sampling.** Under hurricane, tropical storm warnings, or other extreme weather conditions, the Permittee’s normal sampling schedule may be suspended if necessary. The Permittee shall notify the Department at the addresses and telephone number specified in Specific Condition No. 1, of any suspension of sampling associated with hurricanes, tropical storms, or other extreme weather events that may require deviation from the normal sampling schedule. Within seven days following the cessation of emergency conditions, the Permittee shall notify the Department of when normal sampling is expected to resume.

#### **SPECIFIC CONDITIONS – RENEWALS AND MODIFICATIONS**

31. **Permit Modifications.** The Permittee shall submit proposed modifications of the project to the Department, prior to implementation of the modification, for review and approval by the Department. Such modifications may include, but not be limited to:
- A. **Modifications for Future Facilities.** If the monitoring data indicate the need for the construction/operation of future facilities or structures, prior to construction/operation the Permittee shall apply for modifications to the project, as appropriate to accommodate alterations in operations of the project in conjunction with the construction and operation of the new facilities or structures; and
  - B. **Future Phases.** This permit does not authorize any construction or operational activities associated with future portions of the project. Future phases shall require separate review and approval by the Department to determine whether a permit modification will be required.
32. **Permit Renewal.** At least 60 days prior to the expiration of this permit, the Permittee shall apply for renewal of this permit if construction activities are not likely to be completed by the permit expiration date.
33. **Department Review and Approval.** Where conditions in this permit require Department review and approval of remedial actions or plan modifications to be implemented pursuant to this permit, the Department shall consult with the Permittee to ascertain whether mutual agreement can be reached. If mutual agreement on the remedial actions or plan modifications cannot be reached, the action of the Department shall be deemed final agency action and shall be subject to judicial or administrative review, as appropriate.

#### **GENERAL CONDITIONS:**

34. This permit, including its general and specific conditions, shall be construed in light of the February 2006 Interagency Cooperative Agreement for Civil Works Projects (ICA) between the Department and the Corps. As

recognized in the ICA, the Department has the authority to include reasonable conditions in this permit. 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). The ICA is incorporated herein by reference.

35. 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; and
  - 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 affect compliance with permit conditions or monitoring requirements.

36. 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. the 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.

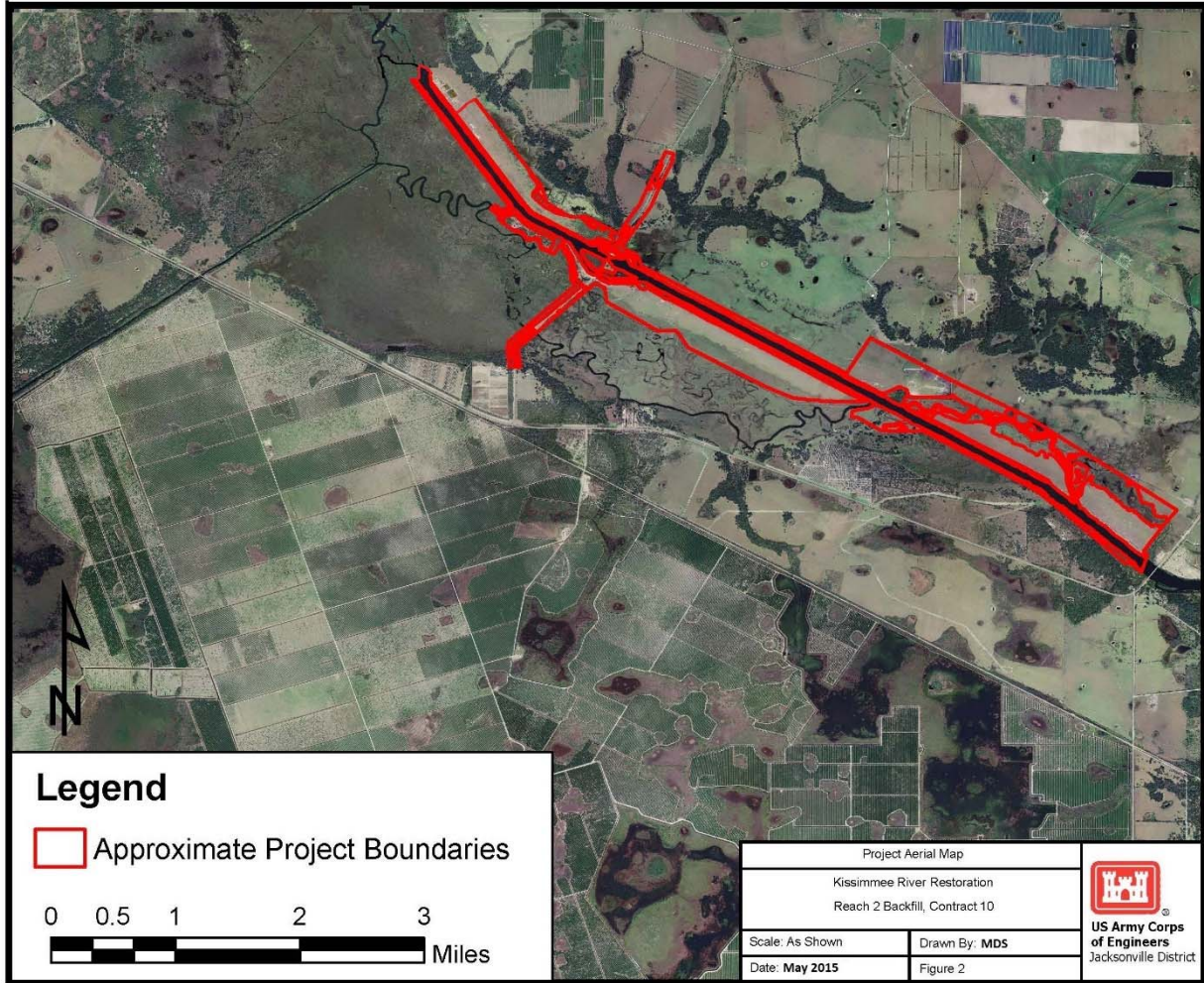
Compliance with the provisions of this condition shall not preclude the Department from taking any enforcement action allowed under state law with respect to any non-compliance.

