



# Florida Department of Environmental Protection

Northwest District  
160 Governmental Center  
Pensacola, Florida 32502-5794

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Mimi A. Drew  
Secretary

September 15, 2010

Mr. Jorge Gonzalez  
The St. Joe Company  
245 Riverside Ave., Suite 500  
Jacksonville, FL 32202

Dear Mr. Gonzalez:

Re: St. Joe Ecosystem Management Agreement for Bay and Walton Counties  
Amendment to Appendix B

On October 11, 2004 the St. Joe Company (St. Joe) and the Florida Department of Environmental Protection (DEP) entered into the above referenced ecosystem management agreement (EMA), pursuant to Section 403.075, F.S. Consistent with subsection 403.075(8)(b)4., F.S., section XIII on page 32 of the EMA defines the procedure for Amendments to the agreement. The attached amendment has been agreed upon and shall be effective on the date the last party signs the amendment.

### **Background:**

The EMA sets forth standards and procedures for dredge and fill permitting, stormwater permitting and mitigation options within a specified boundary area in southern Bay and Walton Counties. The DEP also worked closely with the U.S. Army Corps of Engineers to develop a parallel federal consent or Regional General Permit (RGP) authorized as SAJ-86 (SAJ-2004-1861). Both EMA and RGP documents also include the provisions for the establishment the operation of two mitigation banks, included as Appendices, that were reviewed under the state mitigation bank statute, Section 373.4136, F.S. and rule, Chapter 62-342, F.A.C. These appendices serve as both the state Mitigation Bank Permit and federal Mitigation Bank Instrument. Aside from the initial inclusion as part of the EMA agreement, the mitigation bank permits are relatively complete and independent of the EMA agreement, and have a independent permit numbers for and tracking: Appendix A - Breakfast Point Mitigation Bank is DEP Permit 0227473-001, and Corps MBI, SAJ-2004-1865 and NW27; Appendix B - Devils Swamp Mitigation Bank is DEP Permit 0227475-001, and Corps MBI, SAJ-2004-1864 and NW27.

As Appendix B, the Devils Swamp Mitigation was originally authorized for use only within the permitting and geographic boundaries of the EMA/RGP, and the review and

assessment was somewhat specialized within those parameters. St. Joe Company now seeks authorization to use the mitigation bank outside of the EMA/RGP boundaries and has submitted a modification request to expand the service area and allow its use for non-EMA/RGP permits, similar to other mitigation banks. The Corps of Engineers modified the service area of the federal Mitigation Bank Instrument as of November 19, 2009. The state permit modification also includes remapping of the bank's native communities and assessment areas to correct some errors in the initial mapping, and a reassessment of mitigation credits by the Uniform Mitigation Assessment Method (Ch. 62-345, F.A.C.). While these are considered major modifications of the mitigation bank permit itself, the modification has little impact on the EMA.

**EMA Amendment:**

The attached amendment to the EMA makes the Devils Swamp Mitigation Bank an independent permit, including existing and subsequent modifications of that permit. The specific language is in the attached EMA amendment and provides for these following modifications:

- 1) Changing Appendix B, which is the current DSMB authorization document to a citation of the revised and independent permit;
- 2) An update to the website for the EMA;
- 3) Minor changes in Article VIII of the EMA document that reference the assessment methodology;
- 4) Article XI is appended to include additional reporting requirements and a requirement to generate additional mitigation credits from the conservation units if required to do so by the Department.

**DSMB Mitigation Bank Modifications:**

As a stand-alone, independent permit, all mitigation bank documents are public information and all modifications will have a point of entry for challenges. The service area modification for the bank will be publicly noticed. **The use of the mitigation bank for EMA/RGP projects is not altered.** The mitigation bank permit modification provides the following language to account for EMA/RGP projects and tracking:

"Impact permits issued under EMA/RGP Agreements shall have the number of required credits determined using the methods set forth in the EMA/RGP Agreements, and identified on the state ledger as an EMA/RGP project. EMA/RGP credits required for "high quality" or "unconverted" wetlands will be debited for the state from the Cypress/Shrub/Forested ledger, and credits required for "low quality" or "converted" wetlands will be debited from the Wet Prairie/Flatwoods ledger."

