

Appendix H

Consultation/Coordination Letters





United States Department of the Interior



FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960

February 25, 2010

Colonel Al Pantano
District Commander
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Service Activity Code: 41420-2007-FA-1577
Service Consultation Code: 41420-2008-F-0435
Original Service Log No.: 4-1-04-F-5912
Formal Consultation initiation Date: May 15, 2008
Project: Modified Water Deliveries;
Tamiami Trail
County: Miami-Dade

Dear Colonel Pantano:

The U.S. Fish and Wildlife Service (Service) has received your request (via email dated February 25, 2010) for an amendment to the Tamiami Trail portion of the Modified Water Deliveries to Everglades National Park (ENP) project Biological Opinion, and its effects on the wood stork (*Mycteria americana*). The following amendment is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). The project site is located in Sections 01-06, Township 54 South, Range 37 East and Sections 07-11, Township 54 South, Range 38 East, Miami-Dade County, Florida (Figure 1).

In the original Biological Opinion dated January 12, 2006, (and later amended on June 25, 2008), and incorporated herein by reference, the U.S. Army Corps of Engineers (Corps) made a determination that the project "may affect, but is not likely to adversely affect" the wood stork. The Service concurred with this determination since disturbance would be minimized by the Corps' agreement to manage the construction activities according to the Service's "Draft Supplemental Habitat Management Guidelines for the Wood Stork in the South Florida Ecological Services Consultation Area." The Corps agreed to implement the primary and secondary zone restrictions for the Tamiami West and East colonies; however, new information has surfaced regarding the location of a previously unidentified wood stork colony (East 2) within the project area (Figure 1). The following amendment delineates the appropriate primary and secondary zone boundaries and provides guidance on the type of construction activities allowed within these zones.

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As evaluated in the Biological Opinion, this project consists of constructing a 1-mile eastern bridge and raising the remaining US Highway 41 roadway to support an 8.5-ft National Geodetic Vertical Datum stage in the L-29 Canal. The endangered wood stork uses suitable habitats throughout the project area. Two annual nesting colonies occur near the project area, including the “Tamiami East” and “Tamiami West” colonies located just south of the Trail on the eastern end of the project area (Figure 1, inset). The 1-mile bridge is to be constructed midway between these two colonies, such that the bridge itself would not overlap the established primary or secondary zones. Construction activities for the bridge on-ramps and raising portions of the road however, would impinge into the disturbance zones for these two colonies. Conditions for these two areas have not changed.

However, as a direct result of having qualified avian observers on site, the Corps’ contractor, Kiewit Southern identified and alerted the Corps, Service, and ENP staff to a previously undefined colony located directly in the middle and just south of the 1-mile bridge construction site. This report was later verified by researchers at ENP who frequently conduct aerial surveys of wading bird colonies in the area. Based on numerous discussions with these researchers, other biological staff at ENP and the Corps, and through aerial photograph interpretation, the Service proposes the following zones and construction guidance to minimize impacts to this nesting colony.

The center point for the colony is located at 80°31’33.267”W and 25°45’36.599”N. The primary zone is represented by a circular buffer with a 250-ft radius. The secondary zone is indicated by a 500-ft radius buffer from the center point (Figure 1). The primary zone does not overlap the Trail but may intrude into the construction right-of-way which can be up to 100-ft south of the roadway. The secondary zone intersects the Trail at 80°31’28.722”W 25°45’39.373”N on the east side and 80°31’37.91”W 25°45’39.407”N on the west side which equals 840 linear feet of construction area within this zone.

In addition to the below guidelines set forth in prior correspondence for the primary and secondary zones:

A. Primary Zone Restrictions

1. Avoid all construction activities in this zone during the nesting season (or prior to nesting if observer notices behavior consistent with colony formation). This includes any major changes to hydrologic regime (*e.g.*, significant changes to water depth underneath and around the colony).
2. During the non-nesting season, carry out construction activities in the least obtrusive manner as possible (*i.e.*, no unnecessary removal of vegetation, or any other unauthorized activity that would impact this zone).

B. Secondary Zone Restrictions

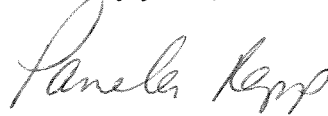
1. Avoid intrusive construction activities during the nesting season (*i.e.*, blasting, pile driving, dumping, etc.).
2. During the non-nesting season, continue with authorized construction activities.


The Corps has agreed to keep heavy machinery (*e.g.*, Vermeer trencher) out of the secondary zone south of Tamiami Trail until the end of nesting season. Since the roadway provides an acoustic barrier to the storks the contractor will be permitted to operate machinery in the secondary zone north of the road, as long as the noise produced by the machine does not rise above that of normal traffic as measured by approved Florida Department of Transportation methods. Additionally, a monitor should be present to observe any reaction by nesting wading birds within the defined colonies. The Service concurs with the Corps' determination, that should the guidelines above be followed, the proposed action "may affect, but is not likely to adversely affect" wood storks in the project area.

The Service has been made aware of other non-protected (State and or Federal) migratory birds nesting in the general area of construction. While we encourage due diligence in minimizing impacts to these nesters (*e.g.*, following guidelines set forth in the Corps environmental protection guidelines) the contractor is not required to suspend construction in the vicinity of these nests. The Service will not refer the incidental take of any migratory bird for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712), if such take occurs while the contractor is in accordance with all guidelines and recommendations stated in this and all prior correspondence from the Service and Corps regarding this project.

