

Final State 404 Program Annual Report
December 22, 2020 – June 30, 2021

Division of Water Resource Management

Florida Department of Environmental Protection

June 22, 2022



This final annual report is prepared in accordance with the requirements of 40 C.F.R. § 233.52 and the Memorandum of Agreement Between the Florida Department of Environmental Protection and the United States Environmental Protection Agency for Florida's State 404 Program.

Copies of this final annual report may be obtained from DEP's State 404 Program website at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program>, or by contacting State_404@FloridaDEP.gov.



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Florida’s State 404 Program: An Overview

On December 22, 2020, the U.S. Environmental Protection Agency (EPA) published approval of Florida’s State 404 Program in the Federal Register, and the Florida Department of Environmental Protection (DEP) began administering the State 404 Program on that date.

State assumption of the 404 program provides a streamlined permitting procedure within which both federal and state requirements are addressed by state permits, with continued EPA oversight. This cooperative federalism approach provides greater certainty to the regulated community, conserves resources of both the applicant and regulator, and affords the state greater control over its natural resources while complying with federal law. The State 404 Program is a separate program from the existing Environmental Resource Permitting (ERP) program, and projects within state-assumed waters require both an ERP and a State 404 Program authorization.

The State 404 Program is responsible for overseeing permitting for any project proposing dredge or fill activities within state assumed waters. Such projects include, but are not limited to: single family residences; commercial developments; utility projects; environmental restoration and enhancement; linear transportation projects; governmental development; certain agricultural and silvicultural activities; and in-water work within assumed freshwater bodies such as boat ramps, living shorelines and other shoreline stabilization.

Executive Summary

This is the first annual report for Florida’s State 404 Program. The first annual period was only about 6 months (December 22, 2020, through June 30, 2021). This report provides the information required in 40 Code of Federal Regulations (C.F.R.) § 233.52 and the *Memorandum of Agreement Between the Florida Department of Environmental Protection and the United States Environmental Protection Agency* for Florida’s State 404 Program.¹ DEP submitted a draft report to the EPA on September 30, 2021. EPA responded with additional questions,

¹ This final report includes additional information in response to the EPA’s questions and comments on the draft annual report provided to the EPA on September 30, 2021, which in some instances exceeds the scope of the information required 40 C.F.R. § 233.52.

comments, and requests for information on October 14, October 21, 2021, and May 23, 2022, the responses to which are incorporated into this Final Report.

Reporting categories as identified in 40 C.F.R. § 233.52 are as follows:

- Problems the state has encountered in the administration of its program and recommendations for resolving these problems
- An assessment of the cumulative impacts of the state's permit program on the integrity of the state regulated waters
- Identification of areas of particular concern and/or interest within the state
- The number and nature of individual and general permits issued, modified, and denied
- An estimate of extent of activities regulated by general permits
- The number of violations identified, and number and nature of enforcement actions taken
- The number of suspected unauthorized activities reported, and nature of action taken
- The number of permit applications received but not yet processed

Early Program Administration

As with any new regulatory program, DEP experienced some initial challenges in the early implementation of the State 404 Program. These challenges resulted in the need to implement some practical solutions and policies in consultation with EPA and other federal and state agencies.

Upon approval of the state program, DEP received a larger than anticipated number of applications from the United States Army Corps of Engineers (Corps). In addition to the transferred Corps applications, DEP experienced a higher than anticipated number of applications submitted directly from regulated entities. In response to this workload, DEP began hiring and training additional staff to process State 404 Program applications. Additionally, DEP does not perform stand-alone Waters of the United States (WOTUS) determinations (determinations done on a property without a planned project and project drawings). To get a WOTUS determination under the State 404 Program, applicants are currently required to do one of three things: (1) apply for a permit and request a WOTUS determination during review; (2) apply for a formal determination under Chapter 62-340, Florida Administrative Code (F.A.C.)

and request a WOTUS determination in conjunction with the formal determination; or (3) request a “No Permit Required” letter for a project where the applicant plans to avoid impacts to WOTUS (project drawings required). DEP has been implementing these limitations on WOTUS determinations from the beginning of the program and therefore does not have data on the difference in WOTUS determination workload before and after implementation. (Issues arising after June 30, 2021 related to the applicable definition of WOTUS are not specifically addressed in this annual report covering December 22, 2020 to June 30, 2021.)

As explained in the assumption package, the State 404 Program was designed to be implemented in conjunction with the existing ERP program and use the state delineation method in Chapter 62-340, F.A.C., to determine the boundary of jurisdictional waters. DEP is continuing to work with the water management districts (WMDs) to find efficiencies between the implementation of the State 404 Program and the ERP program. DEP will continue to assess its program and implement solutions in consultation with EPA and other federal and state agencies, as challenges arise.

DEP is continually assessing the implementation of the State 404 Program and putting in place practices to improve the program. However, it is too early in the implementation of the program to make any recommendations at this time.

Public Participation

The State 404 Program includes several avenues for public participation. Members of the public may sign up to receive notice of receipt of applications within their areas of interest (defined by the user/subscriber) via DEP’s Permit Application Subscription Service (PASS) and/or may request to be copied on correspondence or provide comments or information on any application(s) of interest at any time. When an application for an individual permit is deemed administratively complete, it is put out on public notice as described in Rule 62-331.060, F.A.C. Any interested person may comment or request a hearing during the public notice period. DEP does not collect information about requests for extension of comment periods on individual projects and whether they are granted.

DEP uses standard notice templates, which were provided in section f of the program description within Florida’s assumption package. The notice template was crafted to contain the notice

information specified at 40 C.F.R. 233.32(d), and the format was modeled after the current Corps public notice template. The notices include all specified information within the public notice template, including species information received during the pre-public notice review period from Florida Fish and Wildlife Conservation Commission (FWC) or US Fish and Wildlife Service (USFWS) and information regarding historical, tribal, or cultural resources received from the State Historic Preservation Office (SHPO) or tribes. The public notice provides a summary of information that may be useful to an interested party, with additional information available in the permit file. While the DEP is not aware of any specific concerns raised by the public regarding the sufficiency of information contained within public notices, we have updated our webpages in response to EPA and public comments regarding the accessibility of public notices. The website where public notices are published includes the following information at the top of the page, with links to Oculus (DEP's official public records repository) and the referenced guidance documents:

The table represents the projects currently on public notice, as required by Rule 62-331.060, F.A.C.

The files are available online at the [OCULUS website](#). You can refer to the [Oculus Search Guide](#) for assistance. You may also access the files through the [Information Portal](#) or locate records for a specific property using our online GIS tool, [Map Direct](#). Please refer to the [Information Portal Tutorial](#) or the [Map Direct Tutorial](#) for assistance.

DEP's user-friendly website also provides contact information for general inquiries related to any of its regulatory programs. Moreover, the DEP and EPA Memorandum of Agreement explains the process for additional coordination with other states and tribal groups; the DEP and Corps Memorandum of Agreement explains the process for DEP and Army Corps coordination; the Memorandum of Understanding between DEP, the Florida Fish and Wildlife Conservation and US Fish and Wildlife Service explains the process for DEP coordinating with federal and state agencies concerning endangered species; and the Operating Agreement between DEP and the Florida Division of Historical Resources explains the process for DEP coordinating with tribal groups and stage agencies concerning historic resources. All of these agreements are available to the public on DEP's website at

<https://floridadep.gov/ogc/ogc/content/operating-agreements>. DEP follows the procedures described in these documents when coordinating with commenting agencies or outside entities.

Florida’s Sunshine Law requires that most application materials, with few exceptions for trade secrets or sensitive information, are available for public view through Oculus. Those documents containing sensitive information are placed in an Oculus “restricted file” but may be provided to the public, when requested, after redaction of confidential or exempt information, as identified in Chapter, 119, Florida Statutes. DEP processing staff upload documents into Oculus as they are received or finalized. This includes copies of correspondence exchanged between DEP and the applicant, all public comments received during the public notice and comment period, all correspondence with the commenting agencies, including the State Historic Preservation Office, the Florida Fish & Wildlife Conservation Commission, the Department of Economic Opportunity, the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, the U.S. EPA, and the National Marine Fisheries Service, and correspondence with the tribes. Links to Oculus, or the more user-friendly DEP Information Portal (which pulls documents from Oculus), are available on DEP’s Public Records website at <https://floridadep.gov/sec/sec/content/public-records>.

Each State 404 Program permitting decision (exemption and general permit verifications and individual permits) contains a Notice of Rights pursuant to Chapter 120, F.S., which includes instructions for persons whose substantial interests are affected by the agency action to petition permitting decisions. As of June 30, 2021, no permitting decisions had been petitioned.

An Assessment of the Cumulative Impacts of the State's Permit Program on the Integrity of the State Regulated Waters

The State 404 Program is implemented in addition to the long-standing, robust, ERP Program. Activities regulated under the State 404 Program also require an ERP unless they qualify for an ERP exemption. ERP frequently protects more wetlands and other surface waters than the State 404 Program because isolated wetlands are regulated under ERP. The addition of the State 404 Program review was intended to reduce duplication in review between the federal government and the state, while maintaining the high level of environmental protection provided by both

agencies. The tables in Appendix 1 show the authorized impacts and mitigation during this reporting period for each issued State 404 Program general and individual permit.

