



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

DENVER J. STUTLER, JR.
SECRETARY

December 6, 2006

Mrs. Leslie McCarthy, PhD, P.E.
Program Operations Engineer
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Re: Office of Design, Specifications
Section 007
Proposed Specification: 0070104.D01-Legal Requirements and Responsibility To The
Public-Compliance with Federal Endangered Species Act and Other Wildlife Regulations

Dear Mrs. McCarthy:

We are submitting, for your approval, two copies of a proposed Supplemental Specification for Legal Requirements and Responsibility To The Public-Compliance with Federal Endangered Species Act and Other Wildlife Regulations.

This change was proposed by Josh Boan of the State Environmental Management Office to provide specific requirements to the Contractors when handling unexpected encounters with certain endangered species on the job site. This will update the procedures for state and federal wildlife regulations and will standardize the requirements when there is no existing permit.

Please review and transmit your comments, if any, within two weeks. Comments should be sent via Email to SP965DB or duane.brautigam@dot.state.fl.us.

If you have any questions relating to this specification change, please call Duane F. Brautigam, State Specifications Engineer at 414-4110.

Sincerely,

Duane F. Brautigam, P.E.
State Specifications Engineer

DFB/sh
Attachment

cc: General Counsel
Florida Transportation Builders' Assoc.
State Construction Engineer

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC -
COMPLIANCE WITH FEDERAL ENDANGERED SPECIES ACT *AND OTHER
WILDLIFE REGULATIONS.***

(REV ~~9-18-06~~12-6-06)

SUBARTICLE 7-1.4 (Page 62 and 63) is deleted and the following substituted:

Compliance with Federal Endangered Species Act *and other Wildlife Regulations:* The Federal Endangered Species Act requires that the Department investigate the potential impact to ~~an~~ *a threatened or* endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation ~~identifies~~ *determines* that there is a potential impact ~~on~~ *to a protected, threatened or* an endangered species, the Department will ~~make~~ *conduct* a ~~biological assessment~~ *an evaluation* to determine what measures ~~are~~ *may be* necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, ~~cooperate as necessary to comply with such measures~~ these measures and conditions will be addressed on the plans or in permits as identified in 7-2.1.

In addition, in cases where certain protected, threatened or endangered species may unexpectedly be found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

*These guidelines are posted at the following URL address:
www.dot.state.fl.us/specificationoffice/endangeredwildlifeguidelines.pdf.*

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, *disposal sites, field offices,* and material or equipment storage sites. Include in the notification the ~~State Job Number~~ *Financial Project ID*, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, ~~and~~ the name of the property owner, *and a person to contact to arrange a site inspection.* Provide this notification sufficiently in advance of planned commencement of the off-site activity, to allow a reasonable period of time for the Engineer to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. ~~In the event that the Department's biological assessment indicates that mitigation measures are necessary, cooperate as necessary to comply with such measures.~~ *In the event the Department's investigation determines a potential impact to a protected, threatened or endangered species and mitigation measures or ~~a~~ permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation,*

associated with Contractor initiated off-project activities.

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC -
COMPLIANCE WITH FEDERAL ENDANGERED SPECIES ACT AND OTHER
WILDLIFE REGULATIONS.**

(REV 12-6-06)

SUBARTICLE 7-1.4 (Pages 62 and 63) is deleted and the following substituted:

Compliance with Federal Endangered Species Act and other Wildlife Regulations: The Federal Endangered Species Act requires that the Department investigate the potential impact to a threatened or endangered species prior to initiating an activity performed in conjunction with a highway construction project. If the Department's investigation determines that there is a potential impact to a protected, threatened or an endangered species, the Department will conduct an evaluation to determine what measures may be necessary to mitigate such impact. When mitigation measures and/or special conditions are necessary, these measures and conditions will be addressed on the plans or in permits as identified in 7-2.1.

In addition, in cases where certain protected, threatened or endangered species may unexpectedly be found or appear within close proximity to the project boundaries, the Department has established guidelines that will apply when interaction with certain species occurs, absent of any special mitigation measures or permit conditions otherwise identified for the project.

These guidelines are posted at the following URL address:
www.dot.state.fl.us/specificationsoffice/endangeredwildlifeguidelines.pdf .

Take responsibility to obtain this information and take all actions and precautions necessary to comply with the conditions of these guidelines during all project activities.

Prior to establishing any off-project activity in conjunction with a project, notify the Engineer of the proposed activity. Covered activities include but are not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites. Include in the notification the Financial Project ID, a description of the activity, the location of the site by township, range, section, county, and city, a site location map including the access route, the name of the property owner, and a person to contact to arrange a site inspection. Provide this notification sufficiently in advance of planned commencement of the off-site activity, to allow a reasonable period of time for the Engineer to conduct an investigation without delaying job progress.

Do not perform any off-project activity without obtaining written clearance from the Engineer. In the event the Department's investigation determines a potential impact to a protected, threatened or endangered species and mitigation measures or permits are necessary, coordinate with the appropriate resource agencies for clearance, obtain permits and perform mitigation measures as necessary. Immediately notify the Engineer in writing of the results of this coordination with the appropriate resource agencies. Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities.