

**OPERATING AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS,  
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT,  
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,  
THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, AND  
THE SUWANNEE RIVER WATER MANAGEMENT DISTRICT  
CONCERNING REGULATORY PROGRAMS FOR  
ACTIVITIES IN WETLANDS AND OTHER SURFACE WATERS**

**I. PARTIES, PURPOSE AND GOALS**

**A. The Parties**

The parties to this agreement are the United States Army Corps of Engineers (Corps), the Florida Department of Environmental Protection (Department), the South Florida Water Management District (SFWMD), the St. Johns River Water Management District (SJRWMD), the Southwest Florida Water Management District (SWFWMD), and the Suwannee River Water Management District (SRWMD) (collectively referred to as "Districts").

**B. Purpose**

The purpose of this agreement is to coordinate the permitting, compliance and enforcement programs of the parties concerning regulation of activities which affect wetlands and other surface waters within the state of Florida. This agreement shall apply to federal dredge and fill permits issued by the Corps pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 or Section 103 of the Marine Protection, Research and Sanctuaries Act and to permits issued by the Districts or the Department pursuant to part IV of chapter 373, F.S.

This agreement supersedes the December 2, 1982, amended agreement entitled: "Memorandum of Understanding Between U.S. Army Corps of Engineers, Florida Department of Natural Resources and Florida Department of Environmental Regulation on Permit Processing in the Waters of the State." This agreement shall also supersede the agreement entered into by the Florida Department of Environmental Regulation and the Jacksonville District, United States Army Corps of Engineers on January 20, 1983. This agreement spells out the interaction between the parties and does not change any of the existing regulatory requirements adopted by the parties.

**C. Goals**

It is a goal of the parties to this agreement to effectuate efficient, streamlined regulatory programs to govern activities which affect wetlands and other surface waters. Towards this goal, the parties have established joint application forms and agree to coordinate the distribution and review of information received during the permit application review process. Other streamlining measures to be explored and further developed by the parties include joint field inspections and pre-application meetings, coordinated, complementary enforcement efforts, and Corps' state programmatic and regional general permits. Additionally, in order to further streamline the permitting process, the agencies agree to continue to jointly review the wetland delineation methodologies of the state and the Corps to identify any differences and explore ways to further resolve or overcome these differences. Further, the parties will explore methods to integrate the principles of ecosystem management within their existing legal authority in order to achieve more effective environmental protection.

## **II. WATER QUALITY CERTIFICATION**

By letter dated January 15, 1998, to the Secretary of the Department of Environmental Protection, the Governor of the State of Florida, under the authority in 33 U.S.C., Sections 1341 and 1362 (the Clean Water Act), and 40 C.F.R. 121.1(e), designated the Department as the agency responsible for certifying compliance with applicable state water quality standards for federal licenses or permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, 33 U.S.C. 1344. That letter granted the Department the authority to issue, deny, or waive certification of compliance with water quality standards, the authority to identify categories of activities for which water quality certification is waived, and the authority to establish categories of permits or other authorizations for which the issuance (or denial) of the permit or authorization constitutes a certification (or denial of certification) that the permitted or authorized activity complies with (or fails to comply with) applicable state water quality standards. By letter dated February 2, 1998, to the Administrator of the Environmental Protection Agency, the Secretary of the Department of Environmental Protection, as delegated by the Governor of the State of Florida, designated certain permits under part IV of chapter 373, F.S., and other authorizations as constituting state certification of compliance with state water quality standards unless the permit or other authorization specifically states otherwise, established categories of activities for which water quality certification is waived, and delegated concurrent authority to issue, deny or waive water quality certifications to a District created under section 373.069, F.S., or to the head of a county, municipality or local government local pollution control program where such county, municipality, or local government pollution control program has received delegation of the permitting authority from the Department or a District under section 373.441, F.S. In accordance with these letters, the parties agree to the following regarding water quality certification.