Florida does not use ratios to determine how much mitigation is needed for impacts. Instead, Florida uses rapid assessment methods to determine the loss and gain of wetland functions. Rapid assessment methods are more appropriate than ratio methods because they use ecological principles to calculate functional loss and gain units, rather than simple qualitative descriptions and acreage. Florida's rapid assessment method is called the Uniform Mitigation Assessment Method (UMAM) and is found in Chapter 62-345, F.A.C. Older methods, WRAP (wetland rapid assessment procedure) and WATER (wetland assessment technique for environmental review), are still used when mitigation is proposed at an older site that was reviewed under one of those earlier rapid assessment methods.

All assessment methodology scores submitted by applicants are verified to reflect a reasonably accurate accounting of loss and compensation and that the compensation provided for the permits is adequate to fully mitigate impacts.

DEP uses the mitigation hierarchy in the 404 Handbook, section 8.5.1 to determine the most appropriate type of mitigation. Where the project is within a mitigation bank service area, and credits are available, the mitigation bank credits are prioritized over other types of mitigation unless the applicant proposes an alternative form of mitigation that is found to be environmentally preferable. Where a mitigation banking instrument (MBI) provides for use of the bank outside of the mapped service area, DEP considers use of that bank for projects outside of the mapped area on a case-by-case basis. Most MBIs that allow such use require the approval of the IRT or the MBI signatories. DEP works with applicants to obtain approval where appropriate.

For purposes of this reporting period (December 22, 2020 to June 30, 2021), Florida is approved to issue permits in waters of the United States (WOTUS) as defined under the Navigable Waters Protection Rule (NWPR). Florida is working cooperatively with EPA to navigate the changing definitional regimes of WOTUS that have arisen after this reporting period and is committed to administering its assumed CWA Section 404 program in accordance with the requirements of the

Clean Water Act and regulations promulgated thereunder. DEP looks forward to continuing our productive dialogue with EPA concerning this matter.

DEP did not collect data identifying which projects involve Corps and EPA coordination for jurisdictional determinations for this reporting period. Pursuant to the 404 Handbook, section 1.1, DEP considers all wetlands and other surface waters delineated using Chapter 62-340, Florida Administrative Code (F.A.C.), to be WOTUS unless the applicant provides documentation clearly demonstrating otherwise with which DEP agrees. DEP looks forward to further discussions with EPA and the Corps about the collection of data along these lines.

DEP reviewed the files for NPRs issued between December 22, 2020, and June 30, 2021, to identify the basis of the NPR Decision. For this reporting period, DEP issued a total of 99 NPRs of which 56 were determined to have no impacts to state waters per Chapter 62-340, F.A.C. (62-340), 42 utilized the Navigable Waters Protection Rule (NWPR), and 1 relied on an existing Corps approved jurisdictional determination (AJD), as identified in Table 1, below. A CWE conducted a site visit for all WOTUS determinations except for four files (402357-002NPR, 392002-002NPR, 397330-001NPR, and 390271-002NPR) that were determined to not need site visit. Please see further rationale below:

- 402357-002NPR – Replacement of a transmission line within a clear manmade ditch. This was verified via desktop review.
- 392002-002NPR – This project has an existing Approved Jurisdictional Determination; therefore, a site visit was not needed.
- 397330-001NPR – This project replaced an existing gate and check valve. The project met ERP exemption and does not require a 404 authorization.
- 390271-002NPR – This project consisted of stump grinding. The root system was not impacted, and debris were removed by hand. The proposed project did not plan to impact Waters of the United States.

On June 11, 2021, DEP improved the NPR review process by requiring all CWE professional work product to be accommodated by a work product cover sheet. This CWE coversheet, signed and dated by the responsible CWE, identifies all supporting documentation prepared and

reviewed by the CWE in support of the determination. The inclusion of this signed coversheet is a standard practice and should lead to improved transparency.

Table 1 – No Permit Required Letters Issued

County	Application #	Project Name	Agency Action	Action Date	Basis
Broward	396556-001NPR	Sunrise 25.5 SAJ-2005-00475	Issued	6/25/2021	NWPR
Charlotte	398911-002NPR	Compost Facility NJD	Issued	3/18/2021	62-340
Citrus	390271-002NPR	Alan Sigwardt - Stump Grinding	Issued	4/2/2021	NWPR
Collier	396216-002NPR	SF Residence Wetlands (404)	Issued	1/22/2021	62-340
Collier	396196-002NPR	SF Residence Wetlands (404)	Issued	1/22/2021	62-340
Collier	396334-002NPR	SF Pool (404)	Issued	3/26/2021	62-340
Collier	259221-005NPR	SFR Residence in Upland (404)	Issued	1/28/2021	62-340
Collier	396730-002NPR	SFR Uplands (404)	Issued	3/18/2021	62-340
Collier	245882-003NPR	SFR Uplands (404)	Issued	3/18/2021	62-340
Collier	263532-004NPR	SF Shed (404)	Issued	4/29/2021	62-340
Collier	396919-002NPR	SF Residence (404)	Issued	3/10/2021	62-340
Collier	247425-003NPR	SF Residence (404)	Issued	2/10/2021	62-340
Collier	397008-002NPR	SFR Uplands (404)	Issued	2/10/2021	62-340
Collier	397165-002NPR	Relocate Shed (404)	Issued	2/11/2021	62-340
Collier	242679-003NPR	SFR Uplands (404)	Issued	2/12/2021	62-340
Collier	371256-003NPR	Pool In Uplands (404)	Issued	2/19/2021	62-340
Collier	394756-003NPR	SFR Driveway NJD	Issued	3/26/2021	NWPR
Collier	397806-002NPR	Shed In Uplands	Issued	3/23/2021	62-340
Collier	279094-003NPR	SFR In Uplands (404)	Issued	2/25/2021	62-340
Collier	397982-002NPR	SFR In Uplands (404)	Issued	4/16/2021	62-340
Collier	398013-002NPR	SFR In Uplands (404)	Issued	2/26/2021	62-340
Collier	397978-002NPR	SFR In Uplands (404)	Issued	4/16/2021	62-340
Collier	398102-002NPR	SFR In Uplands (404)	Issued	3/3/2021	62-340
Collier	228626-004NPR	SF Residence NJD	Issued	3/4/2021	NWPR

County	Application #	Project Name	Agency Action	Action Date	Basis
Collier	195260-004NPR	SFR In Upland (404)	Issued	3/4/2021	62-340
Collier	398562-002NPR	SF Residence (404)	Issued	3/11/2021	62-340
Collier	399211-002NPR	SF Residence NJD	Issued	3/24/2021	NWPR
Collier	399438-002NPR	Driveway NJD	Issued	3/25/2021	NWPR
Collier	399783-001NPR	Pelican Bay Services	Issued	4/2/2021	NWPR
Collier	400010-002NPR	Sf Residence NJD	Issued	6/11/2021	NWPR
Collier	400113-002NPR	SF Driveway NJD	Issued	6/11/2021	NWPR
Collier	398871-001NPR	Gold Gate High	Issued	4/14/2021	NWPR
Collier	400733-002NPR	SF Driveway NJD	Issued	5/27/2021	NWPR
Collier	400611-002NPR	SF Driveway Wetlands (404)	Issued	4/16/2021	62-340
Collier	401287-002NPR	Sf Residence NJD	Issued	4/29/2021	NWPR
Desoto	396292-001NPR	Communication Tower (404)	Issued	3/3/2021	62-340
Duval	398290-001NPR	Creekside Preserve	Issued	3/3/2021	NWPR
Duval	399545-002NPR	404-Duval Road Tract	Issued	6/30/2021	NWPR
Escambia	396867-001NPR	Greenway 5th Extension ST 404	Issued	4/20/2021	62-340
Hendry	393391-003NPR	SF Residence (404)	Issued	2/1/2021	62-340
Hendry	397449-002NPR	SFR (404)	Issued	2/17/2021	62-340
Hendry	388263-005NPR	Driveway NJD	Issued	3/31/2021	NWPR
Hillsborough	126191-021NPR	Big Bend II Solar Project	Issued	5/28/2021	NWPR
Hillsborough	399730-001NPR	Patterson Road	Issued	6/7/2021	NWPR
Lake	403769-002NPR	Lisbon Sand 404 NPR	Issued	6/10/2021	NWPR
Lee	396622-001NPR	Stormwater System Uplands	Issued	3/12/2021	NWPR
Lee	396689-001NPR	Orange River 130 (404)	Issued	6/28/2021	NWPR
Lee	397022-002NPR	SFR In Uplands (SFR)	Issued	2/10/2021	62-340
Lee	397025-002NPR	SFR In Uplands (404)	Issued	2/10/2021	62-340
Lee	397027-002NPR	SFR In Uplands (404)	Issued	2/10/2021	62-340
Lee	397114-001NPR	Stormwater System Uplands	Issued	5/14/2021	62-340
Lee	397210-002NPR	SFR Uplands (404)	Issued	3/9/2021	62-340
Lee	397207-002NPR	SFR Uplands (404)	Issued	3/11/2021	62-340

County	Application #	Project Name	Agency Action	Action Date	Basis
Lee	397209-002NPR	SFR Uplands (404)	Issued	2/12/2021	62-340
Lee	295252-003NPR	SFR Uplands (404)	Issued	3/12/2021	62-340
Lee	397213-002NPR	SFR Uplands (404)	Issued	3/1/2021	62-340
Lee	397206-002NPR	SFR Uplands (404)	Issued	3/10/2021	62-340
Lee	397211-002NPR	SFR In Uplands (404)	Issued	2/12/2021	62-340
Lee	397214-002NPR	SFR In Uplands (404)	Issued	2/12/2021	62-340
Lee	397212-002NPR	SFR Uplands (404)	Issued	2/12/2021	62-340
Lee	398146-002NPR	SFR In Upland (404)	Issued	3/16/2021	62-340
Lee	398414-003NPR	SF Activities (404)	Issued	3/30/2021	62-340
Lee	398862-002NPR	SF Residence Uplands (404)	Issued	3/16/2021	62-340
Lee	398934-002NPR	SF Residence	Issued	3/18/2021	62-340
Lee	398946-002NPR	SF Residence (404)	Issued	3/17/2021	62-340
Lee	398935-002NPR	SF Residence (404)	Issued	3/18/2021	62-340
Lee	398947-002NPR	SF Residence (404)	Issued	3/17/2021	62-340
Lee	399137-001NPR	Palms Of Cape Coral MF Dev	Issued	3/19/2021	NWPR
Lee	396362-004NPR	Cayo Pelon	Issued	3/26/2021	NWPR
Lee	402492-001NPR	Oasis Woods Park - NJD	Issued	6/24/2021	NWPR
Marion	398449-002NPR	Richard Andrews C/Wall (404)	Issued	6/9/2021	62-340
Marion	402357-002NPR	Dallas Substation (404)	Issued	5/5/2021	NWPR
Miami-Dade	396995-001NPR	8.5 Square Mile Area	Issued	3/10/2021	NWPR
Orange	392002-002NPR	Kirkman Transmission Reconfig	Issued	3/12/2021	Corps AJD
Orange	397330-001NPR	Haverlake Cir. Drainage Improv	Issued	2/22/2021	NWPR
Orange	399331-001NPR	Western Beltway Park	Issued	5/4/2021	NWPR
Orange	398383-001NPR	State 404 NPR Request	Issued	4/12/2021	NWPR

County	Application #	Project Name	Agency Action	Action Date	Basis
Osceola	398580-001NPR	Kelly Parcel	Issued	6/28/2021	NWPR
Palm beach	396652-002NPR	Gorsek	Issued	6/25/2021	62-340
Palm beach	398421-001NPR	Ranchette Road Assemblage	Issued	6/30/2021	NWPR
Palm beach	401885-001NPR	Proposed High School	Issued	6/18/2021	NWPR
Pasco	398424-001NPR	Angels Senior Living SR-54	Issued	5/26/2021	NWPR
Polk	396395-001NPR	Len Hawthorne	Issued	6/29/2021	NWPR
Polk	397927-002NPR	Phase II Air Cargo Development	Issued	4/12/2021	NWPR
Polk	394006-002NPR	TECO Jamison Solar Power Plant	Issued	4/22/2021	NWPR
Polk	225815-005NPR	Jahna Haines City--404--NPR	Issued	4/15/2021	NWPR
Sarasota	397743-001NPR	Cedar Grove Phase 2 A&B	Issued	2/24/2021	62-340
Sarasota	277515-003NPR	Wetland NJD	Issued	6/15/2021	NWPR
Sarasota	398734-001NPR	Professional Pkwy Exp	Issued	3/19/2021	NWPR
Sarasota	399675-001NPR	Maintenance Of Howard Creek	Issued	3/31/2021	62-340
Sarasota	401486-001NPR	Tamiami Trl Linear Parking N	Issued	4/29/2021	62-340
Sarasota	401988-001NPR	WCIND Admin Building	Issued	5/7/2021	62-340
Seminole	398563-001NPR	Sylvestri Lakes Subdivision	Issued	5/27/2021	NWPR
St. Johns	396596-001NPR	404-Sembler Sr207 Commercial	Issued	5/20/2021	NWPR
Volusia	399732-001NPR	Lot 10 Industrial Development	Issued	4/9/2021	NWPR
Volusia	402018-001NPR	Mason Ave Site	Issued	6/23/2021	NWPR
Volusia	404269-001NPR	Hand Ave Project (404)	Issued	6/14/2021	NWPR
Walton	396527-001NPR	Lot 10 Gulf Hill Estates	Issued	5/27/2021	62-340
Walton	396358-002NPR	Topsail Commercial	Issued	6/3/2021	NWPR

During the first few months of implementation of DEP’s program, DEP became aware that a few old, pre-assumption chapter 62-340, F.A.C. formal determinations were incorrect. After discovery of these sites, DEP created the guidance document for “Delineations for Projects that May Require a State 404 Program Permit” (Appendix 2). To date, DEP has successfully

required that any incorrect line be re-evaluated for the State 404 Program. DEP Certified Wetland Evaluator approved delineation information may be found in each of the project files, available through Oculus. DEP is not aware of any instance where the DEP CWE did not review the delineation line for the State 404 Program permit. DEP did not collect data on which Chapter 62-340, F.A.C. delineations were different from previous delineations done under the federal method.

Identification of Areas of Particular Concern and/or Interest within the State

One area of particular interest was identified during this reporting period. On January 22, 2021, Burnett Oil submitted ERP/404 applications² for impacts to wetlands in the Big Cypress Preserve associated with well pads for oil and gas well drilling. The applications drew significant interest from the public, commenting agencies, and environmental organizations. On February 22, 2022, Burnett Oil withdrew the pending applications following a third Request for Additional Information (RAI), in which the Department strongly recommended that they withdraw until the project is further along in the design process and the applicant could provide a sufficient alternatives analysis, sufficient avoidance and minimization measures, and sufficient water quality and wetland resource protections.

Applicants and members of the public have occasionally asked about the accuracy of the Retained Waters List GIS Layer. This layer was created using several base layers to show the waters listed on the retained waters list in Appendix A of the 404 Handbook and includes a buffer to provide an approximation of the 300-foot administrative boundary from such waters. DEP received some questions regarding proposed projects within the 300-foot boundary which were not retained by the Corps during the time that the Corps was implementing NWPR. The Corps and DEP explained to these applicants that a wetland or other surface water needed to be adjacent to a retained water to be retained.

Some applicants wanted to know why a project was identified as “retained” (Corps review) where GIS layer data indicated that proposed impacts occurred outside retained waters and

² The files for the Nobles Grade applications can be reviewed at [404 Application](#) and [ERP Application](#); the files for the Tamiami Prospect applications can be reviewed at [404 Application](#) and [ERP Application](#).

within areas assumed by DEP. On the other hand, other applicants raised questions about why a project was identified as “assumed” (DEP review) where GIS layer data indicated proposed impacts occurred in retained waters. DEP and the Corps have coordinated on these issues and explained that the GIS layer is only an approximation as to which waters are retained or assumed. The best indicator for identification of these areas is the use of actual field data. If a field measurement is taken that shows the actual distance between the retained waterbody and the impact to be different than the buffer shown on the GIS layer, then the actual field measurement is used to make the determination.

The Corps had not indicated any plans to DEP to modify the retained waters list during this reporting period. DEP has asked the Corps to evaluate certain coastal areas to determine whether they should be considered tidal and shown on the Retained Waters List GIS Layer. An area of canals in Cape Coral was added to the GIS layer in April because they were found to be tidally influenced (Figure 1). The changes to the GIS layer were made in accordance with the Memorandum of Agreement Between the Florida Department of Environmental Protection and the Department of the Army (Corps MOA), Section III. B. Evaluations and discussions for other areas are ongoing, including gathering evidence or data to assist the Corps in determining whether those areas are tidally influenced. The outcome of this evaluation will not affect the actual area of jurisdiction as these areas would have been considered retained upon receipt of applications with surveys showing them to be tidal.

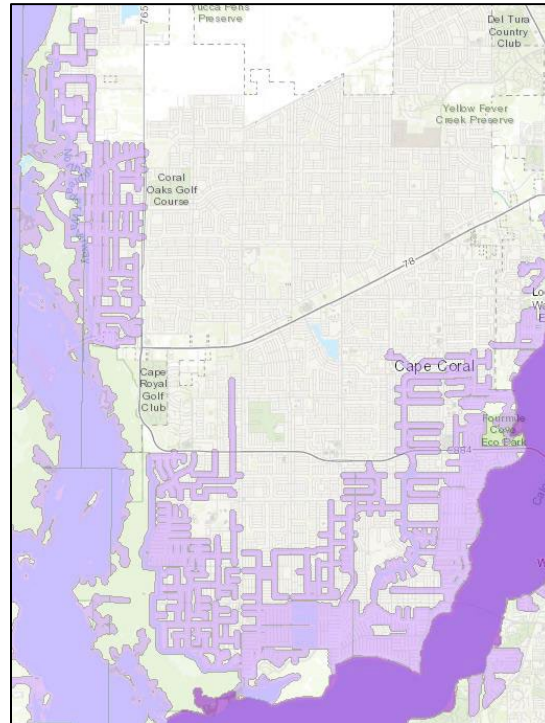


Figure 1 – Cape Coral Canals

The Number and Nature of Individual and General Permits Issued, Modified, and Denied

The individual and general permits issued during this first reporting period included some of those that had been transferred from the Corps or submitted to DEP with complete or nearly complete applications. Permits issued within this period were able to successfully undergo complete review by the commenting agencies, the Department and the public in that timeframe. The lists of issued and denied projects for this initial period are short. No modifications to State 404 Program permits were processed during this reporting period.

Many State 404 Program applications were withdrawn. DEP did not collect data for the reasons for each of the withdrawals, however, discussion with the district offices and programs revealed that these included projects that came in for an ERP within assumed waters, were logged in for State 404 Program review, and then the applicants notified DEP that they already had an existing, valid Corps permit. Some were logged in as the incorrect permit type, withdrawn, and

then re-logged for the correct permit type. Changes in permit type were typically caused by log-in error, a project being changed from a general permit to an individual permit or vice versa. The reason for withdrawal is typically reflected in the file, either by a change in the permit type or a withdrawal email from the applicant. The files listed below can be viewed using one of the methods described on DEP's Public Records webpage at <https://floridadep.gov/sec/sec/content/public-records>.

Long-Term Projects

DEP reviews long-term projects pursuant to the process described in the State 404 Applicant's Handbook Section 5.3.2-3 and Rule 62-331.051, F.A.C., as detailed and accepted in Florida's 404 assumption package. This analysis includes cumulative impacts for the total project, as well as for each permit phase. DEP complies with the public notice requirements outlined in the State 404 Applicant's Handbook Section 5.3.1 and Rule 62-331.060, F.A.C., and includes in the public notice a link to the OCULUS file for the application.

No permits for projects with long-term planning documents were issued during the reporting period. However, several long-term planning projects were under review (Table 2, below). Prior to permit issuance, applicants must submit a long-term planning document with all of the elements required in Section 5.3.2 of the 404 Handbook. DEP assists applicants throughout the process as needed, including through pre-application meetings and during the review process through meetings and RAIs. The public notice, once published, indicates that the project under review is a long-term planning project. The long-term planning document would then be available for public review through Oculus or the DEP Information Portal.

Because no long-term planning projects were permitted during the reporting period, no subsequent phases were reviewed under the expedited permit review process outlined in Section 62-331.060(8), F.A.C. No NPR letters were issued in association with a long-term planning project because long-term planning projects do not qualify to receive NPR letters. To receive an NPR letter, the project as a whole must not require a permit.

DEP uses reasonable scientific judgement (RSJ) for purposes of determining whether there has been a "material permit modification" or "material changes in the scope of the project". DEP did

not define the term “significant” in our ERP or State 404 Programs, partly because there is so much variability in what could be considered “significant” for different projects. Flexibility is important for RSJ determinations.

Rule 62-331.051, F.A.C., requires that all activities the applicant plans to undertake which are reasonably related to the same project shall be included in the same permit application, so that all impacts can be reviewed holistically and cumulatively. Cumulative effects/impacts are reviewed in accordance with Applicant’s Handbook Volume I, section 10.2.8 and the 404 Handbook, section 8.3.5. DEP, like the Corps, uses the concept of “independent utility” to determine whether applications are unique or part of the same larger project. Generally, where a project appears to be interconnected for some identifiable reason or depends on other project phases to function, DEP considers the project as part of a larger project unless the applicant successfully demonstrates otherwise. DEP also looks at ownership. If a project is only proposed for a portion of contiguous lands owned by the applicant, DEP will ask the applicant to provide information about future development plans for the other properties and whether they will be part of the same larger project.

Table 2 – Long-Term Planning Projects Under Review as of June 30, 2021

File Number	Project Name	Application Received
396249-003-SFI	Connerton Village 3 Phase I	12/28/2020
270229-001-SFI	Newport Isles	12/28/2020
400133-001-SFI	Greystone North, South, and West	3/10/2021
404231-001-SFI	Connerton Charter School	5/19/2021
403101-001-SFI	Glen Lakes Ph 2 Parcel 13 AB	4/29/2021
396464-001-SFI	Winter Haven Commerce Center	12/28/2020
396540-001-SFI	Pembroke South C&D Landfill	12/28/2020
396565-001-SFI	ICI Homes – Middlebourne/Longleaf Pine	12/28/2020
396574-001-SFI	Babcock Property Holdings, LLC	12/28/2020
396364-001-SFI	Collier Enterprises Management, Inc. / Various PID (A)	12/28/2020

File Number	Project Name	Application Received
396966-001-SFI	Collier Enterprises / CDC Land Hold / CDC Land Invest (R)	1/11/2021
396348-001-SFI	27 th Pico Boulevard Limited Partnership / Various PID (A)	12/28/2020

DEP has received State 404 Program applications for projects that either already have or are applying for an ERP Conceptual Approval Permit. However, DEP did not collect data for identifying these projects. For those projects where the ERP Conceptual Approval and the State 404 Program application are reviewed simultaneously and require a long-term planning document, the phases should ideally match. However, this is project and site specific and may not always be the case. To get a State 404 Program permit, the project needs to meet the requirements of the program, including Section 5.3.2 of the 404 Handbook. If the State 404 Program application does not meet those specific requirements, the project permit application will be denied.

The tables below (Tables 3-6) contain the number and nature of State 404 Program individual and general permits issued, modified, or denied during this reporting period.

Table 3 – Number of Individual Permits Issued, Modified, or Denied

Permit Status	Number of Individual Permits
Effective (Issued)	6
Denied	0
Modified	0
Withdrawn	167

Table 4 – Nature of Individual Permits Issued, Modified, or Denied

Individual Permit Number	Agency Action Type	Primary Category of Work
396431-002-SFI	Effective (Issued)	Ecological restoration
397140-001-SFI	Effective (Issued)	Local government construction
396232-001-SFI	Effective (Issued)	Residential development (multi-family/subdivision)

Individual Permit Number	Agency Action Type	Primary Category of Work
396366-001-SFI	Effective (Issued)	Residential development (multi-family/subdivision)
396392-001-SFI	Effective (Issued)	Roadways
396414-001-SFI	Effective (Issued)	Roadways

Table 5 – Number of General Permits Issued or Denied

Permit Status	Number of General Permits
Effective (Issued)	67
Denied	17
Withdrawn	152

Table 6 – Nature of General Permits Issued or Denied

General Permit Number	General Permit Type	Agency Action
383690-002-SFG	Maintenance or Removal	Denied – requires individual permit
396420-001-SFG	Maintenance or Removal	Effective (Issued)
397499-001-SFG	Maintenance or Removal	Effective (Issued)
396361-001-SFG	Maintenance or Removal	Effective (Issued)
401370-002-SFG	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices	Effective (Issued)
400573-002-SFG	Scientific Measurement Devices	Effective (Issued)
397035-001-SFG	Outfall and Intake Structures	Effective (Issued)
398377-002-SFG	Utility Line Activities	Denied – lack of information
396564-001-SFG	Utility Line Activities	Effective (Issued)
359189-006-SFG	Utility Line Activities	Effective (Issued)
401524-002-SFG	Utility Line Activities	Effective (Issued)
297463-008-SFG	Utility Line Activities	Effective (Issued)
172299-006-SFG	Utility Line Activities	Effective (Issued)
396174-002-SFG	Bank Stabilization	Denied – lack of information
131086-003-SFG	Bank Stabilization	Denied – lack of information

General Permit Number	General Permit Type	Agency Action
397527-001-SFG	Bank Stabilization	Denied – does not qualify, adverse impact to special aquatic sites
396202-002-SFG	Bank Stabilization	Denied – lack of information
396194-002-SFG	Bank Stabilization	Denied – lack of information
396205-002-SFG	Bank Stabilization	Denied – lack of information
400572-003-SFG	Bank Stabilization	Denied – lack of information
396557-002-SFG	Bank Stabilization	Effective (Issued)
397311-004-SFG	Bank Stabilization	Effective (Issued)
397760-002-SFG	Bank Stabilization	Effective (Issued)
396932-004-SFG	Bank Stabilization	Effective (Issued)
397768-002-SFG	Bank Stabilization	Effective (Issued)
397761-002-SFG	Bank Stabilization	Effective (Issued)
402066-002-SFG	Bank Stabilization	Effective (Issued)
402525-002-SFG	Bank Stabilization	Effective (Issued)
402073-003-SFG	Bank Stabilization	Effective (Issued)
401909-003-SFG	Bank Stabilization	Effective (Issued)
401910-003-SFG	Bank Stabilization	Effective (Issued)
402587-003-SFG	Bank Stabilization	Effective (Issued)
399194-007-SFG	Bank Stabilization	Effective (Issued)
394013-004-SFG	Bank Stabilization	Effective (Issued)
398270-002-SFG	Bank Stabilization	Effective (Issued)
400688-001-SFG	Bank Stabilization	Effective (Issued)
399354-004-SFG	Linear Transportation Projects	Effective (Issued)
396436-001-SFG	Linear Transportation Projects	Effective (Issued)
397665-001-SFG	Linear Transportation Projects	Effective (Issued)
396388-001-SFG	Linear Transportation Projects	Effective (Issued)
396482-001-SFG	Aquatic Habitat Restoration, Enhancement, and Creation Activities	Denied – lack of information
246555-012-SFG	Aquatic Habitat Restoration, Enhancement, and Creation Activities	Effective (Issued)
350037-002-SFG	Aquatic Habitat Restoration, Enhancement, and Creation Activities	Effective (Issued)
400610-003-SFG	Aquatic Habitat Restoration, Enhancement, and Creation Activities	Effective (Issued)

General Permit Number	General Permit Type	Agency Action
257438-003-SFG	Residential Developments	Denied – lack of information
379936-002-SFG	Residential Developments	Denied – lack of information
398583-001-SFG	Residential Developments	Denied – lack of information
399241-002-SFG	Residential Developments	Denied – does not qualify, Florida panther consultation area
217724-003-SFG	Residential Developments	Denied – does not qualify – Florida panther consultation area
396984-001-SFG	Residential Developments	Effective (Issued)
200579-003-SFG	Residential Developments	Effective (Issued)
224168-005-SFG	Residential Developments	Effective (Issued)
396509-001-SFG	Residential Developments	Effective (Issued)
205881-005-SFG	Residential Developments	Effective (Issued)
391855-002-SFG	Residential Developments	Effective (Issued)
396406-001-SFG	Residential Developments	Effective (Issued)
396757-002-SFG	Residential Developments	Effective (Issued)
396134-003-SFG	Residential Developments	Effective (Issued)
399637-003-SFG	Residential Developments	Effective (Issued)
349888-003-SFG	Residential Developments	Effective (Issued)
396459-001-SFG	Residential Developments	Effective (Issued)
297469-003-SFG	Residential Developments	Effective (Issued)
396123-002-SFG	Residential Developments	Effective (Issued)
396566-001-SFG	Residential Developments	Effective (Issued)
288253-004-SFG	Residential Developments	Effective (Issued)
396434-001-SFG	Residential Developments	Effective (Issued)
396447-001-SFG	Residential Developments	Effective (Issued)
401809-002-SFG	Maintenance of Existing Flood Control Facilities	Effective (Issued)
398584-003-SFG	Boat Ramps	Effective (Issued)
400252-001-SFG	Commercial and Institutional Developments	Denied – does not qualify, exceeds thresholds
396351-001-SFG	Commercial and Institutional Developments	Effective (Issued)
396363-001-SFG	Commercial and Institutional Developments	Effective (Issued)
383941-003-SFG	Commercial and Institutional Developments	Effective (Issued)
401984-002-SFG	Commercial and Institutional Developments	Effective (Issued)

General Permit Number	General Permit Type	Agency Action
400781-001-SFG	Activities in Ditches	Denied – lack of information
396496-001-SFRP	Residential Fill in Holley by The Sea, a Subdivision in Santa Rosa County	Effective (Issued)
397456-002-SFRP	Residential Fill in Holley by The Sea, a Subdivision in Santa Rosa County	Effective (Issued)
397603-002-SFRP	Aerial Transmission Lines in Florida	Effective (Issued)
397038-001-SFRP	Aerial Transmission Lines in Florida	Effective (Issued)
385226-005-SFRP	Aerial Transmission Lines in Florida	Effective (Issued)
395675-002-SFRP	Sub-aqueous Utility and Transmission Lines in Florida	Effective (Issued)
396442-001-SFRP	Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties, Florida	Effective (Issued)
398702-002-SFRP	Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties, Florida	Effective (Issued)
396477-001-SFRP	Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties, Florida	Effective (Issued)

An Estimate of Extent of Activities Regulated by General Permits

Table 7 summarizes the total impact acres authorized under each general permit type that was issued within the reporting period. Details regarding the impacts and mitigation for each issued permit are included in Appendix 1.

Table 7 – Estimate of Extent of Activities Regulated by General Permits

General Permit Type	Number Issued	Total Fill Impacts (Acres)
62-331.210 General Permit for Maintenance or Removal	3	0.29
62-331.211 General Permit for Fish and Wildlife Harvesting, Enhancement, and Attraction Devices	1	0
62-331.212 General Permit for Scientific Measurement Devices	1	0
62-331.214 General Permit for Outfall and Intake Structures	1	0

General Permit Type	Number Issued	Total Fill Impacts (Acres)
62-331.215 General Permit for Utility Line Activities	5	0.07
62-331.216 General Permit for Bank Stabilization	14	0
62-331.217 General Permit for Linear Transportation Projects	4	1.141
62-331.221 General Permit for Response Operations for Oil or Hazardous Substances	1	0
62-331.225 General Permit for Aquatic Habitat Restoration, Enhancement, and Creation Activities	3	605
62-331.227 General Permit for Residential Developments	19	4.032
62-331.229 General Permit for Maintenance of Existing Flood Control Facilities	1	0.008
62-331.233 General Permit for Boat Ramps	1	0.01
62-331.236 General Permit for Commercial and Institutional Developments	4	0.55
SAJ-103 Residential Fill in Holley by The Sea, a Subdivision in Santa Rosa County	2	0.34
SAJ-13 Aerial Transmission Lines in Florida	3	1.832
SAJ-14 Sub-aqueous Utility and Transmission Lines in Florida	1	0.401
SAJ-86 Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties, Florida	3	20.85

The Number of Violations Identified and Number and Nature of Enforcement Actions Taken and The Number of Suspected Unauthorized Activities Reported and Nature of Action Taken

Typically, a permit compliance inspection is triggered by one of the following: 1) a permittee submits Form 62-330.350(1), “Construction Commencement Notice,” (for individual permits); 2) a permittee submits Form 62-331.200(1) – “Certification of Compliance with a State 404 Program General Permit”; 3) at least one year has passed since permit issuance; or 4) a complaint is received. DEP typically does not inspect earlier than the occurrence of one of the above because many projects have not yet begun construction within one year of permit issuance. Because this annual report only covers the 6-month period between December 22 and June 30,

2021, DEP does not yet have data to report regarding permit compliance inspections for the reporting period. In future reporting cycles, the Department will report permit compliance data in the following format (Table 8):

Table 8 – Permit compliance inspections

Permit Compliance	Total
Inspections of State 404 Program general permits	#
General permit violations	#
Inspections of State 404 Program individual permits	#
Individual permit violations	#

Table 9 shows the total number of suspected unauthorized activities during this reporting period. Suspected unauthorized activities include complaints received within state assumed waters that were relevant to the State 404 Program (for example, complaints regarding docks in state-assumed waters were not included because docks are typically not regulated under the State 404 Program), and referrals from permitting. Specifically, Discharge of fill material (2)(i) in Appendix B of the State 404 Program Applicant’s Handbook indicates that the placement of pilings in waters of the United States does not have or would not have the effect of a discharge of fill material shall not require a 404 permit. A referral from permitting typically occurs when a permit processor performs a site inspection during review of a permit application and finds a suspected unauthorized activity. Many complaints were still in the process of being investigated at the end of the reporting period. Responses to violations are shown in Table 10. The appropriate type of response is determined as described in section (g) of the program description. Any response-related actions taken or violations confirmed after June 30, 2021, will be reported during the next reporting period.

Table 9 – Suspected Unauthorized Activities

Suspected Unauthorized Activities (Complaints and Referrals)	Total
Total suspected unauthorized activities	971
Total confirmed violations	191

Total still under investigation	103
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Table 10 – Response to Violations

Response to Violations (Formal and Informal Enforcement)	Total
Compliance Assistance Offer (CAO)	82
Warning Letters (WL) issued	22
Notices of Violation issued	0
Short Form Consent Orders executed	0
Long Form Consent Orders executed	0
Settlement Agreements executed	0
Penalties Assessed	\$0
Penalties Collected	\$0
Post-Enforcement Permits issued	0

Enforcement Coordination with EPA

The EPA/DEP MOA, in Section III.E (Unauthorized Activity) states:

FDEP shall coordinate with EPA when a violation is identified that is within the permit and discharge categories in Section II.B.(1) of this Agreement. FDEP shall provide a summary of the unauthorized activity and inform EPA of the status of the file as enforcement actions are taken, including any decision to accept an after-the-fact permit application.

DEP is copying EPA on actions as they occur for those projects that fall within the non-waiver categories outlined in Section II.B.(1) of the MOA. DEP and EPA discussed the possibility of EPA creating a special mailbox to receive these communications in a standardized way. If such a mailbox is created, DEP will use that mailbox to send EPA copies of those actions.

DEP has set up a recurring monthly enforcement call with EPA to discuss any enforcement-related subject matter as needed by either DEP or EPA.

The database of record for permit compliance actions is currently DEP’s ERPce database. Data is not uploaded to ICIS. DEP discussed the potential use of ICIS with EPA and found that other assumed states do not use ICIS, nor does the US Army Corps of Engineers. ICIS does not appear to be built for activities regulated under Section 404 of the Clean Water Act. DEP plans to

continue to use ERPce and will provide data to EPA upon request as outlined in Section III.D. of the MOA, or through the annual report as required by Section III.C. of the MOA.

DEP maintains its “program designed to identify persons subject to regulation who have failed to obtain a permit or to comply with permit conditions,” as required by 40 C.F.R. § 233.40(a), by updating our ERPce database when complaints are received and when complaint or permit inspections reveal a violation. The database is searchable, so agency reviewers can check to see if a person has violated in the past and consider that information when determining the best path to resolution.

Number of Permit Applications Received but not yet Processed

As of June 30, 2021, DEP had the following numbers of applications under review:

- Exemption verification requests: 8
- General permit notices: 520
- Individual permit applications: 415
- “No Permit Required” letter requests: 476

In 2021, DEP received 2,020 State 404 applications, not including applications that were later withdrawn. From January 1, 2022 through June 14, 2022, DEP received 1,203 applications. This number projected through the remainder of the year is 2,626; or a 23% increase in applications received from the prior year. To handle this increase in workload, the 2022 Florida Legislature appropriated 33 positions to the State 404 Program.

YEAR	404 Apps RCVD	% increase from 2021
2021	2018	
2022 (through 6/14)	1203	
2022 (projected)	2626	23%

Staff Training

As of June 30, 2021, DEP provided the following training opportunities for staff:

- Weekly training webinars prior to assumption (August – December 2020), attendance numbers for the trainings listed in Table 11 ranged from 250 – 186 participants.

- Weekly training webinars after assumption (December 2020 – June 30, 2021), attendance numbers for the trainings listed in Table 12 below were routinely between 100 and 120 participants.
- Each processing office was assigned a Division mentor to assist them with 404 permitting and compliance questions
- Weekly meetings between the mentors and their assigned processing offices
- Chapter 62-340, F.A.C., Basic and advanced field delineation training (for 3 years prior to assumption) and post assumption (Table 13).