Thank you for your cooperation and effort in protecting fish and wildlife resources. If you have any questions regarding this project, please contact Kevin Palmer at 772-562-3909, extension 280..

Sincerely yours,



 Paul Souza
Field Supervisor

South Florida Ecological Services Office

cc:

Corps, Jacksonville, Florida (Eric Summa, Susan Conner)
DEP, Tallahassee, Florida (Inger Hansen)
District, West Palm Beach, Florida (Paul Linton)
ENP, Homestead, Florida (Alicia Logalbo)
EPA, Jacksonville, Florida (Eric Hughes)
FWC, Vero Beach, Florida (Tim Towles, Marsha Ward)
Service, Jacksonville, Florida (Miles Meyer)

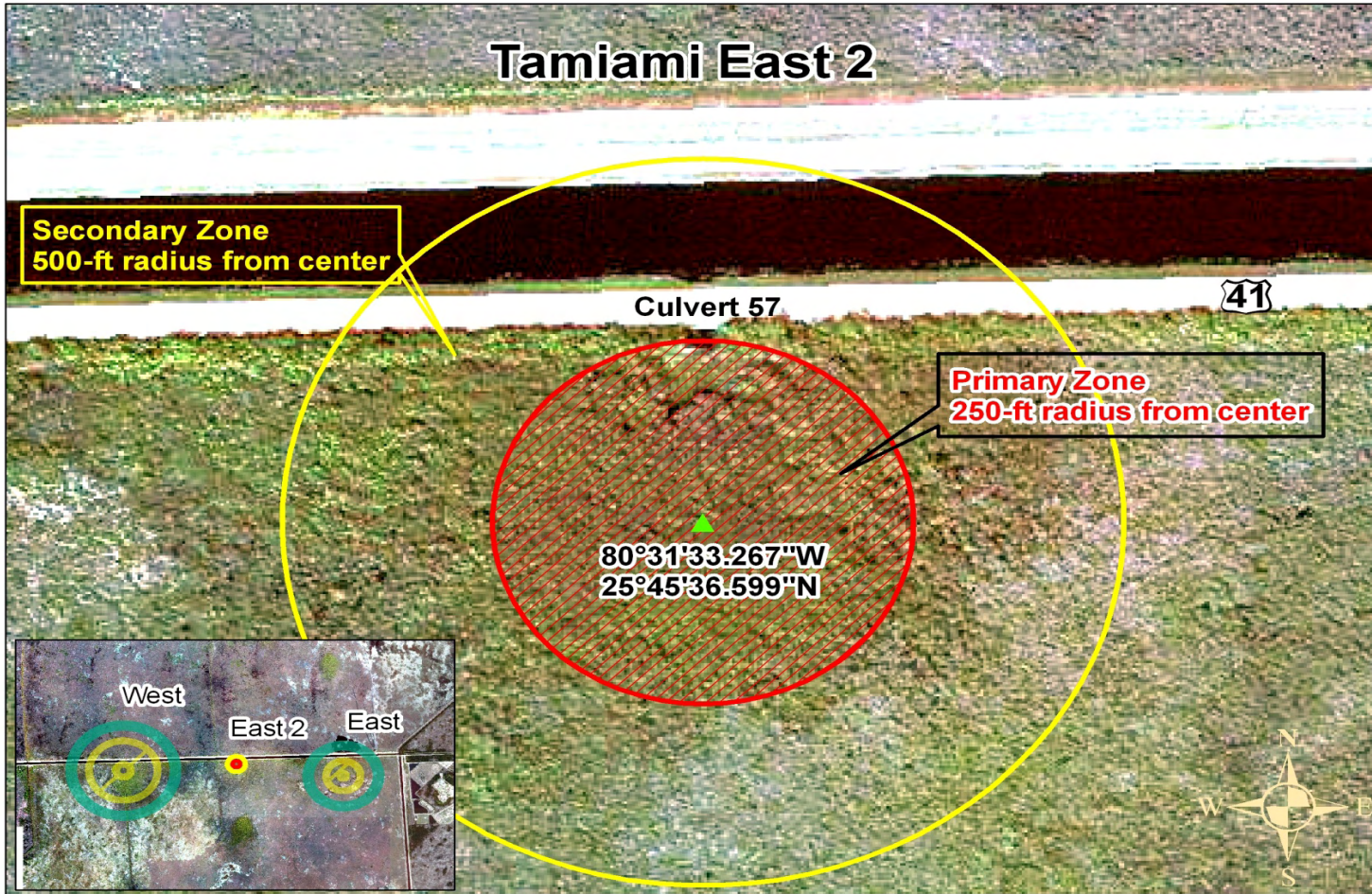


Figure 1. Aerial photograph depicting the center point, primary, and secondary zones of the Tamiami East 2 wood stork colony. The secondary zone perimeter (yellow line) intersects the Trail at $80^{\circ}31'28.722''W$ $25^{\circ}45'39.373''N$ on the east side and $80^{\circ}31'37.91''W$ $25^{\circ}45'39.407''N$ on the west side which equals 840 linear feet of construction area within this zone.

**Consultation with the Miccosukee Tribe of Indians of Florida on the Tamiami Trail
Modifications: Next Steps Project
Meeting Summary**

11 December 2009

11AM-1PM

Subject: Consultation with the Miccosukee Tribe of Indians of Florida

Participants in Tamiami Trail: Next Steps (TTM: NS) project discussion:

Bruce Boler, ENP	Dave Sikkema, ENP
Melissa Memory, ENP	Greg Smith, New South Association
Dan Kimball, ENP	Fred Dahoff, Tribal Representative
Lt. Colonel Michael Kinard, USACE	Steve Terry, Tribal Representative

On December 11, 2009 representatives from the Miccosukee Tribe met with representatives from Everglades National Park (ENP) and the U.S. Army Corps of Engineers (USACE) to discuss the potential impacts of the TTM: NS project on the cultural resources of the Miccosukee Tribe. Prior to the TTM: NS discussion, there was discussion between the Tribal representatives, various members of the South Florida Water Management District, and Dan Kimball on several topics, including demolition of the old Tamiami Trail, exotic species, and new utility corridors.

The TTM: NS project discussion included Mr. Fred Dahoff and Mr. Steve Terry of the Miccosukee Tribe; Mr. Dan Kimball, Superintendent of Everglades and Dry Tortugas National Parks, and several members of his staff, and Lt. Colonel Michael Kinard of the USACE. The purpose of the meeting was to discuss the TTM: NS project and provide the opportunity for the Tribe to express their concerns or issues with the potential impacts of this project on Tribal resources, particularly those in Northeast Shark River Slough (NESRS). The project includes bridging up to 5 miles of the eastern 10.7 miles of the trail located between the L-67/S-333 structure and the S-334 structure (located near the eastern boundary of ENP) and raising the remaining road to allow stages in the L-29 Canal to be raised to 9.7 feet.

Fred Dahoff, representing the Miccosukee Tribe on cultural resources, first provided the position of the Tribe on several issues concerning the Tamiami Trail. Dan Kimball then asked Fred if he would like to hear the presentation his staff had prepared on the details of the Tamiami Trail Modifications: Next Steps project. Fred replied that he did not need to hear this presentation. At this time, Melissa Memory, Cultural Resource Chief for ENP, asked Fred if the Tribe had any specific concerns with the potential adverse effects of this project on Tribal resources, particularly cultural resources in Northeast Shark River Slough (NESRS). Mr. Dahoff did not identify any specific concerns or any cultural resources that he felt would be adversely impacted by this project.

At this time, ENP thanked the Miccosukee Tribe for the opportunity to consult with them on this project and for their willingness to host this meeting at their Miccosukee Reserve offices. The meeting was then adjourned.



**United States Department of the Interior
NATIONAL PARK SERVICE**



**Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034**

In Reply Refer to:

L76

April 13, 2009

Dear Interested Party:

The National Park Service, as the lead agency under the National Environmental Policy Act, is preparing a Feasibility Study/Environmental Impact Statement (FS/EIS) for modifications to the Tamiami Trail. The U.S. Army Corps of Engineers (Corps) and the Federal Highway Administration have been invited to be cooperating agencies. This federal action is authorized by the 2009 Omnibus Appropriations Act, signed into law on March 11, 2009. The study area begins just east of the S-333 structure on the L-67A Canal and ends at or near the S-334 structure on Tamiami Trail, Miami-Dade County, Florida.

Everglades National Park invites your organization to participate on the Project Delivery Team (PDT) that will develop the FS/EIS. The PDT will start meeting in late May of this year and complete a report by March 11, 2010 as directed by the authorizing legislation. Please note that participation on the project team will be the financial responsibility of the participating organization and that meetings will be scheduled as needed. We intend to have an open and public process during development of the FS/EIS. Your agency's involvement, combined with other organizations, will provide the skills, knowledge and experience vital for successful project development. It will also facilitate the flow of information and help achieve concurrence and ownership by key organizational stakeholders.

Please identify the person(s) that will represent your organization on the Tamiami Trail FS/EIS Team by May 14, 2009. If you have any questions, please contact the ENP Project Manager, Bruce Boler at his email address bruce_boler@nps.gov, or by phone at 305-224-4234.

Sincerely,

Dan B. Kimball
Superintendent

ADDRESSEES:

Richard Bowers, Tribal President, Seminole Tribe of Florida, 6300 Stirling Road Suite 109 Hollywood, Florida 33024

Billy Cypress, Tribal Chairman, Miccosukee Tribe of Indians of Florida, Post Office Box, 440021 Tamiami Station, Miami, Florida 33144

Antonio Cotarelo, Professional Engineer, Water Management Division, Miami-Dade County Department of Environmental Resources Management, 33 South West 2nd Avenue Suite 200 Miami, Florida 33130-1540

Susan Markley, Ph.D., Miami-Dade County Department of Environmental Resources Management, 33 South West 2nd Avenue Suite 300, Miami, Florida 33010-1540

George M. Burgess, County Manager, Miami-Dade County, 111 N.W. 1st Street, Suite 2910, Miami, Florida 33128

Donna Fries, Water Resources Coordinator, Miami-Dade County Water and Sewer Department, 3071 South West 38th Avenue Room 544-11, Miami, Florida 33146

Carol Wehle, Executive Director, South Florida Water Management District, 3301 Gun Club Road West Palm Beach, Florida 33406