### **A. Grants or Waivers of Water Quality Certification**

1. The following will constitute the granting of water quality certification by the Department or Districts, unless a permit is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b), F.S., or unless otherwise specifically stated in the permit or authorization:
  - (a) noticed general environmental resource permits and wetland resource general permits issued under part IV of chapter 373, F.S.;
  - (b) standard general, individual, or conceptual approval environmental resource permits, and individual wetland resource permits issued under part IV of chapter 373, F.S.;
  - (c) management and storage of surface waters permits for agricultural activities or agricultural water management systems issued under part IV of chapter 373, F.S.;
  - (d) joint coastal permits issued under section 161.055 and part IV of chapter 373, F.S.; and
  - (e) individual and conceptual mitigation bank permits issued under part IV of chapter 373, F.S.;

(f) a written final order granting "certification" under one of the following siting acts by the Governor and Cabinet as the Siting Board, the Florida Land and Water Adjudicatory Commission, or by the Department of Environmental Protection, as appropriate:

- (1) The Florida High-Speed Rail Transportation Act, sections 341.3201-.386, F.S. (1997), as amended (if the certification exempts the activity from the requirement to obtain a permit under part IV of chapter 373, F.S.--see 341.363(5), F.S.);
- (2) The Florida Electric Power Plant Siting Act, sections 403.501-.539, F.S. (1997), as amended;
- (3) The Transmission Line Siting Act, sections 403.52-.5365, F.S. (1997), as amended;
- (4) The Statewide Multipurpose Hazardous Waste Facility Siting Act, sections 403.78-.7895, F.S. (1997), as amended;
- (5) The Natural Gas Transmission Pipeline Siting Act, sections 403.9401-.9425, F.S. (1997), as amended; or
- (6) The Florida Jobs Siting Act, sections 403.952-.973, F.S. (1997), as amended;

(g) consent decrees, orders, or agreements issued by the Department, a water management district created under section 373.069, F.S., or their delegates under section 373.441, F.S., where such consent decree, order, or agreement authorizes activities which would otherwise require a permit under part IV of chapter 373, F.S.

2. Water quality certification will be considered waived for the following:

(a) activities, other than agricultural activities or agricultural water management systems, exempt by rule or statute from the requirement to obtain an environmental resource permit and a wetland resource permit under part IV of chapter 373, F.S., including activities that fall below permitting thresholds;

(b) agricultural activities or agricultural water management systems exempt by rule or statute from the requirement to obtain an environmental resource permit and a management and storage of surface waters permit under part IV of chapter 373, F.S., including activities that fall below permitting thresholds;

(c) activities permitted or authorized as described in Sections II. A. 1(a) through (g) when the permit or authorization is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b), F.S.; and

(d) activities permitted or authorized in Sections II. A. 1(a) through (g) when the permit or authorization expressly waives water quality certification.

## **B. Denial of Water Quality Certification**

Unless otherwise stated in the denial, the denial of the permit or authorization listed in Section II.A.1. of this agreement shall constitute denial of the state water quality certification. Where a final agency action on an application for a permit listed in Section II.A.1. of this agreement cannot be made within the time frames specified in Section II.C. of this agreement and the application otherwise does not meet the criteria for issuance of a permit, the Department or Districts may deny water quality certification for the activity described in the permit application in order to meet the federal time clock requirements discussed in Section II.C.

### **C. Time Frames**

Once the Department or the District determines that an application for a permit listed under Section II.A.1. of this agreement is complete, it shall have 180 days to act on the certification, or the certification shall be considered waived.

### **D. Corps Nationwide General Permits**

For nationwide permits which have received water quality certification by Florida, or where water quality certification has been waived, no individual water quality certification is necessary. For those Corps nationwide permits which were conditioned upon individual review of the water quality certification by the state of Florida, or which have been denied by Florida, state water quality certification for an individual proposed activity shall be dealt with in accordance with Section II. A-C.

## **III. COASTAL ZONE CONSISTENCY CONCURRENCE (CZCC)**

In accordance with section 373.428, F.S., final agency action on a permit application submitted under part IV of chapter 373, F.S., that is subject to a consistency review under section 380.23, F.S., shall constitute the state's determination as to whether the activity is consistent with the federally approved Coastal Management Program. The agencies agree to the following procedures regarding coastal zone consistency determinations:

### **A. Determination of Concurrence**

1. The following will constitute a finding of concurrence with the state's coastal zone management program for the activity authorized thereby:

- (a) noticed general environmental resource permits and wetland resource general permits;
- (b) standard general, individual, or conceptual approval environmental resource permits and individual wetland resource permits;
- (c) joint coastal permits;
- (d) individual and conceptual mitigation bank permits; and
- (e) general, individual, or conceptual approval management and storage of surface waters permits.

