

Appendix 1.1-B2

Section 404 USACE Consultation – USACE Confirmation Letter



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

January 29, 2015

REPLY TO
ATTENTION OF

Regulatory Division
Cocoa Permits Section
SAJ-2012-01564(IP-AWP)

All Aboard Florida – Operations, LLC
Attn: Jose Gonzalez
2855 Le Jeune Road, 4th Floor
Coral Gables, Florida 33134

Dear Mr. Gonzalez:

Reference is made to the Department of the Army permit application you submitted for the for the proposed All Aboard Florida – Orlando to Miami, Florida Intercity Passenger Rail Project. The application has been assigned number SAJ-2012-01564.

The U.S. Army Corps of Engineers circulated a public notice for the proposed work on October 7, 2014. The comments received during the public notice period were submitted to your office by separate letter dated January 13, 2015. Additional comments are included in Attachment 1 for your evaluation and consideration. Several commenters have stated the proposed work would have an adverse impact to waters of the United States (wetlands and surface waters), federally listed plant and animal species, and historic and cultural resources. In addition, many commenters expressed concerned about impacts to navigation which are likely to occur at the three operable bridges within the project limits. These bridges are located New River, St. Lucie River, and Loxahatchee River.

The U.S. Environmental Protection Agency (EPA) provided comments by letter dated December 8, 2014. The EPA requested that you provide estimated functional losses for each of the build alternatives, recommended build alternative A strictly from a quantitative perspective, and requested detailed compensatory mitigation plans in accordance with the 2008 Final Mitigation Rule. EPA's letter has been included as Attachment 2. The Corps' Jacksonville District, Regulatory Division has posted information regarding compensatory mitigation requirements on the Internet. This information may be viewed at <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx> under the heading Compensatory Mitigation; and, includes a copy of the *Final Compensatory Mitigation Rule* (April 20, 2008) (Rule) and Regulatory Guidance Letter 08-03: *Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources*.

The U.S. Fish and Wildlife Service (FWS) has changed their initial effect determination for the Florida scrub jay from “may affect, not likely to adversely affect” to “may affect” resulting in the requirement to complete a Biological Opinion in accordance with the Endangered Species Act. The FWS has informed the Corps that conservation credits are required to reduce impacts to the Florida scrub jay. To date the conservation credits have not been provided to the FWS and the Biological Opinion has not been drafted. The Corps encourages All Aboard Florida to satisfy FWS requests related to the Florida scrub jay. The Corps was also provided a copy of a letter submitted by the FWS Hobe Sound National Wildlife Refuge, Attachment 3, which specified the proposed action would adversely affect federally listed plants and animals not previously considered. As the lead agency for completion of Section 7 consultation please provide an updated Biological Assessment for the entire project which accounts for all federal listed plant and animal species which could be impacted directly, indirectly, or cumulatively by the proposed action.

The U.S. Army Corps of Engineers (Corps), as the agency charged with the management of Section 404 of the Clean Water Act (33 U.S.C. 1344), is required to complete an objective evaluation of the public interest (33 C.F.R. 320.4). Please provide a detailed response to the public notice comments received and specifically describe how the proposed work would affect the following public interest factors: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, needs and welfare of the people. You are reminded affects can be positive, neutral with mitigation, and/or negative.

Please note the Corps will not be able to complete its Section 10 or Section 404 evaluations without review of 90 percent construction plans which clearly identify impacts to waters of the United States. The plans should differentiate dredging activities from fill activities and include quantity estimates.

Any other information you feel may be helpful to fully justify the project should also be submitted at this time. Your application will be held in abeyance for 30 days pending receipt of your response. If we do not hear from you within the 30 days, we will deactivate of your Department of the Army permit application. Any questions concerning the application should be directed to Andrew Phillips at the letterhead address, by telephone at 321-504-3771 ex. 14, or e-mail andrew.w.phillips@usace.army.mil.

Sincerely,

for Osvaldo Collazo
Chief, North Permits Branch

Enclosures (3)

cc: (Electronically w/out enclosures)

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