

**0070104-LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE
PUBLIC-COMPLIANCE WITH FEDERAL ENDANGERED
SPECIES ACT AND OTHER WILDLIFE REGULATIONS
COMMENTS FROM INDUSTRY REVIEW**

Mark Easley
(813) 636-2113

Comments:

A couple of comments on the T&E species.

1) I have attached notes used by FDOT District 1 for interactions with Crested Caracara nests. These state that no construction will occur within 985 during the nesting season and work out to 1500 feet my occur only if a qualified biologist monitors the nest. I would suggest that the 985 be modified to 1500.

2) According to, "Guidelines for Preparation of Biological Assessments and Evaluations for the Red-cockaded Woodpecker" (USFWS 1989), the primary feeding area of a RCW colony can extend outward up to 1/2 mile. Because of this, all work within 1/2 mile of a colony should stop until coordination with the USFWS has occurred. The determination of affect is based in part on the presence of adequate basal area of trees within the 1/2 mile feeding area. If the construction action resulted in a reduction of basal area below the minimum, than a jeopardy determination could result. This would not be good for the FDOT.

Call if you would like to discuss.

Bob Dion
(386) 740-0665

Comments:

Is there a distinction between threatened and protected species? The 2nd line refers to 'threatened or endangered species'; the 4th line refers to 'protected or endangered species' and the 1st line of the second paragraph refers protected species. Suggest all be similar.

The last sentence deals with additional compensation and time. 8-7.3.2 may allow additional time for controlling items of work. Suggest referring to it.

The URL link has multiple references to "Construction Project Manager" consider changing this to Engineer.

Tami Lee Piascik

Comments:

In reviewing the subject: Proposed Specification Change # 0070104, I have one comment regarding the paragraph that I've copied, listed above;

Please assign an exact time frame to the notification requirement and subsequent investigation. If we are changing Specifications, we need to address muddled issues. Time frames that are stated as "sufficient" or "reasonable" are objects of interpretation.

If the Specification stated something to the effect of "Provide this notification **14 days** in advance of planned commencement...etc.", we as Administrators of FDOT Projects would have a tangible time line that can be enforced if the situation warrants. This would also quell discussions about claims for delays if the Engineer's investigation of an off-site activity area takes longer than the Contractor deemed "sufficient".

Bob Schafer
bschafer@rangerconstruction.com
772-464-6460

Comments:

The last sentence reads, "Additional compensation or time will not be allowed for permitting or mitigation, associated with Contractor initiated off-project activities."

Perhaps not additional money, but non-compensible time should always be granted if a Contractor is attempting to obtain a borrow pit permit, for example, and the process becomes bogged down in the State or County system. The FDOT will have benefitted prior to the permit being issued by the fact of the cheaper price in the bid. The Contractor should be given the opportunity to get the permits, which at times is an unknown timeframe, without having to pay a penalty in the form of potential LD's. Don't forget, by simply pushing the date out for a project completion, the Contractor increased his liability and risk and will pay more for materials. None of this is ever considered by the Department, and they should not compound these potential losses with the additional potential for liquidated damages.

Please call me to clarify and discuss further.