Mary Ann Poole, Policy and Stakeholder Coordination, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399-1600

Ernie Marks, Environmental Administrator, Restoration Planning and Permitting Section, 2600 Blair Stone Road, MS 3560 Tallahassee, FL 32399-2400

Marjorie Bixby, Florida Department of Transportation, 1000 North West 111th Avenue, Room 6109, Miami, Florida 33172

U. S. Department of Agriculture Natural Resource Conservation Service, 6191 Orange Drive Suite 61830, Davie, Florida 33314-3457

Barry Rosen, Ph. D., Director, U.S. Geological Survey, Florida Integrated Science Center, 12703 Research Parkway, Orlando, FL 32826

Paul Souza, U. S. Department of the Interior, Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street Vero Beach, Florida 32960

Heinz Mueller, U. S. Environmental Protection Agency, 61 Forsyth St. SW, Atlanta, GA 30303-8960

CC:

Pamela Telis, U.S. Geological Survey, CESAJ-PD-PR, P.O. Box 4970, Jacksonville, Florida 32232-0019

Eric Hughes, U. S. Environmental Protection Agency, CESAJ-PD-PR, P.O. Box 4970, Jacksonville, Florida 32232-0019

**Gene Duncan, Water Resources Director, Miccosukee Tribe of Indians of Florida, Post Office Box, 440021
Tamiami, Station Miami, Florida 33144**

**Steve Terry, Land Resources Manager, Miccosukee Tribe of Indians of Florida, Post Office Box, 440021
Tamiami, Station Miami, Florida 33144**

Craig Tepper, Seminole Tribe of Florida, 6300 Stirling Road Suite 109, Hollywood, Florida 3302



**United States Department of the Interior
NATIONAL PARK SERVICE**



**Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034**

In Reply Refer to:

L5403

June 10, 2009

Mr. Fred Dayhoff, Tribal Representative
Miccosukee Tribe of Indians of Florida
Tamiami Station
P.O. Box 440021
Miami, Florida 33144

Dear Mr. Dayhoff:

The National Park Service (NPS) and the U.S. Army Corps of Engineers (Corps), as collaborating agencies, are preparing a Feasibility Study/Environmental Impact Statement (FS/EIS) for modifications to the Tamiami Trail, as directed in the 2009 Omnibus Appropriations Act. These modifications have the potential to impact historic and cultural resources located along the trail. Since Everglades National Park will be the lead agency on this project, we are responsible for compliance with the National Environmental Policy Act (NEPA) that stipulates specific actions that must be taken to address historic and cultural resources within project areas. It is my understanding that the Osceola Camp may contain traditional cultural resources that could be impacted by any proposed modifications to the trail. If this is indeed the case, Everglades National Park is very interested in meeting with you as soon as possible to discuss eligible properties and structures as well as making arrangements to gain entrance to the property for purposes of conducting any needed surveys. I believe the following questions are pertinent to the NEPA process for this project:

- What are the traditional cultural properties you believe are located on the Camp and how might they be impacted by this project?
- Does the Tribe wish to conduct their own cultural resource assessment per the provisions in the Special Use Permit?
- Are there any structures on the property which are older than 50 years old and may now be eligible for historic designation?
- Has a topographic survey been conducted recently that can verify the elevations of the recent fill added to the property and the additional structures built over the fill? This may be required for NEPA compliance and also may be needed for proposed legislation to allow for permanent residency status and reimbursement for the fill costs.

Congressional language contained in the 2009 Omnibus Bill directs the National Park Service (Everglades National Park) to complete this project by March 10, 2010 (one year). To meet this challenging schedule, ENP needs to ensure that all National Register properties, or potential NR properties, are appropriately surveyed within the next few months. This letter is to inform you of our sincere interest in meeting with you to discuss this project. I will follow up this letter with a personal telephone call in the next couple of weeks. If you wish to review more information on this project, please contact me or have your staff contact Bruce Boler by email bruce_boler@nps.gov or telephone 305-224-4234. Thank you for your assistance in this matter.

Sincerely,

Dan B. Kimball
Superintendent



United States Department of the Interior
NATIONAL PARK SERVICE



Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034

In Reply Refer to:

L5403

April 21, 2009

Mr. Steve Terry, Tribal Representative
Miccosukee Tribe of Indians of Florida
Tamiami Station
P.O. Box 440021
Miami, Florida 33144

Mr. Fred Dayhoff, Tribal Representative
Miccosukee Tribe of Indians of Florida
Tamiami Station
P.O. Box 440021
Miami, Florida 33144

Dear Mr. Terry and Mr. Dayhoff:

The National Park Service (NPS) and the U.S. Army Corps of Engineers (Corps), as a cooperating agency, are preparing a Feasibility Study/Environmental Impact Statement (FS/EIS) for modifications to the Tamiami Trail, as directed in the 2009 Omnibus Appropriations Act. The proposed modifications will begin just east of the S-333 structure on the L-67A Canal and end at or near the S-334 structure on the trail. Everglades National Park and the Corps would like to initiate government to government consultation with the Miccosukee Tribe on this project and invite you to participate on a Project Delivery Team (PDT) that will start meeting in late May of this year.

From previous consultation with Everglades National Park, as well as the U.S. Army Corps of Engineers, we know that Section 106 compliance has been delegated to you by Chairman Cypress. Therefore, your participation would be a valuable asset to this effort.