37. 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.
38. 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.
39. 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.
40. 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.
41. 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.

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42. 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 shall 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.
43. 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.
44. If historic or archaeological artifacts such as, but not limited to, Indian canoes, arrowheads, pottery or physical remains, are discovered at any time on the project site, the Corps shall immediately stop all activities in the immediate area which disturbed the soil and notify the Department and the State Historic Preservation Officer. In the event that unmarked human remains are encountered during permitted activities, all work shall stop in the immediate area and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
45. 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 a copy, if requested, of any as-built drawings required of the contractor or survey performed by the Corps.

**Figure 1. Kissimmee River Restoration Project, Reach 2 Backfill Phase Boundary**



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Executed in Tallahassee, Florida.

**STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION**



Edward C. Smith, Director  
Office of Ecosystem Projects

ECS/jp/th

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

 12/8/15  
Clerk Date

**Electronic Copies Furnished To:**

Eric Summa, USACE  
Gina Ralph, USACE  
Gretchen Ehlinger, USACE  
Andy LoSchiavo, USACE  
Mark Shafer, USACE  
Tom Teets, SFWMD  
David Colangelo, SFWMD  
Nirmala Jeyakumar, SFWMD  
Luis Colon, SFWMD  
[RPPS\\_Comp@dep.state.fl.us](mailto:RPPS_Comp@dep.state.fl.us)  
[DCPPermits@deo.myflorida.com](mailto:DCPPermits@deo.myflorida.com)  
[compliancepermits@dos.state.fl.us](mailto:compliancepermits@dos.state.fl.us)  
[FWCConservationPlanningServices@myfwc.com](mailto:FWCConservationPlanningServices@myfwc.com)  
[fcmpmail@myfwc.com](mailto:fcmpmail@myfwc.com)  
Ray Scott, FDACS  
Rebecca Elliot, FDACS  
Ernie Marks, FFWCC  
Marissa Krueger, FFWCC  
Ray Eubanks, FDEO  
[verobeach@fws.gov](mailto:verobeach@fws.gov)  
Ron Handley, Highlands County Commission  
Frank Irby, Okeechobee County Commission  
Ed Smith, FDEP

Frank Powell, FDEP  
Jordan Pugh, FDEP  
Tanja Hinton, FDEP  
Deinna Nicholson, FDEP  
Paul Julian, FDEP  
Stanley Ganthier, FDEP  
Jerilyn Ashworth, FDEP  
Julie Neurohr, FDEP  
Jennifer Carpenter, FDEP  
Chad Kennedy, FDEP  
Kelli J. Edson, FDEP  
Kristine Morris, FDEP  
Brian Dougherty, FDEP  
Charles Masella, FDEP  
Bill Rueckert, FDEP  
Lauren Engel, FDEP  
Dee Ann Miller, FDEP  
Lori Elliot, FDEP  
Gregory Walker, FDEP  
Marsha Rickman, FDEP  
Samantha Browne, FDEP  
Greg Kaufman, FDEP  
Tom Butler, FDEP