

COORDINATION AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
(JACKSONVILLE DISTRICT)
AND THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
(OR DULY AUTHORIZED DESIGNEE)
STATE PROGRAMMATIC GENERAL PERMIT

I. PREAMBLE:

Under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), the Jacksonville District, U.S. Army Corps of Engineers (Corps) has regulatory jurisdiction in the geographic area of Florida, Puerto Rico, and the U.S. Virgin Islands over all obstructions and alterations of any navigable water of the United States, the construction of any structures in or over any navigable water of the United States, and any work affecting the course, location, condition, or capacity of navigable waters of the United States. Additionally, under Section 404 of the Clean Water Act (33 U.S.C. § 1344), the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the United States that are retained by the Corps. The definition of waters to be retained by the Corps is located in the Memorandum of Agreement between the Florida Department of Environmental Protection and the Department of the Army signed on August 5, 2020. Under both authorizations, the Corps has authority to issue general permits on a statewide basis for specific categories of work.

The State of Florida, Department of Environmental Protection (FDEP), or a duly authorized designee (Designee), has regulatory jurisdiction over activities regulated under Part IV of Chapter 373 Florida Statutes, which includes dredging and filling in wetlands and other surface waters.

II. PURPOSE:

The Corps and the Florida Department of Environmental Protection (FDEP) have developed a State Programmatic General Permit (SPGP) for use in the State of Florida. The SPGP has undergone several iterations designated SPGP I, SPGP II, SPGP III, SPGP III-R1, SPGP IV, SPGP IV-R1, SPGP V, and SPGP V-R1. This Coordination Agreement, with referenced materials, will cover the implementation of the SPGP VI, and is applicable where the Corps has regulatory jurisdiction in any county in all counties within the State of Florida except those areas specifically excluded by conditions of the SPGP VI. Furthermore, the Section 10 activities covered by SPGP are applicable to all navigable waters of the United States, including those that are navigable due to historic commerce only, and waters of the United States that are retained by the Corps. Section 404 activities covered by SPGP are not applicable to

those waters of the United States that are not retained by the Corps and are regulated under the State 404 Program. This Coordination Agreement is required to implement the processing of requests for authorization under the SPGP VI.

III. PROCEDURES:

A. FDEP or Designee Procedures:

1. Upon receipt of an application or a request to verify qualification for an entity to use an exemption or general permit under Part IV of Chapter 373, and Sections 403.813 and 403.814, F.S., the FDEP or Designee will review the project to determine whether the project is a candidate for review under the SPGP VI and, whether the project adheres to the conditions of SPGP VI.

2. The FDEP or Designee will evaluate a project's potential effects to Federally listed threatened or endangered species or designated critical habitat. The FDEP or Designee will determine if the Project adheres to the conditions of the SPGP VI, and will implement, as applicable, the Special Conditions in the SPGP VI permit, the restrictions and reporting requirements in the NMFS Biological Opinion, and amendments, if any, of these documents. The latest versions of the various tools referenced in the SPGP VI (including the dichotomous keys, maps, and Geographic Information System data) will be used. Any project not satisfying the terms and conditions in the SPGP VI permit or the Biological Opinion are not eligible for authorization under SPGP VI. In the event additional information indicates that an evaluation of a specific project's effects to Federally listed or endangered species or designated critical habitat was made in error, the National Marine Fisheries Service (NMFS) or United States Fish and Wildlife Service (FWS) retain the right to request the Corps to initiate consultation under the Endangered Species Act.

3. For all projects that the FDEP or Designee have determined adhere to the conditions of SPGP VI, the FDEP or Designee will e-mail a copy of the "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Summary Checklist" and one or more of the individual activity sheets, i.e., "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Activity 1: Shoreline Stabilization", "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Activity 2: Pile Supported", "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Activity 5: Scientific Survey", "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Activity 6: Boat Ramps", "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Activity 7: Aquatic Habitat Enhancement, Establishment, and

Restoration", and "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Activity 9: Marine Debris Removal" (JAXBO Checklists), to NMFS at the following address: nmfs.ser.statewideprogrammatic@noaa.gov, with a copy of the email furnished to spgp@usace.army.mil.

a. The email to NMFS will be sent no later than the date the FDEP or Designee verifies authorization under SPGP VI.