This consultation would also provide an opportunity to update you on the status of several other restoration efforts that may affect Tribal lands and cultural resources in the near future. These include (1) the Old Tamiami Trail Removal Project (east of S-12D), (2) the Vista Clearing Project, (3) the Swales Pilot Project, and (4) remaining components of the Modified Water Deliveries Project.

The first PDT meeting for the FS/EIS is scheduled for May 18, 2009. Ideally, we would hope to consult on this new project prior to this first PDT meeting. Please provide me with a date and time most convenient for you. If you would like any further information, please contact me by email: dan_kimball@nps.gov, or telephone 305-242-7712, or Bruce Boler by email bruce_boler@nps.gov or telephone 305-224-4234. Thank you for your assistance in this matter.

Sincerely,

Dan B. Kimball
Superintendent

cc: Stuart Applebaum, Deputy for Restoration Program Management, COE



**United States Department of the Interior
NATIONAL PARK SERVICE**



**Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034**

In Reply Refer to:

L54

Mr. Steve Terry, Tribal Representative
Mr. Fred Dayhoff, Tribal Representative
Miccosukee Tribe of Indians of Florida
Tamiami Station
P.O. Box 440021
Miami, Florida 33144

Dear Mr. Terry and Mr. Dayhoff:

The National Park Service (NPS) in preparation of a Feasibility Study/Environmental Impact Statement (FS/EIS) for modifications to the Tamiami Trail, as directed in the 2009 Omnibus Appropriations Act, contracted New South Associates to conduct a Cultural Resource Survey of properties within a 10.7 mile corridor of the eastern Tamiami Trail. This Cultural Resource Survey is completed, except for minor edits (the summary is enclosed and the final report will be sent to you by COB November 30, 2009) which concludes that none of the alternatives proposed in this FS/EIS will adversely impact cultural resources of the Miccosukee Tribe of Indians. This conclusion is in agreement with the Cultural Resource Survey, dated January 11, 2006, conducted by New South Associates for the 2005 Revised General Reevaluation Report, where the project area and proposed alternatives were similar. It is our understanding that you concurred with the findings from the New South Associates Survey for the 2005 RGRR; however, my staff and I would like to consult with you to review the findings from this updated 2009 Cultural Resource Survey and address your concerns.

In a letter to you dated April 16, 2009, Everglades National Park requested consultation with you on this project; however, at that time the 2009 Cultural Resource Survey had not been completed. Now that this survey is completed, we wish to meet to discuss the findings, identify any impacts to tribal cultural resources not addressed in this report, and discuss potential mitigation options. As I indicated in the April 16, 2009 letter requesting consultation, Congressional language contained in the 2009 Omnibus Bill directs the National Park Service (Everglades National Park) to complete this project by March 10, 2010 (one year). To meet this challenging schedule, ENP has been expedient in completing many technical tasks; however, we have been cognizant of the need and NHPA and NAGPRA responsibility in consulting with the Miccosukee Tribe of Indians. If this priority has not been appropriately expressed through communications between my staff and tribal representatives, I assure you it was unintentional, as tribal matters are of the highest priority to Everglades National Park.

Everglades Chief of Cultural Resources Melissa Memory called on November 17 and requested a meeting on December 3, 2009. Please confirm if you are available and where you would like to meet. If you are not available on this date, please provide me with available dates and times when it is convenient for you to meet with me and Everglades National Park will accommodate your schedule needs. If you wish to review more information on this project, please contact me or have your staff contact Bruce Boler by email bruce_boler@nps.gov or telephone 305-224-4234. Thank you for your assistance in this matter.

Sincerely,

Dan B. Kimball
Superintendent

Enclosures



United States Department of the Interior
NATIONAL PARK SERVICE



Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034

In Reply Refer to:

L5403

June 11, 2009

Chairman Billy Cypress
Miccosukee Tribe of Indians of Florida
P.O. Box 440021
Tamiami Station
Miami, Florida 33144

Dear Chairman Cypress:

In a letter to you dated April 16, Everglades National Park requested consultation with you on a project authorized by the 2009 Omnibus Appropriations Act. In a separate letter dated April 22, the park requested your participation in an inter-agency/tribal meeting to discuss any issues, concerns, problems or opportunities you may have with this same project. In e-mails dated May 11 and May 16, the park requested your participation in this project's initial kick-off meetings on May 19, 20. The park informed you that these meetings were to document any concerns, issues, or problems you may have with the proposed purpose, objectives, scope, and potential impacts of this project. At these meetings the agencies who did participate expressed concern with your absence. On June 2, 2009 a public scoping meeting took place to receive public input on this project. It was well attended; however, once again stakeholders expressed concern with your absence and recommended that we try harder to communicate with you. This letter is an attempt to continue to seek your participation in this project.

While the agency/tribal scoping meeting and the public meeting for this project are concluded, there is still the opportunity for you to document any concerns you have with this project; however, public comments must be received by June 29, 2009. Also, there is an inter-agency/tribal meeting scheduled for June 17, 2009 to further refine the project objectives, alternatives, and performance measures. As the lead agency on this project, we wish to assure you that we will continue to seek your participation. If you would like any further information, please contact me at 305-242-7712 or have your staff contact Bruce Boler by email bruce_boler@nps.gov or telephone 305-224-4234. Thank you for your assistance in this matter.

Sincerely,

Dan B. Kimball
Superintendent

cc:

Steve Terry, Land Resources Manager
Gene Duncan, Water Resources Director



United States Department of the Interior
NATIONAL PARK SERVICE



Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034

In Reply Refer to:

Mr. Steve Terry, Tribal Representative
Miccosukee Tribe of Indians of Florida
Tamiami Station
P.O. Box 440021
Miami, FL 33144

Mr. Fred Dayhoff, Tribal Representative
Miccosukee Tribe of Indians of Florida
Tamiami Station
P.O. Box 440021
Miami, FL 33144

The National Park Service (NPS) and the U.S. Army Corps of Engineers (Corps), as a cooperating agency, are preparing a Feasibility Study/Environmental Impact Statement (FS/EIS) for modifications to the Tamiami Trail, as directed in the 2009 Omnibus Appropriations Act. The proposed modifications will begin just east of the S-333 structure on the L-67A Canal and end at or near the S-334 structure on the trail. Everglades National Park and the Corps would like to initiate government to government consultation with the Miccosukee Tribe on this project and invite you to participate on a Project Delivery Team (PDT) that will start meeting in late May of this year.

From previous consultation with Everglades National Park, as well as the U.S. Army Corps of Engineers, we know that Section 106 compliance has been delegated to you by Chairman Cypress. Therefore, your participation would be a valuable asset to this effort.

This consultation would also provide an opportunity to update you on the status of several other restoration efforts that may affect Tribal lands and cultural resources in the near future. These include (1) the Old Tamiami Trail Removal Project (east of S-12D), (2) the Vista Clearing Project, (3) the Swales Pilot Project, and (4) remaining components of the Modified Water Deliveries Project.

The first PDT meeting for the FS/EIS is scheduled for May 18, 2009. Ideally, we would hope to consult on this new project prior to this first PDT meeting. Please provide me with a date and time most convenient for you. If you would like any further information, please contact me by email: dan_kimball@nps.gov, or telephone 305-242-7712, or Bruce Boler by email bruce_boler@nps.gov or telephone 305-224-4234. Thank you for your assistance in this matter.

Sincerely,

Dan B. Kimball
Superintendent
Everglades and Dry Tortugas National Parks



**United States Department of the Interior
NATIONAL PARK SERVICE**



**Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034**

In Reply Refer to:

Mr. Paul Souza, Field Supervisor
U.S. Fish & Wildlife Service
1339 20th Street
Vero Beach, FL 32960-3559

Dear Mr. Souza:

The National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) of proposed modifications to the Tamiami Trail to restore flows and ecological conditions and enable restoration of Northeast Shark River Slough in Everglades National Park. The purpose of this correspondence is to initiate informal consultation with your agency pursuant to the requirements of the 1973 Endangered Species Act and provide some background information about this project. The NPS is also requesting confirmation of species or their critical habitat either listed or proposed for listing that may be present in the referenced study area.

The 2009 Omnibus Appropriations Act directed the Secretary of the Interior, acting through the National Park Service, to immediately evaluate the feasibility of additional bridge length, beyond that to be constructed pursuant to the Modified Water Deliveries Project, including a continuous bridge, or additional bridges or some combination thereof, for the Tamiami Trail to restore more natural water flow to Everglades National Park and Florida Bay and for the purpose of restoring habitat within the Park and the ecological connectivity between the Park and the Water Conservation Areas.

The following list of threatened and endangered species was developed in coordination with your agency. Federally listed species that may be present in the study area are: the Everglade snail kite (*Rostrhamus sociabilis*), the American crocodile (*Crocodylus acutus*), the West Indian manatee (*Trichechus manatus*), the wood stork (*Mycteria americana*), the Cape Sable seaside sparrow (*Ammodramus maritimus*), the Florida panther (*Puma concolor coryi*), and the eastern indigo snake (*Drymarchon corais couperi*). While no critical habitat is located in the project footprint, the project is located near critical habitat for both the Cape Sable seaside sparrow and the American crocodile. The Corps will consider project effects on these critical habitats in the draft EIS.

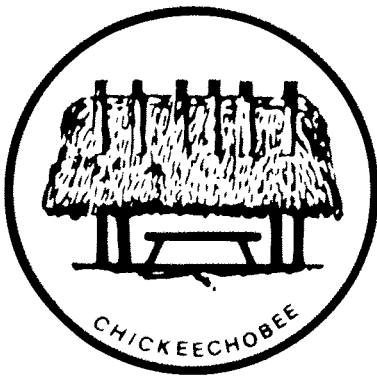
If you have questions, need any additional information or would like to arrange a time to meet and discuss the project, please do not hesitate to contact me at ///number or ///POC of my staff at ///.

Sincerely,

Dan B. Kimball.