This condition ensures that EMA/RGP impact projects will not need to change the methods by which mitigation is determined. Further, impacts to high and low quality

wetlands can be more easily tracked to ensure that the quantity of impact acres does not exceed the provisions of the EMA.

**Notice:**

By copy of this letter, we are notifying interested parties of this amendment. However, the Department has determined that the proposed amendment may have a heightened public concern. Therefore, pursuant to Section 403.815 F.S. and 62-312.060(14) F.A.C., you (the applicant) are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice is required to be published one time within 30 days, in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S. The applicant shall provide proof of publication to:

Andrew Joslyn  
Department of Environmental Protection,  
Northwest District  
160 Governmental Center  
Pensacola, Florida 32502-5794

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

The Petition shall contain the following information:

- (a) The name, address, and telephone number of each petitioner, the permittee's name and address, the Department Permit File Number and the county in which the project is proposed;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department's action; or proposed action;
- (d) A statement of the material facts disputed by petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;

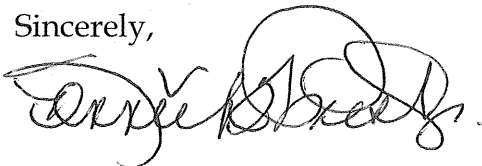
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

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

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

Any party to this letter has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and by filing a copy with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date the Notice of this EMA Amendment is filed with the Clerk of the Department.

Sincerely,



Kenneth W. Prest, Jr.  
District Director  
Northwest District Office

Attachments: First Amendment to the EMA; Public Notice

**FIRST AMENDMENT TO ECOSYSTEM MANAGEMENT AGREEMENT  
FOR BAY AND WALTON COUNTIES**

THIS FIRST AMENDMENT TO ECOSYSTEM MANAGEMENT AGREEMENT FOR BAY AND WALTON COUNTIES (the "First Amendment") is made, executed and delivered as of the 15<sup>th</sup> day of September, 2010, by and between **The State of Florida Department of Environmental Protection**, (the "Department") a Florida governmental agency, and **The St. Joe Company**, a Florida corporation ("St. Joe").

WHEREAS, the Department and St. Joe entered into an Ecosystem Management Agreement on October 11, 2004, in accordance with Florida Statutes §403.075 (the "EMA"); and

WHEREAS, attached to the EMA as Appendix B was a mitigation bank permit authorizing the establishment and operation of the Devils Swamp Mitigation Bank (DSMB); and

WHEREAS, the DSMB permit provided for a service area within the boundaries of the EMA; and

WHEREAS, the Department is issuing a modification of the DSMB permit to expand the DSMB service area; and

WHEREAS, as a result of the DSMB permit modification, Appendix B is no longer the operative document for the DSMB; and

WHEREAS, the Department and St. Joe hereby desire to amend the EMA by amending Appendix B to delete the original DSMB permit documents and substitute in its place reference to an independent DSMB permit as modified and by amending other provisions.

NOW, THEREFORE, in consideration of the mutual agreements herein contained for One and No/100 U.S. Dollars (\$1.00), and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The recitals set forth above are incorporated herein by reference and made a part hereof as fully as if set forth herein verbatim.

**Ecosystem Management Agreement for Bay and Walton Counties**  
**First Amendment**  
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2. Appendix B, which consists of an 18 page document with a 125 page attachment and which is currently referenced as:

Appendix B  
Federal Mitigation Bank Instrument  
FDEP Mitigation Bank Permit  
Devils Swamp Mitigation Bank

Shall be deleted and replaced by:

Appendix B  
**Devils Swamp Mitigation Bank**  
(See DEP Permit #0227475-001, together with all  
Figures, Attachments and current and future Modifications)