Table 11 – Pre-Assumption Training (August 2020 – December 2020)

Date	Title
8/11/2020	Introduction to the State 404 Program
8/18/2020	Processing State 404 Program Permits
8/25/2020	Alternatives Analysis and Avoidance and Minimization
9/1/2020	Review of Secondary and Cumulative Effects
9/8/2020	62-340 FAC-Data Form
9/22/2020	Mitigation and Mitigation Hierarchy
9/29/2020	Listed Species Coordination (Jointly presented by DEP, USFWS, and FWC)
10/6/2020	State 404 Program Compliance and Enforcement
10/13/2020	Documenting the Decision (TSR)
10/20/2020	EPA Oversight and Review, and Public Notice Procedures
11/3/2020	Processing State 404 Exemptions
11/10/2020	FWC Listed Species Determinations (presented by FWC)
11/24/2020	Processing State 404 General Permits
12/1/2020	Practice Training Process
12/8/2020	Historical and Tribal Resource Coordination

Table 12 – Post Assumption Training (December 2020 – June 30, 2021)

Date	Title
12/22/2020	404 ERPPa and Oculus (Database and Document Management Systems Overview)
1/5/2021	404 Q&A
1/12/2021	404 Q&A (Oculus, 404 GIS mapping layers, Section 10 waters and Federal projects, templates for RAI's)

Date	Title
1/26/2021	WOTUS Training (NWPR Overview and Typical Year)
2/2/2021	WOTUS Training (NWPR focus on Tributaries, Ditches, Adjacent Wetlands, and Lakes, Ponds and Impoundments)
2/9/2021	WOTUS Training (NWPR overview of Exclusions)
2/16/2021	404 Q&A (Certified Wetland Evaluator overview, guidance for CWEs and continued coordination)
2/23/2021	404 Q&A (general question and answer session)
3/9/2021	404 Q&A (CWE review and coordination, application review tips, 62-340, F.A.C. and WOTUS)
3/23/2021	404 Q&A (general question and answer session)
4/20/2021	Mitigation hierarchy and requirements including RIBITS overview
4/27/2021	404 Q&A (permit conditions and processes)
5/11/2021	404 Q&A (general question and answer session)
5/18/2021	404 Q&A (delineation guidance, general question and answer session)
6/1/2021	Technology Webinar: 404 Lidar and Aerials in ArcGIS
6/8/2021	Technology Webinar: 404 Georeferencing in ArcGIS
6/15/2021	404 Database Demonstration and Non-Wetland Surface Waters Discussion
6/22/2021	404 Q&A (FWC updates, Non-wetland surface waters (part II), WOTUS and ditches)
6/29/2021	404 Q&A (Historic Resource and Tribal Resource Coordination Overview)

Table 13 – Post Assumption Field Training (December 2020 – Present)

Chapter 62-340, F.A.C. Field Trainings	Location	Date	Attendees
CWE Recruitment Training	Tallahassee	Nov. 4, 2021	18
South District Regional Field Training	Ft. Myers	Feb. 23 and Feb 24, 2022	33
Northwest District Regional Field Training	Pensacola	Mar. 9 and Mar. 10, 2022	38
Southwest District Regional Field Training	Tampa	Mar. 30 and Mar. 31, 2022	45
Southeast District Regional Field Training	West Palm	Apr. 13 and Apr. 14, 2022	46
Central District Regional Field Training	Orlando	Apr 27. and Apr. 28, 2022	38
Northeast District Regional Field Training	Jacksonville	May 11 and May 12, 2022	38
		TOTAL	256

Historical, Cultural, and Tribal Resources

DEP is committed to full engagement with The State Historic Preservation Officer (SHPO) and the Tribes on protecting historic and cultural resources in the State of Florida. DEP provided advance notice to the SHPO, Seminole Tribe of Florida (STOF) and the Miccosukee Tribe of Indians of Florida (MTIF) according to the procedures outlined in the August 6, 2020, Operating Agreement between DEP and SHPO. The SHPO, STOF, and MTIF received advance notice for all State 404 general and individual permit applications received between December 22, 2020, and June 30, 2021. DEP received the following in response to advanced notices:

SHPO

During the initial review of an application, SHPO conducts a historic properties search against the Florida Master File to determine if the application has the potential to affect any known historic properties. Following this search, SHPO can notify the Department of any request for additional information needed to complete the historic properties review, provide a determination of the effect an application may have on historic properties, and/or provide recommendations for alternatives or modifications to the applications that could avoid, minimize or mitigate effects on historic properties.

During the period of December 22, 2020, to June 30, 2021, SHPO requested additional information for 65 applications, the majority of which were requests for a Cultural Resource Assessment Survey, and provided one (1) adverse effect determination, two (2) conditional no adverse effect determinations, four (4) no adverse effect determinations, and 548 no effect determinations. For the 548 no effect determinations, SHPO requested DEP include in its permit conditions the standard condition for unanticipated discoveries. The effect determinations are provided in Table 13, below.

Tribes

In accordance with the Operating Agreement, the Indian Tribes may also review permit applications for effects to cultural resources or historic properties and notify the Department of any request for additional information and/or make effects determinations and recommendations.

During the period of December 22, 2020, to June 30, 2021, The Seminole Tribe of Florida (STOF) requested additional information for 168 permit applications. One hundred fifty-seven (157) of the requests were for a CRAS and eleven (11) were for project specific information. STOF provided thirty-one no effect determinations and three (3) potential to adversely affect determinations – one for the Mack Bayou Subdivision (402347-001) and the other for two Burnett oil applications, which have been withdrawn. Due to the potential to adversely affect determination for Mack Bayou Subdivision, SHPO recommended the parties enter into a Memorandum of Agreement (MOA) for the resolution of adverse effects. This MOA has been

drafted and is awaiting execution. In addition, for seventeen (17) projects, STOF recommended DEP condition the permits to include avoidance of a known cultural resource.

During the period of December 22, 2020, to June 30, 2021, the Miccosukee Tribe of Indians of Florida (MTIF) submitted three (3) requests for additional information, which included one (1) request for a Phase 1 CRAS of the permit area and (2) requests for a full NEPA analysis. MTIF provided two (2) potential to adversely affect determinations. See Table 14.

Table 14 – Recommendations following effects determinations

Commenter	Permit No.	Comment	Recommendation
SHPO	389734-002-SFG	Adverse effect	Archaeology site BD59 be avoided by all ground disturbing project activities, including staging
SHPO	326535-003-SFG	Conditional no adverse effect	monitoring for all project activities within the vicinity of 8TA00594, Spring Hill Cemetery
SHPO	385226-005-SFRP	Conditional no adverse effect	condition requiring an avoidance buffer around archaeological sites 8HN00060 and 8HN00566/8HN00721; this condition was agreed upon during previous 404 consultation with the Corps
SHPO	396493-001-SFM, near Tamiami Canal (8DA6453) and Tamiami Trail Bridge (DA5892)	No adverse effect	None
SHPO	401102-001-SFI, within the Fort Pierce Farms Water Control District (8SL03289)	No adverse effect	None

Commenter	Permit No.	Comment	Recommendation
SHPO	400688-001-SFG, within the Bolles Canal (8PB11412)	No adverse effect	None
SHPO	377871-002-SFI, within Big Cypress	No adverse effect	None
STOF	Mack Bayou Subdivision, 402347- 001	Potential to adversely affect	Memorandum of Agreement, which has been drafted and is awaiting execution
STOF	Burnett Oil – Nobles Grade, 323836	Potential to adversely affect	Application was withdrawn
STOF	Burnett Oil – Tamiami Prospect, 397879	Potential to adversely affect	Application was withdrawn
STOF	17 projects	Suggested permit conditions	Avoidance of a known cultural resource
MTIF		Potential to adversely affect	
MTIF		Potential to adversely affect	

Public Notice

Every State 404 Program public notice is a solicitation for comments, including comments on the potential effects to historic/cultural resources. Our public notice template provides information regarding any known historic properties and/or cultural resources within the permit area and provides a summary of recommendations received by SHPO/THPO/Indian Tribes during initial review of the application. There were no instances where DEP did not accept the recommendations and/or determinations from a commenting agency or tribe.

There were 12 instances where DEP received specific comments during the public comment period on potential effects to historic/cultural resources, broken down as follows:

Table 15 – Comments received during the notice and comment period

Commenter	Permit No.	Comment	Recommendation
SHPO	288253-003/004-SFG	No effect	Include an inadvertent finds clause
	396123-002-SFG		
	396406-001-SFG		
	396566-001-SFG		
	396757-002-SFG		
	396434-001-SFG		
	396447-001-SFG		
	401984-002-SFG		
	397603-001-SFRP	SEARCH encountered no cultural resources within the area of potential effect (APE) during their investigation. SEARCH determined that the proposed project will have no effect on cultural resources listed, or eligible for listing in the NRHP	recommends no further investigation of this project area
Muscogee Creek Nation	396232-001-SFI	No effect	Include an inadvertent finds clause
Seminole Tribe of Florida	350037-002-SFG	No objections or other comments	Please notify us if any archaeological, historical, or burial resources are inadvertently discovered
Seminole Tribe of Florida	401984-002-SFG	the permit area has not been previously surveyed for the possible presence of cultural resources/historic properties	request a Phase I Cultural Resource Assessment Survey be conducted in accordance with the requirements of the Florida Division of Historical Resources Module III Guidelines for Use by Historic Preservation Professionals, prior to project implementation/ground disturbing activities
General Public	None		

DEP was not notified of any unanticipated discovery of human remains as a result of the implementation of a State 404 permitted activity.

