



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
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Vero Beach, Florida 32960



March 26, 2007

Colonel Paul L. Grosskruger
District Commander
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Service Federal Activity Code: 41420-2006-FA-0043
Service Consultation Code: 41420-2007-F-0040
Corps Application No.: SAJ-2005-4263(LP-JLT)
Formal Consultation Initiation Date: January 30, 2006
Reinitiation of Formal Consultation: March 19, 2007
Applicant: Pompano II Associates, Ltd.
County: Broward

Dear Colonel Grosskruger:

This letter serves to amend the January 10, 2007, Biological Opinion for the project listed above in Broward County, Florida. The Fish and Wildlife Service (Service) has received additional information regarding the above-listed project's consistency with the Interim II guidance. In reviewing the additional information, we re-examined the baseline data regarding manatee abundance and distribution, manatee travel patterns, manatee mortality, water depths, aggregation areas, warmwater refugia, freshwater sources, seagrasses, the number of registered vessels, boating traffic patterns, existing watercraft access facilities, and manatee speed zones.

Consultation History

On January 30, 2006, the Corps issued the Public Notice for the proposed multi-slip dock project. The Corps provided a determination of "may affect" for the endangered manatee.

On January 10, 2007, the Service transmitted its biological opinion concurring with the Corp's "may affect" determination.

On March 19, 2007, the Service received by email proposed alterations in the proposed project from the Corps and a request to reinitiate consultation.

PROJECT DESCRIPTION

Pompano II Associates, Ltd. originally proposed to construct a 180-foot long by 14-foot wide marginal dock. The proposed dock would have accommodated eight boats along



approximately 270 feet of shoreline. The new project proposal limits the number of new slips to three along with other modifications to reduce impacts to seagrass and manatees. The U.S. Army Corps of Engineers (Corps) assigned application SAJ-2005-4263 (LP-JLT) to this project. The project is located at 815 North Riverside Drive in Pomano Beach, Section 31, Township 48 South, Range 43 East, Broward County, Florida.

Changes to the original project description

The applicant has now modified the project to bring it into compliance with recommendations made by the Florida Fish and Wildlife Conservation Commission. Those conditions are:

1. The total number of vessels to be moored at the facility, inclusive of all shoreline and upland storage, shall be limited to three (3).
2. Vessel mooring shall be limited to approximately 85 feet of the north portion of the marginal dock where the seagrass bed is described as 5 percent to 7 percent *H. johnsonii*.
3. Handrails shall be constructed along approximately 95 feet of the southerly end of the marginal dock to prevent mooring outside of the designated slip areas.
4. To minimize potential seagrass impacts, the maximum draft, including propeller(s), for vessels associated with this project shall be two and one-half feet.
5. There shall be no intensive or temporary mooring at the facility, the use of the docking facility shall be limited to permanent mooring such as the residents of the adjacent upland development.
6. The Standard Manatee Conditions for In-Water Work (revision 2005) shall be followed for all in-water activity.

FISH AND WILDLIFE RESOURCES

The proposed project has the potential to impact wetlands (including mangroves) and submerged aquatic resources (including seagrasses). The Service believes fish and wildlife resources will be affected and recommends the Corps require the applicants avoid, minimize, and mitigate for anticipated resource impacts.

For projects where there is dredging or filling, methodology and turbidity containment should be employed such that any seagrasses or live hardbottom near the project footprint and de-watering area are not impacted by sedimentation during operations. If there are wetlands along the shoreline and/or seagrasses in the project area, the Service recommends the applicant adheres to the *Dock Construction Guidelines for Florida* developed by the Corps and National Marine Fisheries Service (NOAA Fisheries) (Corps and NOAA Fisheries 2001). Specifically, the dock should be configured to minimize impacts to mangroves, seagrasses, and other submerged

aquatic resources. The Service also recommends in-kind mitigation be provided for any unavoidable impacts to seagrasses, live bottom, and mangroves.

AMENDMENT TO THE BIOLOGICAL OPINION

Broward County has not yet developed a Manatee Protection Plan (MPP) and is one of 13 coastal (= key) counties directed by the Governor and Cabinet to develop a MPP. The State's 1989 report recommended new or expanded commercial boating facilities in key counties should be limited to one powerboat slip per 100 linear feet of shoreline (the 1:100 ratio) or a maximum of two slips per single-family residence until the county implements a State-approved MPP, including a boating facility siting component. Watercraft access projects consistent with a county's MPP provides levels of boater access and activities within the capacity of the manatee protection measures established. Projects not consistent with a MPP may exceed the capacity of these protective measures and, therefore, may result in incidental take of manatees. Countywide MPPs are identified in the *Florida Manatee Recovery Plan* (Service 2001) as a method for protecting manatees and manatee habitat.

Although Broward County is currently developing a MPP, the plan does not include a boating facility siting component and has not been approved by the State. Therefore, the Service believes that proposed projects not consistent with the State's recommended 1:100 ratio for commercial development or a maximum of two slips per single-family residence for new watercraft access projects in a key county without a State-approved MPP may have an adverse effect on the manatee.

As a result of the new information provided by the Corps, including the applicant's modification of the project plan to be consistent with the State's recommended 1:100 ratio, the Service's amendment to the biological opinion listed above is as follows: the Service believes an increase in watercraft associated with the proposed action listed above is not reasonably certain to result in the take of manatees in the form of additional deaths and injuries.

Since adverse affects from the project is unlikely to occur, we recommend that you withdraw your request for formal consultation under the ESA and revise your finding to "may affect, not likely to adversely affect" manatees. If you choose to do so, this letter may be used as a concurrence of that finding.

This letter fulfills the requirements of section 7 of the ESA and no further action is required. If modifications are made to the projects, if additional information involving potential effects to listed species becomes available, or if a new species is listed, reinitiation of consultation may be necessary.

REINITIATION - CLOSING STATEMENT

As provided in 50 CFR 402.15, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained and if:

(1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, (3) the agency action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease, pending reinitiation.

This concludes the amendment to the Biological Opinion dated January 10, 2007, regarding Corps Application Number SAJ-2005-4263(LP-JLT) for Pompano Associates II, also known as Riverside Grande Condos. Thank you for your cooperation and effort in protecting threatened and endangered species in America. If you have any questions regarding this amended biological opinion, please contact Winston Hobgood at 772-562-3909, extension 306.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Allen D. Webb" with a stylized flourish at the end.

Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Corps, Palm Beach Gardens, Florida (Penny Cutt)
NOAA Fisheries, Miami, Florida
FWC (BPSM), Tallahassee, Florida (Mary Duncan)
Regional Solicitor, DOI, Atlanta, Georgia (Delores Young)
Service, ARD-ES, Atlanta, Georgia (Noreen Walsh) electronic copy only
Service, Jacksonville, Florida (Manatee species lead)

LITERATURE CITED

U.S. Fish and Wildlife Service. 2001. Florida Manatee Recovery Plan, (*Trichechus manatus latirostris*), Third Revision. Fish and Wildlife Service; Atlanta, Georgia.

U.S. Army Corps of Engineers and National Marine Fisheries Service. 2001. Dock Construction Guidelines in Florida for Docks and Other Minor Structures Constructed in or over Submerged Aquatic Vegetation, Marsh, or Mangrove Habitat.