b. The JAXBO Checklists are to be submitted by the applicant to the FDEP or Designee concurrently with their application otherwise the FDEP or Designee will consider the application incomplete for processing under SPGP VI. The most recent version of the JAXBO checklists will be utilized. All JAXBO Checklists must be filled out electronically using the existing form fields (i.e. not handwritten or filled out by creating new text boxes). The applicant therein assures the project complies with the Project Design Criteria (PDCs) in the NMFS Jacksonville District's Programmatic Biological Opinion (JAXBO) dated November 20, 2017. This assurance encompasses PDCs that are in JAXBO even though not specifically enumerated on the checklists and/or within the text of SPGP VI. The FDEP or Designee will review and confirm the proposed Project meets all the PDCs, are filled out electronically, and that the JAXBO Checklists are complete and accurate.

c. For projects submitted by FDEP's "Self-Certification" web portal, the FDEP must continue to implement the following on their web pages and/or automated process: (1) the on-line process includes a screen and button by which the Permittee certifies that the Project authorized via the self-certification meets the PDCs of JAXBO; (2) the Permittee also agrees the FDEP can transmit that statement to the Corps on his/her behalf; and (3) the automated process will include the Applicant's certification as a separate document attached to the email to the Applicant that also transmits FDEP's authorization and sends a copy of that email to the Corps at the following address: spgp@usace.army.mil.

4. For projects that adhere to the terms and conditions of SPGP VI and are authorized or verified by the FDEP or Designee, the applicant will receive the following.

a. Accompanying the FDEP or Designee authorization or verification will be language noting that the project is also authorized under the SPGP VI. Language in the notification shall read as follows:

"Your proposed activity as outlined in your application and attached drawings qualifies for Federal authorization pursuant to the State Programmatic General Permit VI, and a SEPARATE permit or authorization will not be required from the Corps. Please note that the Federal authorization expires on July 27, 2026. However, your

authorization may remain in effect for up to 1 additional year, if provisions of Special Condition 15 of the SPGP VI permit instrument are met. You, as permittee, are required to adhere to all General Conditions and Special Conditions that may apply to your project. Special conditions required for your project are attached. A copy of the SPGP VI with all terms and conditions and the General Conditions may be found at <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book>."

b. Where applicable, the FDEP or Designee shall attach the applicable construction or species guidelines to the notification for the verified SPGP VI.

5. For actions that are located in wetland or surface water impacts where FDEP or Designee determines the activity does not qualify for SPGP VI or is one of the types of activities authorized by SPGP VI, but does not meet all of the applicable conditions of SPGP VI, the FDEP or Designee will send notification to the applicant, as part of the authorization or verification, that the project is not authorized under the SPGP VI and requires a separate application to the Corps. Language in the notification shall read as follows:

"Your proposed activity as outlined on your application and attached drawings does not qualify for Federal authorization pursuant to the State Programmatic General Permit and a SEPARATE permit or authorization shall be required from the Corps. You must apply separately to the Corps using their *APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT*, ENG FORM 4345 or ENG FORM 6082, or alternative as allowed by their regulations. More information on Corps permitting may be found online in the Jacksonville District Regulatory Division Source Book at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book>."

6. If the Corps advises the FDEP or Designee that a particular project is not covered by the SPGP and that permitting for the activities is not required by the Corps, language in the notification shall read as follows:

"Your proposed activity as outlined on your application and attached drawings has been reviewed for compliance with the State Programmatic General Permit VI and it has been determined to not be within the jurisdiction of the Corps. No further permitting for these activities is required by the Corps."

7. If the FDEP or Designee discovers or is advised by the Corps that federal authorization pursuant to SPGP was issued inappropriately or for a project that requires Corps review, the FDEP or Designee shall so notify the applicant as follows:

"Our prior notification included a paragraph stating your proposed activity qualified for Federal authorization pursuant to the State Programmatic General Permit VI. We hereby rescind that paragraph either because that was included through an

administrative error or because we have received new information from the Corps. A SEPARATE permit or authorization shall be required from the Corps. You must apply separately to the Corps using their APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT, ENG FORM 4345 or ENG FORM 6082, or alternative as allowed by their regulations. More information on Corps permitting may be found online in the Jacksonville District Regulatory Division Source Book at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book>."

B. Corps Procedures:

1. Projects that are determined by FDEP or Designee to not adhere to the conditions of the SPGP VI will be evaluated by the Corps through the Federal permitting process.