Dan B. Kimball
Superintendent

Enclosures: Newsletter—I can provide you a copy once it is cleared to print



Miccosukee Tribe of Indians of Florida

Business Council Members
Colley Billie, Chairman

Jasper Nelson, Ass't. Chairman
Max Billie, Treasurer

Andrew Bert Sr., Secretary
William M. Osceola, Lawmaker

March 22, 2010

Superintendent Dan Kimball
Everglades National Park
40001 SR 9336
Homestead, FL 33034

Dear Superintendent Kimball:

The Miccosukee Tribe received the Preliminary Draft of the Tamiami Trail Modifications: Next Steps Draft Environmental Impact Statement. We were surprised to see that Mr. Fred Dayhoff was misquoted once again in this draft. This is the second time Mr. Dayhoff has been misquoted. The first time we thought this was a mistake. Now, we are beginning to believe that this is intentional to serve someone's agenda. The misquote is under Section 6.2.3 American Indian Tribes. In this section, third paragraph, Mr. Dayhoff is purported to have stated the Tribe did not have any concerns or cultural resources that would be adversely impacted in the Northeast Shark River Slough National Register Archaeological District. What Mr. Dayhoff did state at this meeting on December 11, 2009, is that the Tribe has no concerns or cultural resources within the ROW Footprint of the roadway, with the exception of the Tigertail Camp and the William McKinley and Alice Osceola Camp.

Every person with any knowledge of the Everglades knows that all islands in Everglades National Park and throughout the Everglades as a whole are of high importance to the Miccosukee Tribe. Every island was used by the Miccosukee people. Every island is of extreme interest to the Miccosukee Tribe. Mr. Dayhoff has been involved in archaeological investigations of the islands in Northeast Shark River Slough and knows full well the importance of these to the Miccosukee Tribe. Therefore, please correct the statement attributed to Mr. Dayhoff to reflect what he actually stated concerning the ROW roadway. Please also include a statement to the effect that all islands in Northeast Shark River Slough National Register Archaeological District are of extreme interest to the Miccosukee Tribe.

Thank you for your cooperation and prompt attention to our request.

Sincerely,

Steve Terry
NAGPRA & Section 106 Coordinator for
Fred Dayhoff
NAGPRA & Section 106 Representative
Miccosukee Tribe

RECEIVED
JUL 01 2009

June 26, 2009

National Park Service
Denver Service Center
Planning Division
P O. Box 25287
Denver, Colorado 80225-0287

Attention: Pat Kenney

Re: Miccosukee Tribe Comments on the Notice of Intent to Prepare Feasibility Study and Environmental Impact Statement for Everglades National Park To Evaluate Modifications to the Tamiami Trail

Dear Ms. Kenney,

The Miccosukee Tribe of Indians of Florida hereby provides its comments on the *Notice of Intent to Prepare Feasibility Study and Environmental Impact Statement for the Everglades National Park to Evaluate Modifications to Tamiami Trail*, which appeared in the Federal Register on May 29, 2009. The notice states that the purpose of the Environmental Impact Statement ("EIS") is to "evaluate the feasibility of additional bridge length, beyond that to be constructed pursuant to the Modified Water Deliveries to Everglades National Park Project (16 U.S.C. 410r- S), including a continuous bridge, or additional bridges or some combination thereof, for the Tamiami Trail (United States Highway 41) to restore more natural water flow to Everglades National Park and Florida Bay and for the purpose of restoring habitat within the Park and the ecological connectivity between the Park and the Water Conservation Areas (Omnibus Appropriations Act 2009)."

As the Department of Interior ("DOI") and National Park Service ("NPS") are aware, the Tribe has customary use and occupancy rights in Everglades National Park and a perpetual lease to 189,000 acres of Everglades north of the Park in Water Conservation Area 3A ("WCA 3A"). The Tribe is confused by the term "proposed project" in the federal register notice, since DOI was only instructed to evaluate feasibility. No "project" was authorized in the Act cited by NPS. However, since the NPS is conducting an EIS, it must fully comply with the National Environmental Policy Act ("NEPA") and other federal law. The Tribe is concerned that the EIS, which is hastily being undertaken by the NPS, will not adhere to the requirements of federal law. To that end, the Tribe provides the following comments on the confusing NPS notice and process.

PROJECT AREA: The Project Area that NPS is planning to analyze in the EIS is too narrow in that it is limited only to Everglades National Park. The Project Area in which impacts are analyzed must include the Water Conservation Areas (including WCA 3A) and western Miami-Dade County.

CONSTRUCTION: The EIS must analyze any adverse impacts from construction, and post-construction, on the Tiger Tail and Osceola Camps (i.e. noise light, traffic, privacy, and cultural impacts) and all such adverse impacts must be avoided. NPS should not consider any alternative that places a bridge over or close to these camps. Impacts on hurricane, health, fire, and other vital access to Tamiami Trail must be analyzed and safety maintained. Any blocking of culverts during construction to prevent pollution from entering the Park will result in higher water levels in WCA 3A, and adversely impact the endangered Snail Kite, and must be analyzed in the EIS. The EIS should also review whether any hazardous waste sites exist along Tamiami Trail and divulge the cost of cleaning them up.

OPERATIONS: The EIS must analyze the impact of operations, as well as construction, on the WCAs and western Miami-Dade County. The NPS cannot assume benefits in the Park from operations, but refuse to assess impacts of operations on the WCAs and Miami-Dade County. The Corps and DOI are well aware that construction of any bridge will result in an average annual increase in flows into the Park, and a *de facto* change in operations, that could flood Indian camps, Tribal private property, and western Miami-Dade County. The impacts of operations on the Miccosukee Reserved Area, the Miccosukee Resort, and the Tiger Tail and Osceola Camps, as well as the Tribe's perpetual lease lands in WCA 3A, must be analyzed in the EIS. The Tribe will not tolerate any adverse impacts on these areas.

