



GUNSTER

ATTORNEYS AT LAW

Our File Number: 31212.00001

Writer's Direct Dial Number: 954-712-1478

Writer's E-Mail Address: jphillips@gunster.com

March 13, 2009

VIA E-MAIL AND U.S. MAIL

Mr. Robert M. Brown
Department Director - Regulation
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

Re: *Environmental Resource Permit Application No. 080624-7 for the Roebuck Road Extension, Palm Beach County*

Dear Bob:

As you recall, this Firm represents the City of West Palm Beach ("City") in the above referenced matter. The City is a substantially interested party in the Palm Beach County's ("County") pending Environmental Resource Permit ("ERP") application for the construction and operation of Roebuck Road.

Roebuck Road is proposed to be constructed immediately adjacent to the City's Grassy Waters Preserve ("Preserve") and through sensitive mitigation lands. The City relies on the Preserve and the adjacent wetlands for its source of water supply. In addition, the Preserve is a state designated natural preserve providing regional ecological and environmental benefits, including water recharge, water quality and wetland habitat for numerous listed species, including the endangered Everglades Snail Kite. The Preserve is an integral and critical component of the South Florida Water Management District's ("District") ongoing restoration of the Loxahatchee River. The proposed extension of Roebuck Road will impact both the water resources within the Preserve and adjacent wetlands, resulting in direct, secondary and cumulative impacts to the City's water supply and wetland habitats.

Since the filing of the application in June 2008, the County and the District have exchanged detailed Requests for Additional Information ("RAI") and responses. The most recent of which was a District RAI dated February 6, 2009. The City has prepared the following comments on the application, that we hope the District will consider.

Elimination and Reduction

In the latest RAI, the District accepted the County's proposal to only bridge the wetlands between the Baywinds and Andros developments with a 700-foot-long bridge. We believe the County's analysis supporting this decision fails to comply with the District's elimination and reduction criteria for ERP applications.

The District's first RAI to the County, stated that bridging was necessary to eliminate and reduce impacts to the hydrology of the wetlands and the wildlife utilization of the affected wetlands¹. The County submitted to the District a "Bridging Alternatives Analysis" ("Analysis") in support of its conclusion that a 700-foot-long bridge over the wetlands area, referred to as the Baywinds-Andros Wetland Slough ("BAWS") alone would be sufficient. A bridge between the Andros Isles and Riverwalk Wetland Slough ("ARWS") was deemed unnecessary by the County because "evidence suggests that north-south flows between adjacent wetlands and the water catchments area ("WCA") are limited." (See Analysis).

As mandated in the ERP Basis of Review, Section 4.2.1, the higher the quality and function of a wetland system, the more an applicant must explore practicable design modifications. This has been the District's long-standing interpretation of this rule, as discussed in the *Captiva Civic Association, et al. v. South Florida Water Management District, et al.*, Case No. 06-0805, 2006 WL 3257349 (Fla.Div.Admin.Hrgs. Nov. 8, 2006). Here, it is undisputed that these two slough systems are highly functioning wetland systems, providing habitat value to listed species.

The Analysis submitted by the County is purely a surface water management calculation addressing water quantity impacts to the integrity of the road. The Analysis contains no data or discussion about the hydrologic impacts to the wetlands from a pre vs. post development perspective. It is impossible to conclude from this engineering calculation whether or to what degree the hydroperiods of the affected wetlands will change. Because of the sensitive nature of the wetlands to be impacted, any change in wetland hydroperiod must be explored and assessed.

The County submitted no design modifications to address impacts to wildlife utilization, as originally requested by the District. The County cannot ignore design modifications aimed at eliminating and reducing impacts to wildlife utilization through a simple water quantity analysis. The project, admittedly, will impact wildlife utilization, but there is no evidence in the permit file that such modifications were explored. The County's proposal to install one 10' x 10' box culvert and one 10' x 24' large mammal crossing is not elimination and reduction of impacts to fish and wildlife. As a way of comparison, the County proposed a ten (10) foot retaining wall for portions of the Jog Road project. The County should be required to explore a similar retaining wall for this project to reduce direct impacts from the proposed roadway.

Secondly, the accuracy of the County's model must be questioned. The County openly acknowledges in its Analysis that site-specific data would increase the accuracy and reliability of its hydrologic model, as well as result in changes to the water stages². The County admits this

¹ The actual language from that letter reads as follows: "Previous District permit applications for Baywinds and Andros Isle, and as identified in those two permits, the preliminary design plans for the section of Roebuck Road which is proposed to span the wetland preserve located between the Baywinds and Andros Isle developments and the eastern preserve at Andros Isle, included bridge crossings to maintain the surface water sheet flow between those wetlands. It should also be noted that the bridge crossings would also maintain a more natural travel corridor between those wetlands for fish and wildlife."

² See page 2 of 2 in the handwritten notes entitled "Slough Hydrology," included in the Analysis.

data exists, in the District's LIDAR TOPO data, but was not used. Any changes in water stages due this project must be carefully assessed to determine if it will impact the apple snail reproduction, thus impacting the Everglades Snail Kite's ability to forage in this area. The County should be required to refine the model with site-specific data to ensure the results relied upon, to conclude that additional bridging is unnecessary, are defensible.

Lastly, the Analysis submitted by the County included three cost estimates for the bridging alternatives. In selecting its "preferred alternative," the County simply states, "Palm Beach County taxpayers will be burdened with a cost of \$4,000,000 to \$5,000,000 per acre for a bridge section, relative to a cost of \$100,000 to \$200,000 per acre for mitigation and preservation wetlands..." The County's argument, apparently, is that since bridging is more expensive than mitigating the impacts, they are not required to eliminate or reduce, any further. The County's rationale is wholly inconsistent with the purpose of the elimination and reduction criteria. Elimination and reduction does not allow the County to use the cost of mitigation as a basis to reject additional design modifications.

If the County submitted these cost estimates to demonstrate that any additional bridging beyond 700-feet is financially not feasible, then as required in the *Captiva Civic Association* case, the District should conduct a detailed financial review of this assertion. Currently, the County's Analysis on financial feasibility is incomplete, at best. The County must be required to demonstrate that the option of two bridges (1600-feet each) or other combinations in size or length are not financially feasible before the current proposal can be considered permissible.

Therefore, for reasons stated above, we respectfully request that the District require the County to provide 1) design modifications that explore additional bridging between both wetland systems, including lengthening the proposed 700-foot bridge, 2) adding bridging between the ARWS slough to address fish and wildlife functions, as well as 3) realigning the road to eliminate and reduce the habitat fragmentation that will occur with the current proposal.

Secondary Impacts

Secondary impacts associated with the construction of this road will be extensive. As noted by the District, the affected wetland areas are highly utilized by various species of wildlife, including the endangered Snail Kite.

The County has taken the position that 100-foot and 50-foot buffers are acceptable limits when adjacent to wetlands and development, respectively. This position, however, has no scientific justification. Instead, the County simply refers to a permit for Persimmon Boulevard. A 300-foot buffer has been documented in the scientific literature to be the minimum needed to address secondary impacts. Unless the County can provide peer-reviewed scientific literature asserting the contrary, the County must evaluate secondary impacts with at least a 300-foot buffer on each side of the proposed roadway that is adjacent to wetlands.

Because of the alleged limited drainage areas north of the Riverwalk development, the County elected not to construct a bridge for this area. However, the historic east-west movement of

water was not addressed nor were the secondary impacts related to the resulting fragmentation of those wetlands. Any fragmentation of wetland systems mandates a secondary impacts analysis. The County must be required to analyze these secondary impacts and mitigate, as appropriate. To date, the County's application is silent on this issue, and therefore fails to meet the secondary impacts criteria.

Mitigation

The County has yet to provide answers on the most basic of mitigation issues for the significant impacts proposed by the project. Details such as the vegetative communities, substrate types, and water depths continue to be missing.

The County's only reference to a mitigation plan is the Pines Glades Natural Area ("Area"). The City believes that this mitigation site is completely unsuitable to offset the functions and values the impacted wetlands provide to fish and wildlife. Most notable is that the Area provides *no* nesting or foraging habitat for the Everglades Snail Kite. The Preserve and the affected wetland areas both provide the unique and necessary habitat needed to sustain the apple snail populations and provide foraging habitat for the Snail Kite. This fact alone makes the Area an unpermissible mitigation option. It is worth noting that if the County had properly considered elimination and reduction, it would have a smaller amount of direct and secondary impacts to offset through mitigation, than currently proposed.

Of equal importance is the fact that the project will impact mitigation wetlands protected by a Conservation Easement. There is no explanation or documentation as to how these preserved wetlands and related mitigation values will be offset.

Lastly, the Area is not within the same drainage basin as the project. Not only does this raise questions about the Area's ability to offset impacts, the County must submit a cumulative impacts analysis if it insists on pursuing mitigation outside of the C-16 Drainage Basin. Such a cumulative impacts analysis must address impacts not only to wetland functions but also *water quality*, as mandated by Section 4.2.8 of the Basis of Review.

Surface Water Management

As the District is aware, this project will be adjacent to the Preserve, a Class I waterbody and the City's main source of water supply. Of concern from an operations perspective, is the affect of the proposed "wildlife crossing" in the form of a box culvert at station 637 on the City's Wetlands Based Water Reclamation Facility ("WBWRF"). This culvert appears to function as a hydraulic connection with a bottom elevation, which is at or below the "normal" and "high water" elevations for this area. The Florida Department of Environmental Protection permit for the WBWRF facility prohibits discharges offsite, except for those specified in the permit for the WBWRF. This culvert appears to result in a new and unpermitted discharge point. The County must be required to analyze whether this proposed wildlife crossing will adversely affect the design and operations of the City's water supply system.

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The County also failed to clearly explain how the dry detention areas will recover storage. The outfalls in these detention areas are depicted going to the north, into the berm surrounding the City's wetland reuse system. The County has not clearly demonstrated how the two eastern dry detention areas will recover storage following rainfall events. In particular, the western dry detention area (triangle area) ultimately outfalls to the Andros Isles wetland preserve which at times will be higher (via pumped inflows) than the dry detention area. The eastern dry detention area, which will outfall into the City's reuse wetland area, may not be able to recover storage when stages within the reuse wetland exceed the elevation of the dry pond.

Conclusion

On behalf of the City, we appreciate the District's professionalism and courtesies in considering the City's concerns with this proposed project. For all the reasons stated in this letter, the City believes that this proposed project will result in adverse impacts that either should have been eliminated or reduced or cannot be properly offset through mitigation. As always, we are willing to meet with you and your staff to discuss further this matter.

Sincerely,



Luna E. Phillips

LEP/ram

cc: Anita Bain
Tony Waterhouse, P.E.
Ed Balbis, P.E.
Claudia McKenna, Esq.

FTL 356088.1

Gunster, Yoakley & Stewart, P.A.
ATTORNEYS AT LAW



SENATOR JEFF ATWATER
25th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Economic Opportunities Policy and
Calendar,
Chair
Health Regulation, *Chair*
Banking and Insurance
Communications and Public Utilities
Ethics and Elections
Finance and Tax
Rules
Social Responsibility Policy and
Calendar

SELECT COMMITTEE:
Property Insurance Accountability, Co-
Chair

September 4, 2008

Mr. Justin Hughes
Army Corps of Engineers
Jacksonville District
4400 PGA Blvd., Ste. 500
Palm Beach Gardens, FL 33410

Fax Transmittal
(561) 626-6971

Re: Permit Application No. SAJ-2008-2749 (IP-JWH)
Roebuck Road Corridor Expansion

Dear Mr. Hughes:

This letter is being offered in response to your Public Notice dated August 6, 2008 and request for public comment for permit number SAJ-2008-2749 (IP-JWH). The project, commonly referred to as the Roebuck Road extension, would propose the construction of a 3.2 mile long divided highway that will directly impact over 36 acres of wetlands and surface waters.

Through my numerous conversations with community leaders and your counterparts at the state level, as well as visits to the site, I have become very familiar with the project. It is my opinion that the irreparable harm to our eco-system far outweighs any perceived benefit of alleviating traffic congestion on the existing roadways. I offer the following specific concerns:

Of primary concern is the proposed alignment's adjacency to the Water Catchment Area (WCA) and adjacent wetland preserve which serves as the City of West Palm Beach's drinking water supply. The WCA and preserve areas are high quality wetlands which provide habitat to numerous species of wildlife, including the endangered snail kite. In recent years, the snail kite population has declined dramatically due to a decline in wetland acreage and resulting impacts to the apple snail, the sole food source for the snail kite. The WCA and the wetland preserve both provide the unique and necessary habitat needed to sustain the apple snail population and thus provides foraging habitat for the snail kite. In evaluating the Roebuck Road project, all efforts should be made to ensure protection of the snail kite habitat.

