



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
400 HIGH POINT DRIVE, SUITE 600
COCOA, FLORIDA 32926

September 19, 2013

REPLY TO
ATTENTION OF

North Permits Branch
Cocoa Permits Section
SAJ-2012-01564(SP-AWP)

Mr. Larry Williams
South Florida Ecological Services Office
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960

Dear Mr. Williams,

The Federal Railroad Administration (FRA) is currently developing an Environmental Impact Statement (EIS) for a privately-proposed project by All Aboard Florida to provide reliable and convenient intercity passenger rail transportation between Orlando and Miami, Florida, by maximizing use of existing transportation corridors. This transportation service would offer a safe and efficient alternative to automobile travel on the Interstate-95 corridor (I-95), add transportation capacity within that corridor and encourage connectivity with other modes of transportation, all without governmental operating subsidies. Because the project may impact waters of the United States within the jurisdiction of the U.S. Army Corps of Engineers (Corps) the Corps has agreed to be a cooperating agency in the development of the EIS. As a cooperating agency; the Corps has assumed responsibility for completing consultation with the U.S. Fish and Wildlife Service for the proposed EIS. A draft EIS is expected to be published in the Federal Register in October 2013.

The applicant's preferred alternative for the North/South corridor occurs within the right-of-way of the existing Florida East Coast Railroad from Miami to Cocoa, Florida and will include in-water work at fifteen (15) distinct locations within the project footprint. Additionally the project would require improvements which will impact wetlands and uplands utilized by federally listed species. The applicant has completed a Biological Assessment (BA), Attachment 1, which outlines the specific locations and impacts associated with the proposed work. The Corps has reviewed the BA and completed an evaluation of the impacts the work may have on the West Indian manatee, Audubon's crested caracara, wood stork, Everglades snail kite, red-cockaded woodpecker, Florida scrub-jay, eastern indigo snake. Based on information available from the applicant (Biological Assessment, Attachment 1) our initial determinations are as follows:

Based upon review of the Wood Stork Key for South Florida dated May 18, 2010, the proposed project resulted in the following sequential determination: A > B > C > E = "Not likely to adversely affect" the wood stork. This determination is based on the project not being located within 2,500 feet of an active colony site; impacts to suitable foraging habitat (SFH) will be greater than 0.5 acre, project impacts to SFH are within the Core Foraging Area (CFA) of a colony site, prior to construction the applicant would provide SFH compensation in accordance with the CWA section 404(b)(1) guidelines and is not contrary to the Habitat Management Guidelines; habitat compensation would be within the appropriate CFA or within the service area of a Service-approved mitigation bank; and habitat compensation replaces foraging value,

consisting of wetland enhancement or restoration matching the hydroperiod of the wetlands affected, and provides foraging value similar to, or higher than, that of impacted wetlands.

Based upon review of the North and South Florida Eastern indigo snake key dated August 13, 2013, the proposed project would result in the following sequential determination: $A > B > C =$ “*not likely to adversely affect*” the Eastern indigo snake. This determination is based on the project not being located in open water; Commitments in the EIS will include the use of the Service's *Standard Protection Measures For The Eastern Indigo Snake (August 12, 2013)* during site preparation and project construction; there are gopher tortoise burrows, holes, cavities, or other refugia where a snake could be buried or trapped and injured during project activities; the project will impact less than 25 acres of xeric habitat supporting less than 25 active and inactive gopher tortoise burrows; any permit will be conditioned such that all gopher tortoise burrows, active or inactive, will be evacuated prior to site manipulation in the vicinity of the burrow. If an indigo snake is encountered, the snake must be allowed to vacate the area prior to additional site manipulation in the vicinity. Any permit will also be conditioned such that holes, cavities, and snake refugia other than gopher tortoise burrows will be inspected each morning before planned site manipulation of a particular area, and, if occupied by an indigo snake, no work will commence until the snake has vacated the vicinity of proposed work.

Based upon review of the Manatee Key dated April 2013, the proposed project would result in the following sequential determination: $A > B > C > E > N > O > P =$ “*not likely to adversely affect*”. This determination is based on the project is located in waters accessible to manatees or directly or indirectly affects manatees; project is other than the activities listed above; project is not located in an Important Manatee Area; project includes dredging of less than 50,000 cubic yards; project is for dredging a residential dock facility or is a land-based dredging operation; Project impacts to submerged aquatic vegetation, emergent vegetation or mangrove will have beneficial, insignificant, discountable or no effects on the manatee; project proponent **elects** to follow standard manatee conditions for in-water work and requirements, as appropriate for the proposed activity, prescribed on the maps; if project is a residential dock facility, shoreline stabilization, or dredging, the determination of “*may affect, not likely to adversely affect*” is appropriate and no further consultation with the Service is necessary.

The applicant has identified and surveyed the project area for the Florida scrub-jay. The applicant has confirmed the presence of the species within the project area, but outside of the work area. Surveys completed by the applicant suggest the Florida scrub-jay is unlikely to cross the existing and future tracts. As such the Corps has determined the proposed rail addition “*may affect, not likely to adversely affect*” Florida scrub-jay.

The Corps has determined the proposed work will have “*no effect*” to the Florida panther, Everglade snail kite, red-cockaded woodpecker, and piping plover based on lack of suitable habitat, known species range within the project area, and/or lack of visual confirmation during surveys of the project corridor.

Because the project occurs within the jurisdictional ranges of both the U.S. Fish and Wildlife Service, North and South Florida Ecological Services Field Offices the effect determinations in this letter are specifically tailored to the South Florida Ecological Service Office. Pursuant to Section 7 of the Endangered Species Act we request your concurrence with these determinations within 30 days. A separate consultation request is being submitted to the North Florida

Ecological Services Office. You are reminded that the Corps is acting as a cooperating agency on the proposed EIS; all required compensatory mitigation measures will be included as commitments in the EIS and may eventually be applied to a Department of the Army permit should the Corps evaluate and approve the project for compliance with Clean Water Act and Rivers and Harbors Act.

Please advise if you agree with the above determinations or provide a date when formal consultation would commence. If you have any questions regarding this letter, please contact Andrew Phillips at the letterhead address, by telephone at 321-504-3771 extension 14, or by email at andrew.w.phillips@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Irene Sadowski', with a large, stylized flourish extending to the right.

Irene Sadowski
Chief, Cocoa Permits Section

Enclosure

Copies Furnished: (electronically)

FRA; Mary Hassell