BENEFITS: The EIS should divulge that construction of a bridge alone will not provide benefits for the Park. The EIS should also analyze the impacts and benefits from operations and seek alternatives that will maximize benefits to the greater Everglades ecosystem. Alternatives should be assessed on whether they provide improvements in ecological and hydrological conditions, not just in the Park, but in the WCAs as well. No harm to the WCAs should occur either during construction or operation.

SEEPAGE CONTROL: Since benefits to the Park cannot be realized until seepage out of the Park is controlled, seepage control must be a component of the preferred alternative. Seepage to the east of the Park into the flood protected areas in western Miami-County must be analyzed and controlled.

SHARK RIVER SLOUGH RESTORATION: The EIS must analyze alternatives that facilitate both components of Shark River Slough restoration: 1) flows through WCA 3A and WCA 3B into Shark River Slough and 2) the lost component due to urbanization. Congress specifically directed that a purpose of the study is to restore connectivity between the Park and the WCAs. Thus, impacts of the alternatives on the WCAs must be fully analyzed in the EIS.

"UNCONSTRAINED FLOWS" AND VOLUME: The EIS documents should fully explain the concept of "unconstrained flows" that NPS has declared for the alternatives. It should also analyze

whether unconstrained flows will result in flooding impacts to the Osceola Camp, private property, and Miami-Dade County. Peak and annual flows should be analyzed for each of the alternatives, including the increase in average annual flow into the Park that will result from a *de facto* change in operation from just building the bridge. Also, distribution of flows should be used as a performance measure. Moreover, the NPS has recently, and improperly, rejected the volume performance measure for the EIS and should reinstate it. Without knowing the volume desired, and delivered, the EIS can not possibly analyze what is necessary or the impacts on the environment.

CULVERTS: NPS reported that DOI Leadership Guidance includes the recommendation to “use con-span-like structures (prefabricated culverts) as potentially a more cost effective way to meet the Congressional intent to improved connectivity.” Since con-spans are essentially large culverts, and culverts are technically small bridges, clearing out the exotic vegetation downstream of the existing culverts, and constructing additional culverts and swales, should be evaluated in the EIS as a cost-effective alternative to meet Congressional intent.

WATER QUALITY: The EIS must assess the impacts of construction and operations of each of the alternatives on water quality.

ENDANGERED SPECIES: The EIS must assess the impacts of construction and operations of each of the alternatives on all threatened and endangered species, including the Wood Stork colonies along Tamiami Trail and the Snail Kite in WCA 3A.

LAND TO BE ACQUIRED: The EIS must divulge the amount, and cost, of the land that must be acquired in the Everglades National Park Expansion Area and divulge that such land must be purchased before any benefits can be realized from operations.

COST CAP: According to NPS representatives, DOI leadership advised that there should be NO COST CAP for the preferred alternative. This is irresponsible in light of the current fiscal crisis in this country. Cost should be fully evaluated, and used as a factor to screen out alternatives.

COST OF DELAY: Irreversible damage to the Everglades must be stopped. Delay has a cost. All alternatives analyzed should look at the cost of delay to the Everglades. The amount of time it would take to implement each alternative should be used as a performance measure.

CERP AND NON-CERP PROJECTS: The EIS should look at the compatibility of the alternatives with Comprehensive Everglades Restoration Projects (“CERP”) projects and non-CERP projects. The EIS should discuss each of the projects to be built and contain a time line for their completion. Any redundancies of the alternatives with future projects should be divulged. The alternatives must also be compatible with the spreader swale pilot project.

In closing, Tribal representatives have personally observed the NPS’ attempt to hurriedly slap together something it can call an EIS, even though Congress gave no deadline for completing the feasibility study. In order to rush out a document, NPS intends to improperly rely on the Army

Corps of Engineers' *Second Supplemental Environmental Impact Statement for the Tamiami Trail Modifications for the Modified Water Deliveries Project* (2005). NPS is even seeking to extrapolate modeling from a completely different suite of alternatives and apply it to new alternatives, rather than conduct the requisite modeling. It plans to rely on a 2005 Mod Waters SEIS, even while claiming that its so-called "proposed project" is neither Mod Waters nor CERP. The NPS is clearly not conducting the feasibility evaluation that Congress directed.

Congress asked for an evaluation of the feasibility of, among other things, restoring "the ecological connectivity between the Park and the Water Conservation Areas." The 2005 SEIS did not study the connectivity between the Park and the WCAs. It only studied benefits in the Park. This is only one example of why reliance on this antiquated document, and its flawed science, is certain to result in an inadequate analysis and a legally deficient document. DOI appears to be attempting to hi-jack the language in the Omnibus Appropriations Act to rush through an "EIS" in order to claim it has a shovel-ready project, so it can seek stimulus money to achieve its plans for Tamiami Trail. DOI is doing so with no regard for science, fiscal responsibility, the needs of the greater Everglades ecosystem, or the rights and concerns of the Miccosukee Tribe, whose members lived in the Everglades long before the Park existed.

Sincerely,


Dexter W. Lehtinen

cc Thomas Strickland, Assistant Secretary of Fish, Wildlife and Parks
Dan Kimball, Superintendent Everglades National Park