



Jeb Bush
Governor

Department of Environmental Protection

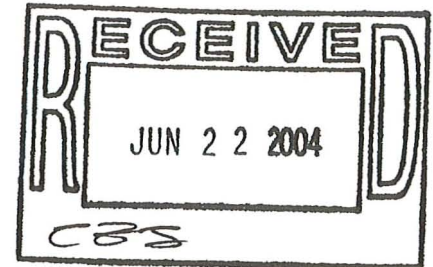
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Colleen M. Castille
Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 16, 2004

Mr. Jonathan Weiss
Foster Wheeler Environmental Corporation
759 S. Federal Highway, Suite 100
Stuart, Florida 34994



Dear Mr. Weiss:

Permit Number: 0140969-001, Palm Beach County
Loxahatchee Mitigation Bank

The Department received your request to modify the above referenced permit on February 13, 2004, with follow-up revisions on April 14, 2004 and June 8, 2004. The first request is to modify the wildlife success criteria. The permit requires that wildlife usage within the bank be equal to that at reference wetlands that are sampled concurrently. However, the approved monitoring plan indicates that the reference wetlands were sampled for two years, and that the data from this monitoring would be the basis for comparison. To reconcile this discrepancy, and after reviewing the data from both the reference wetlands and the bank site, the Department finds that listing the specific target criteria based on the reference wetland data will be clearer as well as indicative of an appropriately functioning system. Therefore, Specific Condition 21.e. is hereby modified as follows:

21.

e. Wildlife utilization: ~~Successful wildlife and fish usage shall be determined using reference wetland data. The following target numbers, derived from reference wetlands data, shall be used to determine success for fish and wildlife usage.~~ The Strazzula Tract marsh ~~will be~~ is the reference wetland for the bank's marsh polygon, and the cypress swamp located in the Loxahatchee Wildlife Refuge ~~will be~~ is the reference wetland for the bank's forested polygons. Each year, the total number of wetland dependent fish, amphibian, reptile, bird and mammal species recorded during all monitoring events will be tallied, by class, for the bank's marsh polygon, and for the bank's forested polygons. Each year, the bank shall be determined to be successful for that year if the herbaceous polygon and the grouped forested polygons have as many wetland dependant species in each class as the relevant reference wetland, as defined in the following table. Because wildlife usage is linked to vegetation coverage, the bank's final success determination shall require that these annual success criteria are met for at least two years in which the vegetation coverage success criteria (Specific Condition 21c. above) are also met.

"More Protection, Less Process"

Printed on recycled paper.

[Table added]

Class	# Wetland Dependent Species	
	Herbaceous	Forested
Fish	4	3
Amphibians	6	7
Reptiles	2	1
Birds	16	3
Mammals	3	3

The second request is to modify the approved monitoring plan. After analyzing the first year's wildlife monitoring locations, frequency and efficiency, the QMS noted that some of the monitoring locations should be moved to a more representative site with more direct access. Further, some sampling locations or frequencies did not contribute to or were duplicative of species counts collected from the rest of the monitoring effort. The Department concurs that the following changes may be made to the monitoring plan:

- Eliminate 3 of the "Time-Area Count" stations (a reduction from 11 stations to 8).
- Eliminate 3 of the "Fish/Amphibian Trap" stations (a reduction from 12 stations to 9).
- Relocate 1 "Time-Area Count" station and 1 "Fish/Amphibian Trap" station.
- Reduce the drift-fence monitoring frequency from quarterly to semi-annually, in summer and fall.

These changes are shown in the attached monitoring location revisions map, Figure 4.1-1.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. Petitions filed by the permittee and the parties listed below must be filed within 21 days of receipt of this letter. Petitioner shall mail a copy of the petition to the permittee at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, F.S.

The Petition shall contain the following information:

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- (a) The name, address, and telephone number of each petitioner, the permittee's name and address, the Department Permit File Number and the county in which the project is proposed;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department's action; or proposed action;
- (d) A statement of the material facts disputed by petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this letter. Persons whose substantial interests will be affected by any decision of the Department with regard to the permit have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

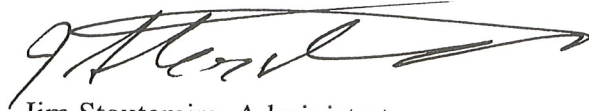
This Notice constitutes final agency action unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition. Upon timely filing of a petition or a request for an extension of time this Notice will not be effective until further Order of the Department.