3. The following sentences within Article VIII shall be deleted:
- a. "The mitigation potential for each mitigation bank has been evaluated using WRAP analysis and field observations, and mitigation credits have been assigned pursuant to Rule 62-342."; and
  - b. "The number and type of mitigation credits available in each mitigation bank are given in Appendices A and B. Based on representative impacts to low and high quality wetlands within the Agreement area, the number of credits required within either the Breakfast Point or Devil's Swamp mitigation bank for impacts to low and high quality wetlands has been determined, and are shown in Appendices A and B."
4. Article XI requires St. Joe to submit an annual report by February 15 of each year which provides information from the preceding calendar year. The following additional items and information shall be provided with the annual report:
- 6) A summary of mitigation and mitigation bank activities, including credits available, credits released and credits used;
  - 7) A copy of mitigation bank ledgers;
  - 8) Total wetlands by quality remaining in the Agreement Area;
  - 9) Past credit use categorized by rate of use, year used, and anticipated use for the upcoming year.

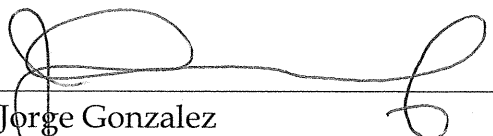
**Ecosystem Management Agreement for Bay and Walton Counties**  
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The Department will review the additional items and information required by items 6) and 7) and determine whether there is a need to create mitigation credits from existing Conservation Unit acreage in one thousand (1,000) acre or larger increments. This determination will be based on whether there is an adequate supply of credits to satisfy the rate of credit absorption within the EMA boundary. Upon the Department's determination and notification that there is a need to create mitigation credits, St. Joe will submit a plan to create the needed mitigation credits for projects within the EMA boundary. The plan shall be submitted within 180 days of the notification and contain the necessary supporting mitigation plans, financial assurance and property protection mechanisms.

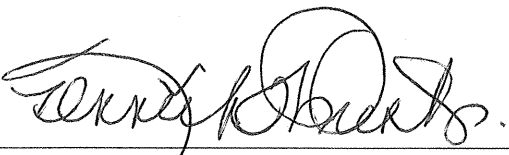
5. Except as specifically modified and amended herein, all of the terms, provisions, covenants, and conditions of the EMA shall remain unmodified and in full force and effect as written.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized officers as of the day and year first above written.

**The St. Joe Company**

By:   
\_\_\_\_\_  
Jorge Gonzalez  
Vice President

**State of Florida Department of Environment Protection**

By:   
\_\_\_\_\_  
Kenneth W. Prest, Jr.  
Northwest District Office Director

**State of Florida**  
**Department of Environmental Protection**  
**PUBLIC NOTICE OF EMA AMENDMENT**

The Department of Environmental Protection and the St. Joe Company give notice of their intent to amend the **Ecosystem Management Agreement for Bay and Walton Counties (EMA)**. The EMA amendment replaces the current Appendix B of the EMA Agreement with a separate Devils Swamp Mitigation Bank (DSMB) Permit, including all current and future modifications of that permit. The proposed DSMB permit modifies and expands the mitigation service area, adjusts the mapping and description of the target ecological communities, re-assesses the credit evaluation by the Uniform Mitigation Assessment Methodology (UMAM - Chapter 62-345 F.A.C.), and updates conditions regarding construction, success criteria and schedules. **The use of the mitigation bank for EMA projects is not altered.** The modifications will not affect overall mitigation goals on the 3,050 acre Devils Swamp Mitigation Bank parcel to restore, enhance and preserve the native communities. The EMA Agreement contains a provision for generation of additional mitigation credits by additional large scale mitigation project in the conservation units of the EMA, as directed by the Department, if needed to satisfy credit demand within the EMA boundaries.

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- (c) A statement of how each petitioner's substantial interests are affected by the Department's action; or proposed action;
- (d) A statement of the material facts disputed by petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;
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The amendment letter and amendment document are posted on the DEP, Northwest District Office website:

<http://www.dep.state.fl.us/northwest/StjoeEMA/joeema.htm> .