It is also important for the Corps of Engineers to consider the cumulative impacts of this project, when considered in conjunction with other past, present or future projects in the region. Several other roadway extensions or expansions have been proposed that cumulatively could result in a significant effect on the WCA. Palm Beach County's Acreage Reliever Road or "Persimmon Connector" is under construction to the west of the WCA and the County's Pond Cypress Natural Area; the extension of Jog Road from

REPLY TO:

- 824 U.S. Highway One, Suite 210, North Palm Beach, Florida 33408 (561) 625-5101
- Oakland Park City Hall, 3650 NE 12th Avenue, Oakland Park, Florida 33334 (954) 847-3518
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5100

Senate's Website: www.flsenate.gov

KEN PRUITT
President of the Senate

LISA CARLTON
President Pro Tempore

Mr. Justin Hughes
September 4, 2008
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Roebuck Road to 45th Street is currently in for permitting with the Corps; and the Florida Department of Transportation is studying alignments for the extension of State Road 7 along the western edge of the

WCA. Additionally, various segments of Northlake Boulevard to the north have been proposed for expansion. Taken together, these multiple roadway extensions and expansions will encircle the WCA and surrounding natural areas and could result in a significant impact to this sensitive ecosystem.

Additionally, because of the roadway's significant potential for impacts to the WCA, it is necessary to conduct a meaningful evaluation to determine if there are other less impactful alternatives or roadway alignments. As part of this analysis, the projected demands and needs for the road should be evaluated based the most up to date and accurate population and growth estimates.

It is my sincere hope that you will carefully weigh all aspects of the environmental impact of a project of this magnitude. Florida has been a leader in environmental conservation and preservation – to detract from that preservation would be damaging to the long-term health and safety of our community.

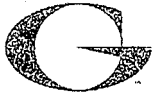
I appreciate the invitation you have extended to me to share my opinion on this project. If I may offer you any further insights at this time, I hope you will not hesitate to call.

Sincerely,

A handwritten signature in black ink that reads "Jeff Atwater". The signature is written in a cursive, flowing style.

Jeff Atwater
Florida Senate, District 25

JA/cv



GunsterYoakley
ATTORNEYS AT LAW

Our File Number: T/B/D
Writer's Direct Dial Number: 954-712-1478
Writer's E-Mail Address: lphillips@gunster.com

July 24, 2008

VIA E-MAIL AND U.S. MAIL

Mr. Robert M. Brown
Department Director - Regulation
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

Re: *Environmental Resource Permit Application No. 080624-7 for the Roebuck Road Extension, Palm Beach County*

Dear Bob:

This Firm represents the City of West Palm Beach (City) in the above referenced matter. The City is a substantially interested party in the County's pending Environmental Resource Permit (ERP) application for the construction and operation of Roebuck Road.

Roebuck Road is proposed to be constructed immediately adjacent to the City's Grassy Waters Preserve (Preserve) and through sensitive mitigation lands. The City relies on the Preserve as its main source of water supply for its residents. The Preserve is a state designated natural preserve providing regional ecological and environmental restoration benefits, including water recharge, water quality and high quality wetland habitat. Furthermore, the Preserve is an integral and critical component of the South Florida Water Management District's (District) ongoing restoration of the Loxahatchee River.

The proposed extension of Roebuck Road will impact both the quantity and quality of the waters within the Preserve, directly affecting the City's water supply and wetland preserves. Furthermore, the application proposes to directly impact acres of mitigation lands which provide foraging habitat for the endangered snail kite and water recharge for the Preserve. Contrary to the County's assertions in its permit application, the City has not consented to accept the project's drainage or provide the requisite right of way, all necessary for permit issuance. A thorough and detailed hydrologic modeling and ecological analysis must occur as part of the permit review to determine the extent of the impacts on the environment, and ultimately, whether this project is permissible.

Mr. Robert Brown
July 24, 2008
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The City appreciates the District's willingness to keep us informed and involved in the process, including copying the City on all correspondence issued by the District. Please send such correspondence to my address and to:

Mr. Eduardo Balbis, P.E.,
Assistant City Administrator,
City of West Palm Beach,
200 Second Street
West Palm Beach, Florida 33402

We look forward to meeting with you and your staff to discuss further our concerns.

Sincerely,


Luna E. Phillips

LEP/mam

cc: Anita Bain
Tony Waterhouse
Client copy

FTL 345794.1

Gunster, Yoakley & Stewart, P.A.
ATTORNEYS AT LAW

The
City
of
West Palm Beach



OFFICE OF THE CITY ADMINISTRATOR
P.O. Box 3366
West Palm Beach, Florida 33402
Telephone: 561/822-1400
Fax: 561/822-1424

"The Capital City of the Palm Beaches"

July 30, 2008

Omelio A. Fernandez, P.E.
Director, Engineering and Public Works Operations
Palm Beach County
P.O. Box 21229
West Palm Beach, Florida 33416

RE: *Response to Palm Beach County's Letter, dated June 18, 2008, regarding the Construction of Roebuck Road*

Dear Mr. Fernandez:

The City of West Palm Beach (City) is in receipt of your letter dated June 18, 2008, regarding the design and construction of Roebuck Road. Your letter references paragraph 4b of the 1994 Interlocal Agreement between the City and Palm Beach County (County). Your letter incorrectly concludes that because of this language the City is obligated to "accept water quality treated drainage . . . from Roebuck Road..."

In fact, the terms in the "Amended Stipulation of Settlement and Order Approving Stipulation" (Settlement Agreement), entered into on January 24, 2007, between the City and the County, reserves the City's right to challenge any environmental permits required for the construction of Roebuck Road, including the Environmental Resource Permit required from the South Florida Water Management District (District). Therefore, per the terms of the Settlement Agreement, the City has not consented to accept drainage from the road nor does the County currently have the required right of way. Furthermore, until the environmental permitting matters are fully resolved, it is inappropriate to represent to the District otherwise.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Balbis".

Eduardo E. Balbis, P.E.
Assistant City Administrator

cc: Robert M. Brown, SFWMD

"An Equal Opportunity Employer"

June 25, 2008

To: Mr. Robert J. Kanjian
301 North Olive Ave., Suite 1201
West Palm Beach, FL 33401

From: Mr. William J. Chamberlain Jr.
2749 Muskegon Way
West Palm Beach, FL 33411-5779
Phone No. 561-478-6427

Subject: Roebuck Road Extension

Dear Mr. Kanjian,

In lieu of extending Roebuck Road I make the following recommendations:

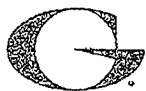
1. Since Okeachobee Blvd. is being modified from (6) six lanes to (8) eight lanes, the (2) two center lanes can be used for high traffic hours. This would make the use of (5) five lanes going east for the morning rush hours and vice versa (5) five lanes going west for the evening rush hours.
2. At the low traffic hours, use the (3) three outside lanes east & west.
3. Use concrete barriers to divide the low traffic lanes from the high traffic lanes.
4. Close the (2) center high traffic lanes during the low traffic hours.
5. Only open the (2) two center lanes for the high traffic hours.
6. Use gates at all intersections to prevent entrance at low traffic hours.
7. Open the gates for high traffic hours using traffic signals, signs & road markings to direct traffic flow.