Any party to this letter has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General

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Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and by filing a copy with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date the Notice of Permit Modification is filed with the Clerk of the Department.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Stoutamire", with a long horizontal flourish extending to the right.

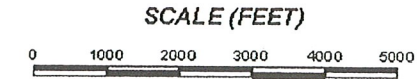
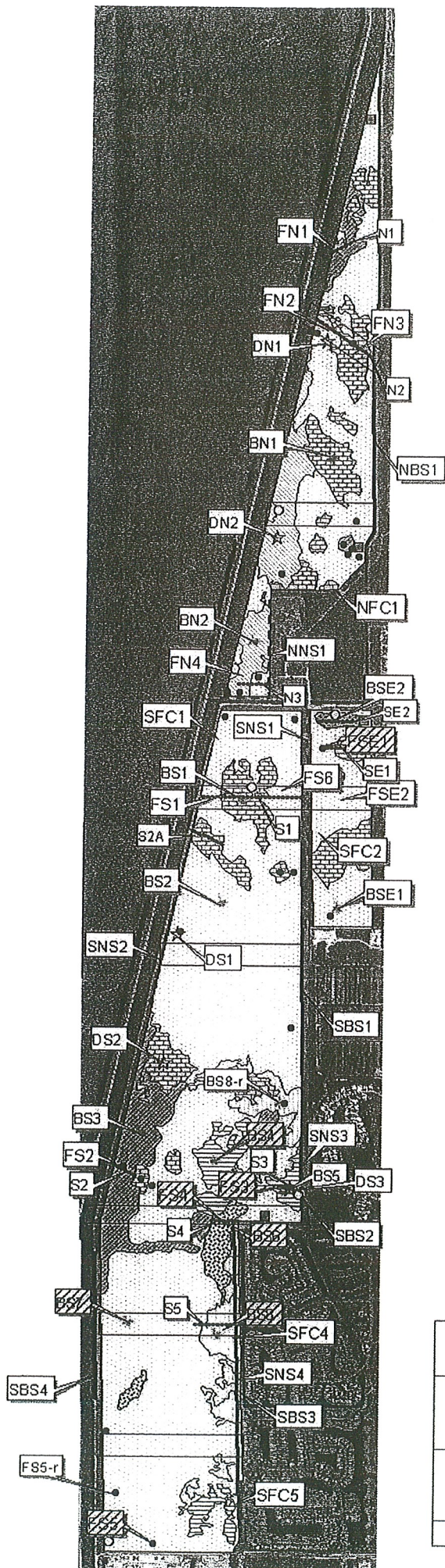
Jim Stoutamire, Administrator
Submerged Lands and Environmental Resources

Attachment – Monitoring Figure 4.1-1

cc: Tim Rach, DEP Southeast District
Rob Robbins, SFWMD, West Palm Beach
Tori White, US Army Corps of Engineers, Vero Beach
Sandy Mann, Palm Beach County DERM
File

FILING AND ACKNOWLEDGMENT:

FILED, on this date, pursuant to 120.52(9), Florida Statutes,
with the designated Department Clerk, receipt of which is hereby acknowledged.



LEGEND

- Photo Flight Line
- Vegetation Transects (N, S, SE)
- MWRAP Scoring Locations
- Time Area Count Stations (BN, BS, BSE)
- Belt Surveys (NBS, SBS)
- Fish Traps and Amphibian Poles (FN, FS, FSE)
- Drift Fences (DN, DS)
- Night Spotlight Surveys (NNS, SNS)
- Night Frog Call Surveys (NFC, SFC)
- Staff Gauges
- Continuous Water Level Monitors
- Proposed Discontinued Monitoring Stations

Restored Vegetation

- Cypress
- Cypress/Mixed
- Low Density Shrub
- Marsh
- Mudflat
- Pond Apple
- Red Maple
- Willow



LOXAHATCHEE MITIGATION BANK

MONITORING LOCATIONS

FIGURE 4.1-1

Tetra Tech FW, Inc.

DATE: 4/9/04

figure4_1_1_MBI_permit_mod.apr