



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960

February 29, 2008



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

Dear Colonel Grosskruger:

This letter serves to amend the Biological Opinions for the project described below in Broward County, Florida. The Biological Opinion for Oakland Hills is dated May 30, 2007. The Fish and Wildlife Service (Service) has received additional information regarding the project's consistency with the State of Florida (State)-approved Manatee Protection Plan (MPP) for Broward County, Florida.

Service Federal Activity Code	Corps Number	Applicant	Shoreline (feet)	Existing Slips	New Slips
41420-07-FA-0944	SAJ-2006-4392	Oakland Hills Apartment Association	200	6	10

PROJECT DESCRIPTIONS

The proposed action is located within Reach 4 of the U.S. Army Corps of Engineers' (Corps) Reach Characterization Analysis. Vessels using the new multi-slip docks or residences would likely travel through the Atlantic Intracoastal Waterway in Broward County, Florida.

The applicant has applied for a Department of Army permit to remove an existing dock and construct a multi-family docking facility consisting of a 4-foot by 200-foot marginal dock with eight 1.5-foot by 8-foot finger piers and eight associated mooring piles for a total of 16 slips, 10 of which will be new. The project site is located at 2857 NE 32nd Street, Fort Lauderdale, Broward County, Florida. The applicant owns about 2000 linear feet of shoreline at the site.

Changes to the baseline conditions and effects

Broward County 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 these counties implement a State-approved MPP. 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. The Service's original opinion on this project was based on the absence of a State-approved MPP in Broward



County and the project exceeded the 1:100 ratio. Countywide MPPs are identified in the *Florida Manatee Recovery Plan* (Service 2001) as a method for protecting manatees and manatee habitat.

Broward County's MPP was approved in December 2007. At the applicant's request for reevaluation of the project, the Corps has revised its effect determination for the projects from "may affect" to "may affect, not likely to adversely affect" the West Indian manatee.

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 minimally affected, however we recommend the Corps require the applicants to avoid, minimize, and mitigate for any unanticipated 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 OPINIONS

The State approved Broward County's MPP in December 2007. Broward County has determined the project is consistent with its MPP, with conditions. Therefore, the Service believes the proposed project is within the capacity of the manatee protection measures established, thus avoiding incidental take, and will not have an adverse effect on the manatee as long as the applicant adheres to the County's conditions.

As a result of the new MPP and subsequent reinitiation of consultation by the Corps, the Service's amendment to the biological opinion listed above is as follows: the Service believes an increase in watercraft associated with this proposed actions is not reasonably certain to result in the incidental take of manatees in the form of additional deaths and injuries. Since adverse affects from the project is unlikely to occur, we concur with your revised findings of "may affect, not likely to adversely affect" manatees.

This letter fulfills the requirements of section 7 of the Act 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 Opinions for the Oakland Hills Apartment Association project described above in Broward County, Florida.

Thank you for your cooperation and effort in protecting threatened and endangered species in South Florida. If you have any questions regarding this amended Biological Opinion, please contact Winston Hobgood at 772-562-3909, extension 306.

Sincerely yours,



Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Corps, Palm Beach Gardens, Florida
FWC (BPSM), Tallahassee, Florida (Mary Duncan)
NOAA Fisheries, West Palm Beach, Florida
Regional Solicitor, DOI, Atlanta, Georgia (Delores Young)
Service, Atlanta, Georgia (Noreen Walsh) electronic 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.