### **B. Determination of Inconsistency**

The denial of a permit listed in Section III. A. of this agreement shall constitute a finding that the activity is inconsistent with the state's coastal zone management program.

### **C. Time Frames**

The time frame for a coastal zone concurrence begins upon a determination by the Department or the District that an application for a permit listed in Section III.A. of this agreement is complete. The coastal zone consistency decision must be made within 180 days after the application is considered complete by the Department or District and in accordance with

the procedures in 15 CFR 930.63. At the end of 180 days, if a determination of coastal zone consistency has not been made, concurrence will be conclusively presumed.

#### **D. Corps Nationwide General Permits**

For nationwide permits which have been determined to be consistent with the state's coastal zone management program, no individual coastal zone consistency concurrence determination is necessary. For those Corps nationwide permits where consistency with the state coastal zone management program is conditioned upon individual review of the coastal zone management consistency by the state of Florida, or has been denied by Florida, the final consistency concurrence determination for a proposed activity shall be made in accordance with Section III. A-C.

### **IV. PERMIT APPLICATION COORDINATION**

#### **A. Joint Application Forms**

The parties have developed comprehensive, integrated joint permit application forms to initiate processing of permit applications required by each of the parties. For activities which require a federal dredge and fill permit and an environmental resource permit under part IV of chapter 373, F.S., that are not grandfathered under sections 373.414(11)-(16), F.S., and that are not within the Northwest Florida Water Management District, the "Joint Application for Environmental Resource Permit/Authorization to Use State Lands/Federal Dredge and Fill Permit or the Application for a Joint Coastal Permit will be used, as applicable. For activities which require a federal dredge and fill permit and a wetland resource permit under the grandfathering provisions of sections 373.414(11)-(16), F.S., or that are within the Northwest Florida Water Management District, the "Joint Application For Works in the Waters of Florida" and the "Notice of Intent to Construct Works Pursuant to a Wetland Resource General Permit" will be used.

#### **B. Processing of Applications**

Once a joint application, a request for permit modification, or a request for verification of exempt status is submitted by an applicant to the Department or District in accordance with the division of responsibilities in the operating agreement in effect between these entities, the responsible agency will, within five-working days of receipt, for activities in, on, or over wetlands and other surface waters, forward a copy of the application or request, including any Notice of Receipt of the Application, all application drawings, and any other information accompanying the application or request, to the Corps office with responsibility for processing the corresponding federal dredge and fill permit application. An application or request for permit modification sent to the Corps shall include an application processing number. In those cases where the Corps receives a copy of the joint application directly from an applicant, the Corps shall retain one copy of the application and all accompanying materials and send all other copies and materials to the appropriate office of the Department or District with the Corps processing number.

#### **C. Distribution of Final Actions**

The Department and Districts shall forward to the Corps copies of all final permitting actions for activities in, on or over wetlands and other surface waters, including copies of permits, permit modifications, notices of denial, application withdrawals, and exemption verification letters. The Corps shall forward to the Department or Districts, as appropriate, copies of notices of intent to issue standard permits, and final actions on standard permits.

## **V. MITIGATION BANKS**

### **A. Joint Review Teams**

Joint review of mitigation bank applications can serve to facilitate more efficient and effective review of such applications. At the request of one or more of the parties which has permitting responsibilities for a proposed mitigation bank, an interagency review team (Team) shall be formed, comprised, at a minimum, of representatives from the Corps, the Department, and the appropriate District.

### **B. Team Coordination**

The Team shall coordinate the following:

1. Pre-application meetings involving the planning of mitigation banks;
2. Reviewing mitigation bank permit applications;
3. Sharing of relevant application information, including letters and staff reports;
4. Assigning the number and use of available mitigation credits, establishing mitigation service areas, and developing compatible mitigation bank permit conditions, to the extent possible under the applicable rule criteria of the parties;
5. Tracking the withdrawal of mitigation credits;
6. Conducting inspections of the bank; and
7. Determining success of the bank.

## **VI. COMPLIANCE AND ENFORCEMENT**

### **A. Discovery of Potential Violations**

The parties shall coordinate their enforcement activities in order to maximize limited agency resources. Upon discovery of an unauthorized activity in wetlands or other surface waters, the party discovering the activity will forward to the appropriate parties all correspondence and supporting materials concerning the unauthorized activity, including warning letters, notices of violation, cease and desist orders, consent orders and emergency orders. If the nature and magnitude of the violation warrants, the initial information provided should also include a case number, a map identifying the location of the site and a sketch of the project area.

