Myth Busters II

WETLANDS

Myth: A wetland delineation determined that the proposed project will be located in an upland area, and no wetlands will be impacted; therefore, no further wetland determination or consultation with the U.S. Army Corps of Engineers (USACE) is required.

Fact: When wetlands are located within close proximity of the project site, the proposed project should be reviewed by the USACE to ensure no impacts to wetlands. Even though the project site is not located within a wetland, it may be within a buffer area. Wetland buffers may vary according to federal, state and local regulations; the type of wetland; and the type of proposed project. Additionally, fill may have been placed on the project site prior to your involvement. Purchasing land with illegal wetland fill or constructing on such land, may become your liability.

ENDANGERED SPECIES ACT AND SECTION 7 CONSULTATIONS

Myth: All projects must comply with Section 7 of the Endangered Species Act (ESA)?

Fact: Only activities carried out by, permitted, funded, licensed, or otherwise authorized by a Federal agency *and* likely to jeopardize the continued existence of a listed species must consult with the U.S. Fish and Wildlife Service (USFWS).

Myth: The USFWS will not allow projects to proceed that may affect threatened or endangered species.

Fact: Section 7 of the ESA outlines a process for both informal and formal consultations between federal agencies, or their representative, and the USFWS. If the USFWS determines through informal consultations that the proposed project is not likely to adversely affect listed species, then no further consultation is required and the project may proceed. If the USFWS determines that the proposed project will adversely affect listed species, then the project proponent must enter into formal consultations with the USFWS. Formal consultations are governed by specific timeframes and results in the preparation of a biological opinion, which will provide the USFWS's opinion as to whether the proposed project is likely to jeopardize the continued existence of listed species. If a jeopardy determination is made, then the biological opinion will also identify reasonable and prudent alternatives that could allow the project to proceed and may include an incidental take statement.

Myth: Because my project is located on private land and has no federal involvement, it's okay if I harm threatened or endangered species.

Fact: The ESA protects all threatened and endangered species regardless of location or action by which they will be harmed. Section 9 of the ESA prohibits the take of threatened and endangered species. "Take" is defined as "…to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such

conduct." Section 10 of the ESA outlines a procedure for preparing Habitat Conservation Plans and obtaining an incidental take permit. An incidental take permit protects non-Federal permit-holders, such as states and private landowners, from liability under Section 9.

CRITICAL HABITAT

Myth: No projects can occur within designated critical habitat.

Fact: Only activities that involve a Federal permit, license, or funding *and* are likely to destroy or adversely modify critical habitat are affected. Even these projects are often able to proceed once the project is modified to minimize impact to critical habitat. Additionally, the areas shown on critical habitat maps are often large blocks of land that may include some excluded areas, such as developments, roadways, and utility easements. Non-federal entities may be required to prepare a Habitat Conservation Plan if the proposed project will modify of destroy critical habitat. A qualified biologist can aid you in reviewing the project location and proposed action to determine if consultation is required with the USFWS.