



Florida Department of Environmental Protection

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

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

TO: George Roberts, Chair, NFWFMD
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Joe Collins, Chair, SFWMD
Melissa L. Meeker, Executive Director, SFWMD

FROM: Gregory Munson, Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: December 5, 2011

SUBJECT: Withdrawal of Projects from the DOT Mitigation Banking Program

Mitigation Banking serves an important role in protecting Florida's environment by providing a readily-available, ecologically-valuable location for offsetting wetland impacts. Section 373.4137, F.S., sets forth a program by which the Water Management Districts plan and carry out mitigation for the Department of Transportation ("DOT") and other participating transportation agencies whose transportation projects impact state wetlands and surface waters (the "DOT Mitigation Program"). The mitigation plans must meet the regulatory requirements for both the state Environmental Resource Permitting program and the United States Army Corps of Engineers' dredge and fill program.

At the time of the creation of the DOT Mitigation Program, before the widespread availability of private mitigation banks, it served important goals including streamlining the regulatory process for transportation projects, and accomplishing more effective large-scale mitigation through regional, long-range planning. As the number of private mitigation banks in the state has grown, the response of the water management districts has varied. Private mitigation banks can sometimes provide a cost effective alternative to mitigation on public land. DOT and Florida's taxpayers should have direct access to the lowest cost mitigation provider, whether that provider is a public or private entity.

This memorandum is designed to improve consistency and ensure a cost-effective approach is followed by the state's water management districts in considering requests by DOT to opt out of the DOT Mitigation Program in favor of private mitigation banks.

Subsection 373.4137(4)(b), F.S. provides:

Specific projects may be excluded from the mitigation plan, in whole or in part, and shall not be subject to this section upon the agreement of the Department of Transportation, or a transportation authority if applicable, and the appropriate water management district that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process. The water management district may choose to exclude a project in whole or in part if the district is unable to identify mitigation that would offset impacts of the project.

To maximize statewide consistency and coordinate land acquisition among the water management districts, the Department is directing the Water Management Districts that if DOT or another participating transportation agency requests to exclude a specific transportation project from the mitigation plan (either a new project or one already in the mitigation plan) and DOT asserts that including a particular project in the DOT mitigation plan would hamper the efficiency or timeliness of mitigation planning or the permitting process, the Water Management District must obtain Department approval before denying the request for exclusion but shall otherwise agree to the DOT request. Requests to refuse exclusions should be directed to Ann Shortelle, Director, Office of Water Policy, and include an explanation for the Water Management District's request. As stated in Subsection 373.4137(4)(b) above, each Water Management District retains the option to exclude a transportation project from the mitigation plan if the pertinent District is unable to identify mitigation to offset the impacts of the project.

Thank you for your cooperation in ensuring the most efficient and cost-effective approach to conducting mitigation for state transportation projects.

cc: Herschel T. Vinyard Jr., Secretary, FDEP
Ananth Prasad, Secretary, FDOT
Jeff Littlejohn, Deputy Secretary for Regulatory Programs, FDOT
Jon Steverson, Special Counsel on Policy & Legislative Affairs, FDEP
Ann Shortelle, Director of Water Policy, FDEP