If in the future, traffic increases in the high traffic hours, the barriers can be moved from the (2) two center lanes to (4) four center lanes. This would provide (6) six lanes east & west for the high traffic hours. This would allow only (2) two lanes for the low traffic hours.

cc: Mr. Jess R. Santamaria
Palm Beach County Commissioner

Yours truly,

Wm J. Chamberlain Jr.



GunsterYoakley
ATTORNEYS AT LAW

Our File Number: t/b/d
Writer's Direct Dial Number: 954-713-6413
Writer's E-Mail Address: rmalinoski@gunster.com

September 5, 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

District Engineer
Department of the Army
Jacksonville District Corps of Engineers
4400 PGA Blvd., Suite 500
Palm Beach Gardens, Florida 33410
Attn: Justin W. Hughes

**Re: City of West Palm Beach's Public Comment on
Permit Application No. SAJ -2008-2749 (IP-JWH)**

Dear Mr. Hughes:

Our Firm represents the City of West Palm Beach ("City") in the above referenced matter regarding the proposed construction of Roebuck Road in Palm Beach County. On behalf of the City, we are submitting these comments to the U.S. Army Corps of Engineers ("Corps") in response to the Corps' Public Notice, dated August 6, 2008, requesting comments on the above referenced application. The Corps' Public Notice provided thirty (30) days for the submittal of comments, and therefore these comments are timely. Please include these comments as part of the administrative record in this matter. In addition, pursuant to the Public Notice, the City respectfully requests the opportunity for a Public Hearing for all the reasons detailed in this comment letter.

Background

Palm Beach County ("County") has applied for a Section 404 permit (33 U.S.C. § 1344) from the Department of the Army to construct an east west corridor, Roebuck Road, to purportedly alleviate traffic in Western Palm Beach County. The proposed roadway would consist of a 3.2 mile divided four-lane roadway and associated eight-foot wide sidewalk. As proposed, construction of the roadway will result in the filling of 25.34 acres of high quality herbaceous wetlands and 6.91 acres of forested wetlands. Thus, a total of 32.25 acres of wetlands would be adversely impacted if the County's application is approved.

The City has an interest in the above mentioned permit application because the proposed impacted wetlands, as acknowledged in the Corps' Public Notice, are connected to the City's Water Catchment Area ("WCA") in the C-51 Watershed. The extension of Roebuck Road is proposed to be constructed immediately adjacent to the City's WCA and through sensitive mitigation lands. The City relies on the WCA as its main source of water supply for its residents. The WCA is a state designated natural preserve, also known as Grassy Waters Preserve

("Preserve") providing regional ecological and environmental restoration benefits, including water recharge, water quality and high quality wetland habitat. Furthermore, the Preserve is an integral and critical component of the South Florida Water Management District's ongoing restoration of the Loxahatchee River.

The proposed extension of Roebuck Road will impact both the quantity and quality of the waters within the WCA and the surrounding wetlands, directly affecting the City's water supply and wetland resources. Furthermore, the application proposes to directly impact acres of mitigation lands which provide foraging habitat for the endangered snail kite and water recharge for the WCA. Contrary to any assertions in its permit application, the County has not obtained the necessary drainage consent or rights of way from the City, which are necessary for permit issuance.

We note that the Public Notice did not contain various critical pieces of information and reports necessary to fully evaluate this application and provide meaningful comments. For example, the Public Notice states that the County provided an alternatives analysis which is *available upon request*. Although we requested on behalf of our client a copy of the alternatives analysis in correspondence to you, dated August 22, 2008, we have yet to receive that analysis. Additionally, the County did not provide a detailed mitigation plan. Obviously, it is not possible for our client to comment on the adequacy of the County's mitigation plan and alternatives analysis when no such documents were provided. Thus, we reiterate our previous request that the comment period be extended until thirty (30) days after we have received the alternatives analysis and provide for another thirty (30) day comment period once a detailed mitigation plan has been submitted by the County. The City also urges that the Corps reissue a public notice once a wetland jurisdictional determination ("JD") is complete, if such JD indicates more than 32.25 acres will be impacted.

To the extent that our client is able to comment on the County's application without the above documents, the City has the following comments:

Project Purpose

The Public Notice states the basic purpose of the project is to improve linear transportation. Linear transportation can be improved by either arterial or collector roadways. Arterial roadways function to carry traffic through a region. Because Roebuck Road terminates at each end, (at Jog Road on the east terminus and the planned extension of SR 7 at the west terminus) the planned roadway will not function as an arterial roadway. It is actually anticipated to have limited success in improving linear transportation in western Palm Beach County. Collector roads serve to connect local roadways to arterial roadways. Collector road functions are mixed between access and mobility. Collector road characteristics include some limited driveways and access to the local roads. The north side of planned roadway is the City's WCA. The south side

of the planned roadway abuts the rear of three residential developments which have all ingress and egress to Okeechobee Boulevard. Thus, the planned roadway will not serve the collector road function as there is no access planned along the link.

The County's proposed road will not serve its stated purpose of improving linear transportation and alleviating traffic in western Palm Beach County. Therefore, the County must consider alternatives that include building an east west corridor in another location that would serve the County's purpose and not unnecessarily impact pristine wetlands.

Water Catchment Area

The WCA functions as the City's drinking water supply. It is classified as a Class I waterbody, which is the highest and most stringent water quality standard for surface waters of the state. In addition, the WCA is a high quality wetland, providing habitat to numerous species including the endangered snail kite and wood stork. Water quantity and quality must be maintained and monitored very closely to ensure there are no adverse impacts to the ecological functions or water supply functions of the WCA. If the County's application is approved, this project will affect the WCA's hydrology thereby affecting its wetland species composition and the WCA's ability to support fish and wildlife. The County must conduct a thorough hydrological analysis to determine how the hydrology of the WCA will be affected by the project.

Additionally, the City understands that the proposed road may be twelve feet above the existing grade in some sections. Construction at this elevation raises significant compensating storage concerns. It is unclear if the County has conducted a compensating storage analysis addressing the affects of water storage in the wetland preserve and the adjacent WCA. In order for the Corps to evaluate fully the project's impacts on the hydrology and related functions of the WCA, a thorough compensating storage study is critical to this permit review.