DEP is required to place all finalized file materials into Oculus and has instructed processing staff to do so. Any information generated during the advance notice and public notice process which identifies the location of an archaeological site is uploaded into Oculus as a restricted file. Per s. 267.135, Florida Statutes, this information is exempt from s. 119.07(1) and s. 24(a) of Art. I of the State Constitution.

DEP does not recommend any actions or revisions to the DEP-SHPO Operating Agreement or the PA at this time.

Listed Species

DEP provides Endangered Species Act early coordination engagement for all State 404 general and individual permit applications. The Memorandum of Understanding (August 5, 2020) between DEP, FWC and USFWS describes the roles and responsibilities of each agency in implementing the State 404 Program, to ensure that endangered and threatened federally listed species and their critical habitats are protected. These roles and responsibilities are also outlined in EPA's ESA Biological Evaluation for Clean Water Act Section 404 Assumption by the State of Florida (August 2020) and in the Programmatic Biological Opinion for the EPA's Approval of FDEP's Assumption of the Administration of the Dredge and Fill Permitting Program under Section 404 of the Clean Water Act (November 2020). In reviewing the implementation of the State 404 Program for this annual report, DEP has confirmed with the USFWS that DEP and FWC have fully implemented the provisions of the Memorandum of Understanding.

For General Permit application reviews, FWC and USFWS are each responsible for providing comments for species under their jurisdiction. For Individual Permit application reviews, FWC is the listed species coordination lead. FWC performs the preliminary analysis for both state and federally listed species and coordinates with the USFWS for agreement on project effects and recommended permit conditions. FWC then provides comment letters to DEP combining the reviews for both state and federally listed species. As part of this review, DEP and the applicant provide additional information to FWC and USFWS regarding applications, when requested. The FWC and the USFWS provide information and analysis about possible effects to listed species which DEP includes in the Public Notice. After Public Notice, FWC and/or USFWS provide final comment letters with recommended permit conditions, which are incorporated by DEP as required conditions to the State 404 permits.

Tables 16 and 17 below demonstrate the actions DEP, FWC and USFWS have taken to ensure that federally listed species and designated critical habitats were protected during the review and issuance of State 404 permits. Of the six (6) Individual Permits issued by DEP, only one (1) permit included a "may affect, likely to adversely affect" determination for a listed species,

where anticipated incidental take was addressed by specific conditions to the permit. Table 14 shows the other determinations encompassed in those permits.

Table 16: Results of federally listed species reviews for issued State 404 Individual Permits (December 22, 2020 through June 30, 2021)

	No effects expected	No Effect	Not likely to adversely affect	Likely to adversely affect
Audubon’s crested caracara		1		
Eastern indigo snake		1	3	
Everglades snail kite		2		
Florida scrub-jay		3		
Red-cockaded woodpecker		1	1	
Sand skink				1
Wood stork			3	
No species listed	2			
Totals	2	8	7	1

For federally listed endangered species, a quantification of adverse impacts to critical habitat and/or taking of federally listed species is provided in Table 16. There was only one (1) project during this time period where incidental take was anticipated, and no projects were identified as adversely modifying or destroying designated critical habitat. The permit application where incidental take was reasonably certain to occur was transferred to DEP from the Corps of Engineers as a pending application, and it included an existing USFWS Biological Opinion.

Table 17: Incidental take and/or adverse modification of critical habitat (December 22, 2020 through June 30, 2021)

Type of Effect	Permit	Affected Species or Critical Habitat	Requirements
Incidental Take	Pacific Ace 396232-001-SFI	Sand Skink	Purchase of 40.22 conservation bank credits for loss of 20.11 acres of occupied habitat
Adverse Modification of Critical Habitat	None	None	None

It is standard practice for all correspondence from commenting entities such as FWC and USFWS to be routinely uploaded into the OCULUS system when provided to DEP. To reiterate the need for this documentation in the project file, the procedures for wildlife coordination were updated to include this as a requirement. Any exchanges that may have occurred between FWC and USFWS which have not been uploaded are missing only because they were not provided to DEP. FWC has agreed to ensure that all pertinent USFWS correspondence in their files will be

forwarded to DEP, and that they will document verbal approvals from the USFWS with written notes to the file that will be forwarded to DEP.

The Endangered and Threatened Species Technical Team (Technical Team), composed of representatives of DEP, FWS, and USFWS, convenes on a weekly basis to discuss emerging issues, specific projects and improvements to coordination procedures. The team has worked together to provide training to DEP, FWC, and USFWS staff regarding review procedures.³ In addition, the Technical Team has developed solutions and coordination process improvements to address challenges with coordinating, meeting timelines, or implementing procedures.

The Technical Team's discussions have resulted in the development of a USFWS form (State 404 Permit Application Review/Response Form) to facilitate their coordination between FWC and DEP. This Form is used to provide USFWS opinions to DEP or FWC when incidental take is anticipated. The Technical Team also improved the process for reviewing single family applications by starting a coordination agreement between USFWS and FWC to allow FWC to address federally listed species for most single-family residences. For those types of projects requiring Individual Permits, particularly those within Florida panther habitat, FWC was the species lead and only coordinated with the USFWS on an as-needed basis. USFWS now allows DEP processors to screen applications using the Panther Key with additional guidance. Through this technical assistance with the USFWS, DEP can make panther effect determinations for some applications, and request consultation from FWC and the USFWS for others.

Challenges discussed by the Technical Team included how to review the initial workload transferred from the Corps as well as new applications. Due to the high volume of applications, it has been necessary in most cases for FWC to divide the listed species information into two comment letters to DEP, one specifically for the Public Notice, and one during the public commenting period. Information for the Public Notices generally provides information to the public, such as whether permit conditions may be needed, and whether standard conditions or conditions already agreed upon by the applicant will be required. The final comment letter then includes the recommended conditions for both state and federally listed species, which are incorporated into the permit by DEP. Technical Team discussions are ongoing regarding efficiencies that may allow some future projects to have one letter that will include all species information, prior to the posting of the Public Notice.

Two permits were issued during this timeframe which ultimately included additional information not addressed in the Public Notice. For both of those permits, the public notices did not include a

³ On September 29, 2020, prior to assumption, the Technical Team provided a training webinar for listed species coordination to DEP staff responsible for reviewing State 404 permits. FWC supplemented this training with a webinar to DEP processors on November 10, 2020, providing more details on FWC's role in the review of State 404 permit applications. In January 2021, DEP wrote coordination procedures for permit processing staff, and provided draft coordination procedures to FWC and USFWS that were complementary to DEP's procedures for their staff to use internally.

map of the locations of proposed wildlife permeability structures. The applicant for each project provided a map and additional information for these structures upon request.

Program Auditing

Program auditing requirements, including target numbers, are described in section (e) of the approved Program Description. Auditing is conducted on an annual basis. Typically, after the end of each quarter starting July 1, staff pull a list of permits or formal determinations issued the same quarter of the previous year. Auditing is performed by pulling the required percentage of authorizations or formal determinations from a list of all files in that category using one of two methods: Method 1 – using Microsoft Excel’s random function to randomly select the correct percentage of authorizations per district or program office; or Method 2 – choosing every nth file from a list (example: to audit 20% of permits, pull every 5th file number from a list.) No auditing was performed during this reporting period because the program has only been effective for 6 months.

Other Information

Prior to assumption, the average workload per permit processor was 11.7 applications. As of June 30, 2021, the average workload per permit processor had increased to 30.2 applications. The open application count increased from 1,172 (ERP only) on 12/21/2020 to 3,445 (2,123/ERP and 1,322/404) on June 30, 2021.

These applications are processed and reviewed by a permitting team of 90 individuals, of which 69 positions spend the majority of each workday evaluating activities for the assumed program. The DEP State 404 Program Compliance and Enforcement team is comprised of 54 total individuals with 34 members whose primary job responsibilities have been identified as supporting the State 404 Program. This provides a total of 144 positions directly involved in permitting and, compliance and enforcement activities. There are additional staff members who provide a supporting role outside of permitting and, compliance and enforcement activities. This includes clerical, training, guidance, and leadership personnel statewide that contribute to the continued implementation of the State 404 Program. Therefore, the total number of people working within the 404 program is 212.

As of June 29, 2021, DEP had 54 Certified Wetland Evaluators (CWEs). This number continues to increase as more staff are hired and trained. (As of the date of this report, over 140 CWEs are employed at DEP and the 5 Water Management Districts.)

DEP is obtaining new positions and hiring new staff as quickly as possible to handle the unexpectedly large workload. The scope of this report includes activities through June 30, 2021, when DEP was in the beginning stages of staff increases. DEP will continue to inform EPA of

the increased staffing numbers, as requested, periodically in separate cover. Staffing increases will be included in next year’s annual report.

DEP issued 6 verifications of State 404 Program exemption, Table 18, below:

Table 18 - Verifications of Exemption

File Number	Project Name	Exemption	Status
397009-001-SFE	Ridgewood Ranch Reserve Esmnt	(c)(1) - Agriculture	Exempt
403823-001-SFE	Yucca Penn Culvert	(c)(6) – Farm, forest, or temporary access roads	Exempt
401700-001-SFE	Palm Aire Dr	(c)(2) – Maintenance	Exempt
403904-001-SFE	Bachman Horse Farm	(c)(3) – Farm or stock ponds, irrigation or drainage ditches	Exempt
399159-001-SFE	CWMA Culvert Replacement	(c)(6) – Farm, forest, or temporary access roads	Exempt
400006-001-SFE	Little Gator Creek WMA LWC	(c)(6) – Farm, forest, or temporary access roads	Exempt

Summary

Florida is committed to the continued success of the State 404 Program. DEP continues to face challenges associated with implementation of a new program. New solutions are found and implemented as challenges arise. DEP continues to hire and train new staff to implement the program and looks forward to reporting continuing improvements and successes in future reporting periods.