2. The Corps, in conjunction with the Federal resource agencies, will conduct periodic reviews to ensure that continuation of the permit during the period ending July 27, 2026, is not contrary to the public interest. The SPGP VI will not be extended beyond July 27, 2026 but may be replaced by a new SPGP.

IV. MONITORING:

A. The FDEP will furnish to the Jacksonville District office a report of the projects verified under the SPGP VI on a quarterly basis as a spreadsheet that includes the latitude and longitude location, permittee name, address and county, description of what's authorized, date issued and permit number. Where a Designee is the administering entity and the Designee is not entering data directly into the FDEP database, the Designee will furnish the information to the Corps. Copies of the authorizations will either be made available for the Corps to download or will be transmitted to the Corps at time of the authorization.

B. The FDEP will inspect at least 10% of all projects verified under the SPGP VI within one year after verification. FDEP will furnish to the Jacksonville District office a report, including inspection data and summaries of findings, on a quarterly basis as a spreadsheet that identifies the number of the projects inspected, date of compliance completed, and the result. Where a Designee is the administering entity and the Designee is not entering data directly into the FDEP database, within ten working days of the end of the quarter, the Designee will furnish the information to the Corps. If the project does not appear to fully comply with the terms of the SPGP, the full inspection report for that project will be sent by e-mail to SAJ-RD-Enforcement@usace.army.mil.

C. Projects that do not comply with one or more of the terms and conditions of the verification and SPGP will first be reviewed by FDEP to assess potential resolution of the non-compliance. If FDEP is not able to achieve a compliance resolution, FDEP

will refer the case to the Corps. The Corps may at any time, upon being notified of project non-compliance, request to serve as lead for addressing the non-compliance. Initial compliance resolutions for non-compliant activities can be defined as voluntary restoration (e.g. voluntary reduction of structure footprint to design criteria) or issuance of an after-the-fact verification. The Corps shall be responsible for determining appropriate action to address any work completed without the benefit of federal authorization or any unresolved compliance matter that has been referred from FDEP or the Designee. The SPGP VI non-compliance rate should not exceed 20% in any given year.

D. FDEP or the Designee shall refer unresolved compliance matter or actions requiring after-the-fact Federal authorizations to the Corps for processing. No after-the-fact verifications shall be verified by FDEP. All referrals to the Corps shall be sent via email to SAJ-RD-Enforcement@usace.army.mil.

E. To better assist with compliance/enforcement coordination, FDEP, Designees, and the Corps will conduct semiannual coordination meetings to improve the integrity of this SPGP.

V. COORDINATION WITH OTHER FEDERAL AGENCIES:

A. Prior to implementation of this Coordination Agreement, the Corps personnel may meet with FDEP and/or Designee personnel to familiarize them with: the Endangered Species Act; the threatened and endangered species issues within each FDEP district and/or Designee locale the protocols utilized in contacting the appropriate personnel concerning threatened and endangered species issues; and issues surrounding essential fish habitat.

B. During implementation of this Coordination Agreement, the Corps may meet with the FDEP and/or Designee on a regular interval to evaluate whether the issued permits are in compliance with applicable Federal regulations. Initially the meetings will be scheduled as needed, and the interval will be adjusted accordingly as the implementation proceeds. The meetings may be conducted telephonically if the Corps and FDEP and/or its Designee agree.

C. All parties acknowledge that under Condition 4 in the Further Information Section of the General Conditions of the SPGP VI, impacts to threatened and endangered species and essential fish habitat are considered in the public interest review. Should any unanticipated threatened and/or endangered species or essential fish habitat impacts arise, it may be necessary to suspend the SPGP VI, or specific sections of it, in all or portions of the authorized geographic areas, until they can be resolved.

VI. MODIFICATIONS AND TERMINATION:

Coordination Agreement Between Corps and FDEP/Designee (SPGP VI)

A. This Coordination Agreement may be modified in writing at any time as necessary by mutual consent of the Corps and the FDEP. Modifications may be made in whole, by part, or by section; and upon approval shall supersede previous versions of this Coordination Agreement. Approvals of modifications to the language of this Coordination Agreement shall be approved and signed by the District Engineer for the Corps and the Secretary of the FDEP.

B. Either party may terminate this Coordination Agreement upon 90 days written notice.



John J. Truitt
Deputy Secretary for Regulatory Programs
Florida Department of
Environmental Protection

Shawn H. Zinszer 7/27/21

Andrew D. Kelly, P.E.
Colonel, U.S. Army
District Engineer

July 23, 2021

Date

Date