Wetland Impacts

The County's application proposes to directly impact 32.25¹ acres of pristine and sensitive wetlands many of which are currently under a conservation easement as mitigation for other impacts. It is not clear from the Public Notice how or if the County has proposed to address impacts to mitigation wetlands. Along these lines, the County must provide an alternatives analysis that demonstrates it has avoided and minimized the impacts to these wetlands. For example, the County should explore bridging as part of its alternatives analysis to demonstrate that impacts to the wildlife functions provided by these wetlands are being avoided or at least minimized. The City has concerns that the County has not properly or fully considered the avoidance and minimization of impacts as the following demonstrate:

¹ The Public Notice states that the jurisdictional line has not been verified by the Corps. The City as noted below believes that more wetlands will be impacted than estimated by the County.

- Toward the west end of Sections 16 and 19, the proposed road veers off from an existing altered fill road into undisturbed high quality wetlands. This type of alignment choice does not appear consistent with the Corps' avoidance and minimization criteria.
- There is an existing fill embankment (non-wetlands) along the entire north boundary of Section 20. The proposed road, however, is located entirely within wetlands. The Corps should require exploration of this embankment as part of the County's alternatives analysis to ensure that the avoidance and minimization criteria is properly considered.

The County also does not address secondary impacts that would result from construction of this project. For example, as proposed, the road would result in habitat fragmentation which is not addressed or quantified. Specifically, the location of the proposed road will bisect existing wetland and upland mosaic. This would create isolated habitat patches where contiguous habitats currently exist, thereby reducing the functional values of these wetlands. The County needs to address these functional losses in addition to the direct wetland impacts. Other types of secondary impacts that should be considered are habitat and edge effects impacts, vehicular and wildlife collisions, noise and lighting, water quality impacts from stormwater runoff, and the impact of potential spills or accidents on the proposed road. Furthermore, the hydrology of these fragmented wetlands will also be adversely affected. The County must provide a detailed hydrological analysis of the impacted wetlands as part of its secondary impact analysis. Accordingly, a detailed secondary and cumulative impacts analysis must be completed and provided to the Corps and the City, in order to conduct a comprehensive review of the project's wetland impacts.

As noted above, the Public Notice states that 32.25 acres will be impacted, but the Corps has not confirmed the jurisdictional line. There is an area of upland depicted within the proposed project area immediately east of "Wetland D" (sheet 11 of 24, plan view A) that appears to be wetland not upland, based upon aerial photographs. Our client understands that the Corps will be verifying the jurisdictional line and believes that if there are any changes to the amount of wetland impacts that the Public Notice should be reissued with an additional comment period.

Additionally, the proposed road presents the following issues:

- A portion of the proposed road is entirely within wetlands restored and maintained for mitigation, as required by previously issued permits. Has the County requested modification of these permits to impact mitigation otherwise required in those permits? What additional mitigation is proposed to offset impacts to these mitigation lands?
- As with regard to the permits noted above, if the County has not requested modification of those permits yet, are those permittees in support of the proposed road and willing to modify their permits?

Wetland Mitigation

The County proposes to mitigate the above wetland impacts at the Palm Beach County Pine Glades Natural Area ("Pine Glades"). Pine Glades lies approximately thirteen miles to the northwest of the proposed project area, is located in an entirely different drainage basin from the proposed impacts, and is composed of different wetland habitats than the proposed impacts. Thus, it is unlikely that mitigation in Pine Glades will compensate or offset for the impacts to the WCA or the wetlands resulting from the project. For example, there is no indication that Pine Glades provides habitat to the snail kite or any of the other listed species which are known to use the Preserve and the WCA.

Because of the differences in the proposed project and mitigation areas the following issues must also be addressed:

- What methodology will be used to determine the number of acres needed to offset project wetland functional losses?
- How will the distance between the proposed project and mitigation areas be addressed?
- What additional mitigation options, if any, have been explored and analyzed by the County, as required by the Corps?

Endangered Species

The Public Notice states that the Corps has determined the proposed project may affect the wood stork, eastern indigo snake, and the Everglades snail kite. The City appreciates that the Corps will initiate formal consultation with the U.S. Fish and Wildlife Service ("FWS") pursuant to Section 7, of the Endangered Species Act. However, the City believes that the Corps should not approve the County's application until the FWS issues a formal Biological Opinion ("BO"). A BO is necessary because of potential adverse impacts to the Everglades snail kite and its habitat.

It is well documented that since 1998, the number of snail kites has declined dramatically due to a decline in wetland acres that are suitable foraging habitat. The elimination of wetland acreage directly leads to the loss of apple snails, which is the sole food source of the snail kite. The WCA and the adjacent wetlands both provide the unique and necessary habitat needed to sustain the apple snail populations and thus provide foraging habitat for the snail kite. Numerous studies conducted by various agencies and scientists have established that the WCA and the adjacent wetlands are used by snail kites for foraging, roosting and nesting. The adjacent wetland areas clearly support apple snails as indicated by discarded shells in feed piles and the presence of apple snail egg masses.

The WCA has proven critical to the regionally nomadic snail kite. During periods of drought where areas such as Water Conservation Area 3A dry up, snail kites move into the WCA in large numbers and use the area to forage, roost, and nest. Thus, it is irrefutable that the WCA and adjacent wetlands provide critical habitat for the snail kite.

The presence of known habitat coupled with the declining population in the region requires any impacts to wetlands that support a forage base to be highly scrutinized by the Corps. The proposed project will result in the loss of herbaceous marsh that supports apple snails and will affect the hydrology of the adjacent wetlands. Impacting the WCA and the adjacent wetlands areas will contribute to the snail kites' habitat degradation and would contribute to the currently declining snail kite population.

Additionally, as noted above, there is a question of whether Pine Glades is a suitable mitigation option for the loss and impact to snail kite habitat (loss of habitat acreage and quality) that will result from the proposed project. An assessment of the suitability of the proposed mitigation would also require an analysis of the current habitat condition of Pine Glades and any future condition resulting from mitigation. There was no indication in the Public Notice that the enhanced condition of Pine Glades would create suitable conditions for apple snails or snail kites.

As discussed in the Public Notice, other endangered species, such as the eastern indigo snake and the wood stork may be impacted by this project. The County, however, has failed to adequately study any of the wildlife impacts associated with its proposed project through either a detailed wildlife survey or other site specific studies. For all these reasons, the Corps should not approve the County's application until the FWS completes a BO.