### **B. Development of Settlement Proposals**

For those settlement proposals that involve activities which may require authorization from other parties to this agreement, the parties agree to coordinate the development of settlement proposals to the extent possible.

### **C. Advisory Note**

All consent orders and notices requiring corrective action shall advise the alleged violator that implementation of required corrective action does not relieve the alleged violator of the need to comply with applicable Federal, state or local laws, rules or ordinances.

## **VII. INTERAGENCY MEETINGS**

### **A. Permitting Meetings**

Each party agrees to host interagency permitting meetings on a rotating basis. The time and place of all the meetings will be addressed at the beginning of each calendar year. Because interagency meetings between the parties and other agencies can serve as a good forum to aid communication, exchange information, conduct pre-application meetings, or to resolve outstanding permitting issues, each party will endeavor to have a representative present at all interagency meetings.

### **B. Enforcement Meetings**

Representatives of the parties' enforcement staff shall meet at least annually. If possible, the meeting should take place at the Department's Annual Enforcement Workshop. The meeting should address:

1. priorities for enforcement actions;
2. enforcement procedures;
3. status of particular enforcement cases identified by any party;
4. measures for increasing the public awareness of state and federal regulations; and
5. updated organizational structures, contacts, and related office information.

### **C. Cross Training**

The parties agree to provide opportunities for cross training. This may take the form of: providing spaces in formally scheduled training courses; providing training sessions at each others' training events; providing personnel and opportunities for cross-training through developmental assignments; sharing interpretations of agency rules and procedures; and performing joint formal and informal training on other subjects of mutual interest.

## **VIII. COMPUTER LINK AND GIS**

All parties agree that it is mutually beneficial to share GIS information and to be linked electronically for the purpose of exchanging information. Each party will participate in any future group whose purpose is to establish electronic connections between the parties. A list of Internet addresses will be developed and shared for each party's Environmental Resource Permit/Section 10 and Section 404 staff.

**IX. DELEGATED PROGRAMS**

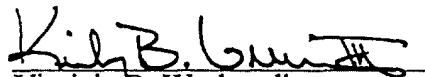
Where the Department or Districts delegate to a local government all or a portion of the permitting or enforcement authority under part IV of chapter 373, F.S., the delegation agreement shall include a provision that the local government shall be subject to all the terms and conditions of this Agreement, although the Corps, with the concurrence of the delegating agency, may allow deviations from these terms and conditions.

**X. EFFECTIVE DATE**


This agreement shall take effect upon execution by all the parties.

**XI. TERMINATION**


Any party who wishes to terminate this agreement with or without cause shall provide 60 days prior written notice to the other parties. The notice submitted by the Corps shall be signed by the District Engineer of the Jacksonville or Mobile District. The notice submitted by a Water Management District shall be signed by the Chair of the Governing Board. The notice submitted by the Department shall be signed by the Secretary. By mutual agreement of all parties, the 60 day notice period may be reduced. Within 30 days of a notice of intent to terminate this agreement, all parties shall make good faith efforts to preserve the agreement by attempting to resolve any basis for the termination. This agreement also may be terminated by future agreements between the parties which expressly provide for supersedure of this agreement.

  
Virginia B. Wetherell  
Secretary  
Department of Environmental Protection

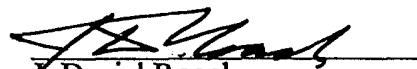
30 November 1998  
Date

  
Joe R. Miller  
Col., U.S. Army, District Engineer  
U.S. Army Corps of Engineers


20 NOVEMBER 1998  
Date

  
Lynetta Usher Griner  
Chair, Governing Board  
Suwannee River Water Management  
District

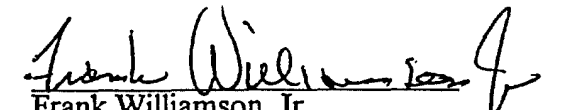
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Date

  
J. Daniel Roach  
Chair, Governing Board  
St. Johns River Water  
Management District

\_\_\_\_\_  
Date

  
James L. Allen  
Chair, Governing Board  
Southwest Florida Water

Date 8/25/98

  
Frank Williamson, Jr.  
Chair, Governing Board  
South Florida Water Management District  
Management District

Date