Additionally, the proposed road presents the following issues:

- What design criteria have been used to accommodate wildlife needs, including assurances that target wildlife species (e.g. eastern indigo snake) will preferentially use the crossings instead of crossing the proposed highway?
- How have the number, location and size of any proposed wildlife crossings been determined?
- Were bridges considered for habitat crossings instead of the indicated box culverts and, if so, how was their use ruled out of the proposed project?
- Whether provisions will be made to reduce and/or mitigate collisions of endangered wildlife and vehicles on the proposed roadway?

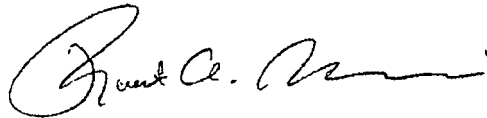
Department of the Army
September 5, 2008
Page 7

Conclusion

As noted above, the County's proposed project raises various issues that must be addressed before the Corps approves its application for a Department of Army Section 404 permit. A thorough and detailed review of all the issues discussed in this letter must occur as part of the permit review in order to determine the extent of the impacts on the environment, and ultimately, whether this project is permissible. The Corps should also defer any decision on the County's application until the FWS issues a Biological Opinion with regard to endangered species with particular emphasis on the snail kite.

Due to the totality of issues raised in this comment letter and as an interested party, the City respectfully requests that the Corps grant a Public Hearing so that all the issues can be more fully explored and evaluated. Thank you for your consideration on these matters. Please let us know if you have any questions regarding the issues raised in this correspondence.

Sincerely,



Robert A. Malinoski
Luna E. Phillips

RAM

cc: Client
SFWMD Permit File Application No. 080624-7

FTL 347860.1

Gunster, Yoakley & Stewart, P.A.
ATTORNEYS AT LAW



*Parker Ridge Neighborhood Association
P.O. Box 7053
West Palm Beach, FL 33405
www.parkerridge.org*

September 5, 2008

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed Roebuck Road extension permit application. Please accept this letter on behalf of the approximately 5,800 residents of Parker Ridge Neighborhood Association as opposition to the proposed road construction project and a request that the permit application be denied. Please note that as a neighborhood leader representing my neighborhood this project does not occur near my home or my neighborhood. While this is not a NIMBY issue for us, the engaged citizenry feels this project is wrong for the reasons stated below.

We are however also very skeptical that our government agencies that permit projects like these do not listen to the people and that our input is merely an exercise in futility, an annoying part of the permit process that must be dealt with rather than addressed constructively in the spirit the regulation was intended which is to know and address the objections and respond in a way that protects and enhances the environment. While we are skeptical, we are also hopeful that the intelligence of good people will prevail and that this unnecessary and damaging project will not be permitted to occur.

First it should be stated that the purpose for the project is questionable at best, the cost is too high and that the alternatives have not been explored fully. To be specific the purpose of this project is to ultimately provide 4 (divided) lanes of vehicular traffic to relieve Okeechobee Blvd between Royal Palm Beach and the eastern coastal communities. This project if approved will create a road with a vehicular capacity of 32,700 vehicles per day and 3110 vehicles per peak hour at a time where traffic volumes have decreased due to high fuel prices.

As mentioned the dollar cost to the taxpayer for this proposed road is extremely high at a time of falling home values and the reduced property taxes that come with that reduction. In addition to the drop in property tax revenue from falling home values there is also reduced revenue from state government initiatives that provided much needed tax relief. Simply put, the government can and should spend the people's money on things much more essential. But the economic costs are not the only ones. The environmental cost and the reduction in quality of life cost are unreasonably high as well. To be blunt this unnecessary road is to create the condition for further development and urban sprawl in the unincorporated Royal Palm Beach area. Developers and agricultural land owners west of town are not guaranteed land use changes that would give them extreme profits on their land.

As the County looks for more property tax revenue, unbridled development at the detriment of the environment and the citizens that must live near these monster roads is not the answer, building sustainable communities is the answer and this County's government has done nothing in this regard.

The smallest effort toward sustainable development would at the very least protect the water supply reservoir that this project would seriously and negatively impact. No amount of mitigation is worth the reduction in quality of this important wetland reservoir and the off site mitigation proposed by the County simply destroys the environment in one location at the requirement to mitigate for it somewhere else.

This "off site" mitigation is supposed to happen only when the need is extreme and when there are no viable alternatives. It can be argued that the need does not exist and the exploration of alternatives seriously lacking.

In the past I have personally been involved with monitoring the endangered Everglades Snail Kite in the Loxahatchee Slough wetland reservoir. I have assisted a biologist in banding and radio tagging this extremely fragile and magnificent animal. This unique raptor has been brought to near extinction precisely because of the loss of habitat that this type of development has destroyed. Is there no place that can be left alone to help these animals survive? I have also witnessed nesting Wood Storks and nesting Bald Eagles, both protected animals and one our national symbol. The environmental costs are too high.

It can be argued that this proposed reliever road will not do what it was intended. First of all it does not penetrate the very community it is supposed to serve to the west. Royal Palm Beach does not have one inch of this road go through their community. Furthermore they are not willing to widen Royal Palm Beach Blvd south to Southern Blvd (SR 80) from 2 lanes to 3 or 4 lanes effectively bottlenecking the road that would give them traffic relief by provided greater access to a limited access freeway. To be frank Royal Palm Beach is playing NIMBY with this issue by not addressing roads within their municipality that would provide them direct relief. As a community they have not made efforts to internalize and minimize their traffic.

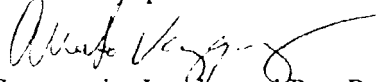
As mentioned Southern Blvd has been recently widened and made into a limited access freeway. Royal Palm Beach Blvd south of Okeechobee Blvd can and should be widened. Okeechobee Blvd is currently being widened raising the question of why it needs a controversial and expensive reliever road. Northlake Blvd can be widened from 4 lanes to 6, and public transportation can be enhanced to include a bus route to the eastern coastal communities and eastern transportation centers. Currently only one bus route services Royal Palm Beach; it runs hourly and does not go to the eastern communities (route 52). It is mystifying to many of us why our County leaders are so bent on constructing this expensive road when the more economically and environmentally sound alternatives listed above haven't even been tried.

It is also mystifying why this proposed project hasn't generated a thorough and complete environmental impact study given the environmental importance of a water supply reservoir that services three municipalities and the type and number of endangered species this project and road would negatively impact. I am confident that a more thorough and complete study of what is being proposed would expose the severe and unnecessary impacts this project and road would bring.

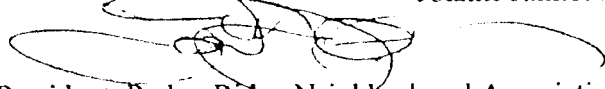
You can bring this permit to an end by denying it. It is not the job of the permitting agencies to bend over backward to facilitate the permit seeker. It is your job to safeguard the environment, protect the water supply, and ensure no loss in the quality of life to the people who would be impacted by this unsound, unnecessary, and expensive project.

Thank you for your time and your thoughtful consideration.

Alberto Vazquez


Community Leader and Past President
Parker Ridge Neighborhood Association
al@theflyingcircus.com, 561-281-1706

Joanne Jaimes


President, Parker Ridge Neighborhood Association
joanne@parkerridge.org

Attached: - Palm Beach County Comprehensive Plan Transportation Element Capacity Table
- Palm Tran Route 52 Map
- Photos taken in the Loxahatchee Slough / Grassy Waters Preserve of the Endangered Everglades Snail Kite

**TABLE TE 1a
LEVEL OF SERVICE D Link Service Volumes**

FACILITY TYPE		ADT	PK HOUR (Two-way)	Peak Season, Peak Hour, Peak Direction Service Volume	
				CLASS I	CLASS II
2 lanes undivided	2L	12,300	1,170	690	650
2 lanes one-way	2LO	19,600	1,870	2,230	2,050
3 lanes two-way	3L	15,400	1,460	960	810
3 lanes one-way	3LO	29,500	2,810	3,350	3,080
4 lanes undivided	4L	24,500	2,330	1,400	1,280
4 lanes divided	4LD	32,700	3,110	1,860	1,710
5 lanes two-way	5L	32,700	3,110	1,860	1,710
6 lanes divided	6LD	49,200	4,680	2,790	2,570
8 lanes divided	8LD	63,800	6,060	3,540	3,330
4 lanes expressway	4LX	67,200	6,250	3,440	
6 lanes expressway	6LX	105,800	9,840	5,410	
8 lanes expressway	8LX	144,300	13,420	7,380	
10 lanes expressway	10LX	182,600	16,980	9,340	

Based on the FDOT Quality LOS Manual, 2002 edition.
 *Service volumes for "undivided" roadways assume no left turn lanes are available.

**Table TE 1b:
Level of Service D Intersection Thresholds**

Level of Service	Critical Movement	HCM Operational Analysis
D	1400	Greater than 35.0 to 55.0 Seconds of Delay

**Table TE 1c:
Level of Service D Speed Threshold**

Urban Street Class	I	II	III
Range of Free Flow Speeds (FFS)	55 to 45 miles per hour	45 to 35 miles per hour	35 to 30 miles per hour
Typical FFS	50 miles per hour	40 miles per hour	35 miles per hour
LOS D	Average Travel Speed (Miles per Hour)		
	Greater than 21 to 27	Greater than 17 to 22	Greater than 14 to 18

Route 52

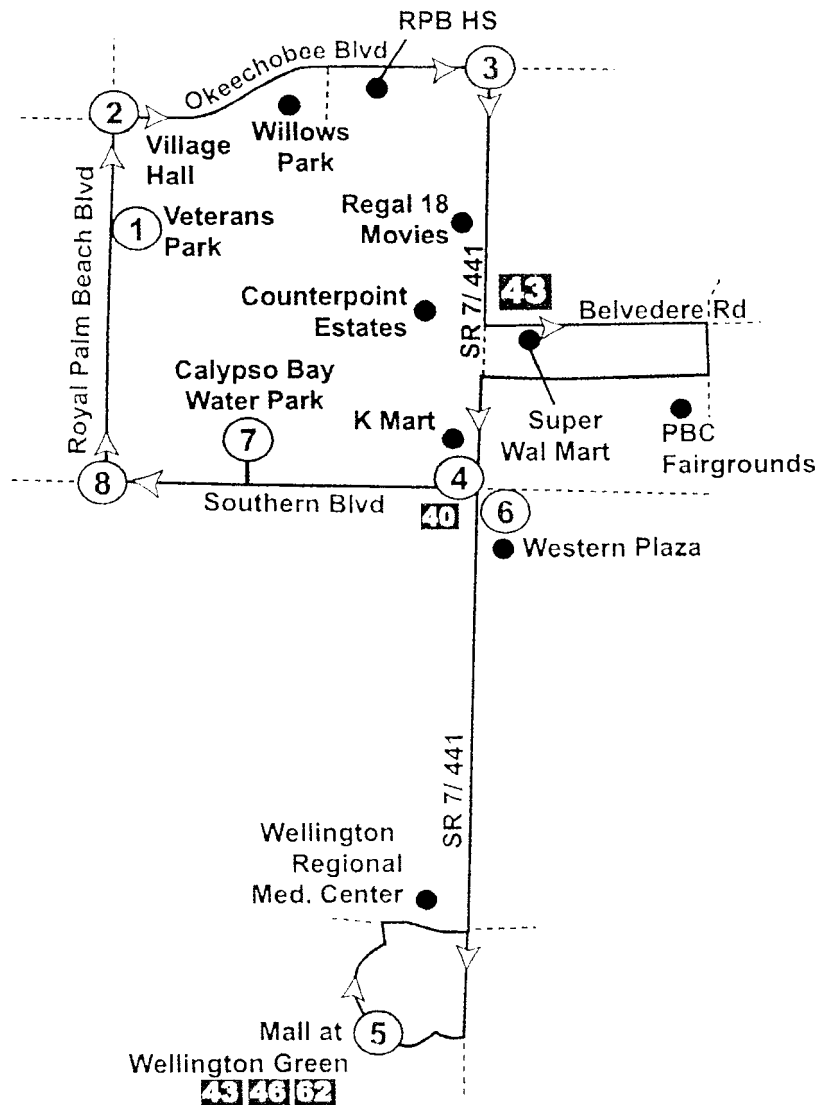
*Royal Palm Beach Crosstown
No Sunday Service*

Revision Date: March 8, 2006



LEGEND

- Points of Interest
- Specified Times Only
- Roads
- Routes
- Timepoints
- Connecting Route
- One-way Route Service







**CITY OF WEST PALM BEACH
SUMMARY REVIEW
OF THE
NATURAL RESOURCE ASSESSMENT
FOR THE
ROEBUCK ROADWAY EXTENSION
FROM STATE ROAD 7 TO JOG ROAD
PALM BEACH COUNTY ROADWAY PRODUCTION PROJECT**

August 2007

PREPARED FOR:
Palm Beach County
Roadway Production

PREPARED BY:
City of West Palm Beach
Environmental Resource Management
8537 Northlake Boulevard
West Palm Beach, FL 33412

General

For the purpose of response, the City of West Palm Beach is submitting a Summary Review of the initial **Technical Memorandum Report** associated with the requisite Natural Resources Assessment edited by Kimley, Horn and Associates, Inc. (May 2007).

This **Report**, which was compiled from collective field evaluations and historical inferences was limited to delineating onsite jurisdictional wetland areas, identifying and mapping land cover and conducting listed species surveys. The **Report** was correlated to apply to the entire wetland Preserve basins of Baywinds, Andros Isles and Riverwalk at large, rather than specifically to the areas immediately affected by the proposed Roebuck Roadway Extension right-of-way corridor which is to extend from S.R. 7 to its terminus point east at Jog Road.

The **Report** as a whole relates more to the greater landscape features and generic habitat coverage of the surrounding land-use patterns rather than to a technical examination of the roadways' actual footprint and the associated externalities related to environmental impacts and/or social disturbance factors.

Summary Review

For the sake of this review the City of West Palm Beach, under its Environmental Resources Management Division, conducted multiple field trips into the affected zones of the Preserves, which also included a combined photo assessment by South Florida Water Management District (SFWMD) which focused on the present field survey delineations of the roadway footprint relative to determining areas of perceived impacts translated across the various wetland features of the sites.

Field evaluations were conducted during both dry season (April 2007) and wet season (July 2007) cycles to draw a more accurate assessment of the habitat values under more extended seasonal variability indexes.

Such an extended assessment period was aided by the City's own expansive historical knowledge and familiarity of the sites of Baywinds, Andros Isles, Riverwalk and the Grassy Waters Preserve. Such context served to inform the review process and assisted in the formulation of the following responses to the **Technical Memorandum Report**:

- ▶ While the **Report** was generally correct in describing the set aside right-of-way of Roebuck Roadway as wetland habitat, it did not fully describe in any specific detail the environmental impacts that will be derived from the introduction of a contiguous four-lane divided urban roadway section thru such wetlands nor does it properly scale this impact relative to size, roadway infill heights above the existing topography, or habitats impacted within the 120-foot corridor section. An Aerial Exhibit of the various Photo Assessment Areas was compiled by the City to assist in interpreting representative habitat areas that will be affected by the proposed roadway alignment (see attachment).
- ▶ From the standpoint of description, the **Report** represented only a cursory view of the habitat features and described only briefly the interactive reliances of this area for wildlife populations within and peripheral to the corridor. Beyond its narrowed time scale of assessment which limited a comprehensive interpretation of the area, there was the fact that most of the **Report** assessment was conducted during a drought regime that has been estimated to have been a one in one-hundred year event.

In this regard such a drought had altered all normalcy within the marsh . . . disrupted all flow patterns and volumes of water across its hydric landscape feature.

The recent return of rain in June and July has had a “resetting effect” on this landscape . . . flow patterns and volumes are reconnected, aquatic animals have dispersed into the expanding rain fed habitats, as the return of water has cued nesting and distribution of species that, during the drought, were only casually observed. In essence, rain and the return of water levels to the system has brought the system back into more optimal levels for life support vastly increasing the overall net worth and value of the system over background interpretation of the **Report**.

In effect, the drought masked many of the more important processes related to the marsh’s functionalities and services provided to the surrounding hydroscares, particularly when viewed as a habitat extension to the greater Grassy Waters Preserve which is adjacent to the surveyed sites.

- ▶ For reasons of brevity or limitations related to scope of work the **Report** did not describe a nearly 0.34 mile section of the roadway that, as proposed, will impose a severance barrier within an existing open marsh/relic slough system within the Andros Isles’s western Preserve. The detrimental effects of roadway systems, particularly in their role as an ecological barrier, as a source of mortality of wildlife, and as a source of disturbance to adjacent habitats and the wider landscape have yet to be factored into the present right-of-way **Study**.

Roads and highways that divide hydrological/landscape linkages and animal pathways/flyways are particularly problematic. Not only is there a gap in the natural habitat imposed by two or more lanes of paved roadway, but traffic sounds, lights, chemical emissions, potentially harmful runoff and conveyance blockage impose a complex array of long-term liabilities in the form of additional direct and indirect impacts to the system.

- ▶ From a social context the **Study** failed to factor the disturbances related to increased noise and light pollution that will be generated from the elevated roadway section to the existing neighborhood settlements immediately adjacent to the proposed highway corridor.
- ▶ In regard to factoring, there were several entries in the **Report** that suggest that the Baywinds and Andros Isles developments, during their ERP submittals, had factored in wetland impacts, water quality treatment/attenuation and compensation storage for the future Roebuck Roadway right-of-way corridor. This does not appear to match with the intent of these referenced Permits and will therefore solicit additional and separate impact/compensation analysis for both direct and indirect impacts produced by the proposed roadway alignment.
- ▶ The stated monetary contributions toward wetland mitigation for Roebuck Roadway made in the **Report** should not be construed to imply precedence related to this Project. Such contributions, or more accurately mitigation fees, were made to the City of West Palm Beach (June 2003) to conduct mitigation within the Grassy Waters Preserve for impacts/compensation of Roebuck Road Extension from the Turnpike to Haverhill Road — a completely disjunct project from the present proposed Roebuck Roadway Extension.
- ▶ Under the section on Hydrology/topography the **Report** referenced the levee construct of the Grassy Waters Preserve/Water Catchment Area and an associated pump station which was mistakenly identified as a County facility in the **Report**. The referenced pump station is in actuality owned and operated by the City of West Palm Beach and utilized to offer a measure of hydrologic stage-level control over the existing wetland Preserve systems of the Baywinds and Andros Isles.
- ▶ As paraphrased in the Conclusion section of the **Report** the proposed four-lane elevated highway is expected to traverse 3.2 miles of primarily freshwater and forested wetlands. What it fails to elude to is the 46.5 acres of wetlands, their concomitant storage, recharge, and habitat that will be lost as

a direct result of the highway's infill components. Beyond the reduction of the amount of the original habitat present there is the loss of more specific structural habitat elements such as mature cypress domes and hydric pine flatwoods which although they are not irreplaceable, cannot be replaced within any meaningful time frame in mitigation terms. The potentials for fragmentation and edge-effects extending the entire length will invariably produce, as a by-product, a variety of biotic and abiotic side effects that will translate out beyond species and populations originally surveyed in the **Report**.

In essence, exactly what effects there may be; beyond the straight forward numerical and inventory responses produced by the **Report**, still remain unclear and call for more interpretative means of evaluation in order that all factors are considered within the context of environmental and social affects of the Roebuck Roadway's footprint's placement within these existing high quality wetlands Preserve features of the City of West Palm Beach.