Appendix 1

Impacts and Mitigation for State 404 Program Permits

Permitted Impacts – Individual Permits

Permit Number	County	Mitigation Required? *	Impact Area ID	Impact Type	Impact Timeframe	Impacted FNAI Community Type	Impact Area (Acres)	UMAM functional loss
396232-001-SFI	Lake	Yes	W1, W3A, W3B, W3C	Direct	Permanent	Wetland Forested Mixed	3.90	3.39
396232-001-SFI	Lake	Yes	W2, W7	Direct	Permanent	Depression Marsh	1.35	1.19
396366-001-SFI	Clay	Yes	DI-1	Direct	Permanent	Swale	0.03	0.02
396366-001-SFI	Clay	Yes	DI-4	Direct	Permanent	Swale	0.03	0.02
396366-001-SFI	Clay	Yes	WI-10	Direct	Permanent	Wet Flatwoods	0.02	0.01
396366-001-SFI	Clay	Yes	WI-11	Direct	Permanent	Wet Flatwoods	0.63	0.45
396366-001-SFI	Clay	Yes	WI-12	Direct	Temporary	Wet Flatwoods	0.05	0.00
396366-001-SFI	Clay	Yes	WI-1A	Direct	Permanent	Wet Flatwoods	0.03	0.02
396366-001-SFI	Clay	Yes	WI-1B	Direct	Permanent	Wet Flatwoods	0.56	0.40
396366-001-SFI	Clay	Yes	WI-2	Direct	Permanent	Wet Flatwoods	0.09	0.40
396366-001-SFI	Clay	Yes	WI-3	Direct	Permanent	Wet Flatwoods	0.07	0.05
396366-001-SFI	Clay	Yes	WI-4-A	Direct	Permanent	Wet Flatwoods	0.24	0.17
396366-001-SFI	Clay	Yes	WI-4-B	Direct	Permanent	Basin Swamp	0.11	0.08
396366-001-SFI	Clay	Yes	WI-5	Direct	Permanent	Wet Flatwoods	0.04	0.03
396366-001-SFI	Clay	Yes	WI-6A	Direct	Permanent	Wet Flatwoods	0.30	0.21
396366-001-SFI	Clay	Yes	WI-6B	Direct	Permanent	Wet Flatwoods	0.17	0.12
396366-001-SFI	Clay	Yes	WI-7	Direct	Permanent	Wet Flatwoods	0.11	0.08
396366-001-SFI	Clay	Yes	WI-8	Direct	Permanent	Wet Flatwoods	0.06	0.04

Permit Number	County	Mitigation Required? *	Impact Area ID	Impact Type	Impact Timeframe	Impacted FNAI Community Type	Impact Area (Acres)	UMAM functional loss
396366-001-SFI	Clay	Yes	WI-9	Direct	Permanent	Wet Flatwoods	0.10	0.07
396392-001-SFI	Sumter	Yes	Direct Impacts	Direct	Permanent	Bottomland Forest	37.35	23.47
396392-001-SFI	Sumter	Yes	Secondary Impacts	Secondary	Permanent	Bottomland Forest	14.34	1.02
396414-001-SFI	Hernando	Yes	Direct	Direct	Permanent	Bottomland Forest	27.17	20.46
396414-001-SFI	Hernando	Yes	Secondary	Secondary	Permanent	Bottomland Forest	11.70	0.79
397140-001-SFI	Lee	Yes	1	Direct	Permanent	Slough	2.76	1.65
						Totals	101.21	54.13

*Answer of “No” to “Mitigation Required?” means the project has insignificant individual, secondary, and cumulative impacts or has provided environmental benefit (i.e., restoration, enhancement).

Permitted Impacts – General Permits

Permit Number	County	Mitigation Required? *	Impact Type	Impact Timeframe	Impacted FNAI Community Type	Impact Area (Acres)	UMAM functional loss
396361-001-SFG	Holmes	No	Direct	Temporary	NA	0.25	0.00
396420-001-SFG	Escambia	Yes	Direct	Permanent	Wet Flatwoods	0.04	0.00
359189-006-SFG	Sarasota	No	Direct	Temporary	Wet Flatwoods	0.07	0.00
396564-001-SFG	Collier	No	Direct	Permanent	Swale	0.00	0.00
396388-001-SFG	Polk	No	Direct	Permanent	Bottomland Forest	0.31	0.22
396388-001-SFG	Polk	No	Direct	Permanent	Bottomland Forest	0.17	0.12
396436-001-SFG	Columbia	Yes	Direct	Permanent	Wet Flatwoods	0.37	0.70
397665-001-SFG	Bradford	Yes	Direct	Permanent	Swale	0.25	0.20
399354-004-SFG	Sarasota	No	Direct	Permanent	Bottomland Forest	0.05	0.00
396984-001-SFG	Orange	Yes	Direct	Permanent	Wet Flatwoods	0.27	0.15
350037-002-SFG	Lake	No	Direct	Permanent	Floodplain Marsh	605.00	0.00

Permit Number	County	Mitigation Required? *	Impact Type	Impact Timeframe	Impacted FNAI Community Type	Impact Area (Acres)	UMAM functional loss
200579-003-SFG	Collier	Yes	Direct	Permanent	Bottomland Forest	0.08	0.04
205881-005-SFG	Lee	Yes	Direct	Permanent	Bottomland Forest	0.09	0.08
224168-005-SFG	Lee	Yes	Direct	Permanent	Bottomland Forest	0.22	0.13
224168-005-SFG	Lee	Yes	Secondary	Permanent	Bottomland Forest	0.15	0.00
288253-004-SFG	Collier	Yes	Direct	Permanent	Basin Swamp	0.18	0.09
297469-003-SFG	Orange	No	Direct	Permanent	Wet Prairie	0.06	0.02
297469-003-SFG	Orange	No	Secondary	Permanent	Wet Prairie	0.04	0.01
349888-003-SFG	Charlotte	Yes	Direct	Permanent	Slough	0.11	0.12
391855-002-SFG	Collier	Yes	Direct	Permanent	Wet Flatwoods	0.07	0.05
391855-002-SFG	Collier	Yes	Direct	Permanent	Depression Marsh	0.05	0.04
396123-002-SFG	Volusia	Yes	Direct	Permanent	Hydric Hammock	0.17	0.11
396134-003-SFG	Lee	Yes	Direct	Permanent	Bottomland Forest	0.12	0.06
396406-001-SFG	Escambia	Yes	Direct	Permanent	Wet Flatwoods	0.12	0.00
396459-001-SFG	Walton	Yes	Direct	Permanent	Wet Flatwoods	0.32	0.21
396459-001-SFG	Walton	Yes	Direct	Temporary	Wet Flatwoods	0.06	0.01
396459-001-SFG	Walton	Yes	Direct	Permanent	Wet Flatwoods	0.10	0.01
396509-001-SFG	Sarasota	Yes	Direct	Permanent	Canal/Ditch	0.08	0.56
396509-001-SFG	Sarasota	Yes	Direct	Permanent	Canal/Ditch	0.03	0.00
396509-001-SFG	Sarasota	Yes	Direct	Permanent	Depression Marsh	0.01	0.00
396509-001-SFG	Sarasota	Yes	Direct	Temporary	Depression Marsh	0.24	0.00
396566-001-SFG	St. Johns	Yes	Direct	Permanent	Hydric Hammock	0.11	0.07
396566-001-SFG	St. Johns	Yes	Direct	Permanent	Wet Flatwoods	0.38	0.25
396757-002-SFG	Escambia	Yes	Direct	Permanent	Wet Flatwoods	0.02	0.01

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Permit Number	County	Mitigation Required? *	Impact Type	Impact Timeframe	Impacted FNAI Community Type	Impact Area (Acres)	UMAM functional loss
396757-002-SFG	Escambia	Yes	Secondary	Temporary	Wet Flatwoods	0.08	0.01
399637-003-SFG	Collier	Yes	Direct	Permanent	Bottomland Forest	0.26	0.19
396434-001-SFG	Escambia	Yes	Direct	Permanent	Wet Flatwoods	0.21	0.00
396447-001-SFG	Escambia	Yes	Direct	Permanent	Wet Flatwoods	0.14	0.00
398584-003-SFG	Highlands	No	Direct	Permanent	Flatwoods/Prairie Lake and Marsh Lake	0.01	0.00
383941-003-SFG	Brevard	No	Direct	Permanent	Canal/Ditch	0.04	0.00
396351-001-SFG	Sumter	Yes	Direct	Permanent	Canal/Ditch	0.16	0.05
396351-001-SFG	Sumter	Yes	Direct	Permanent	Floodplain Swamp	0.20	0.13
396363-001-SFG	Washington	Yes	Direct	Permanent	Wet Flatwoods	0.05	0.57
401984-002-SFG	Lee	No	Direct	Permanent	Canal/Ditch	0.10	0.00
396496-001-SFG	Santa Rosa	Yes	Direct	Permanent	Wet Flatwoods	0.18	0.11
397456-002-SFRP	Santa Rosa	Yes	Direct	Permanent	Wet Flatwoods	0.16	0.12
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.02	0.43
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.02	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.01	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.02	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.03	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.05	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.10	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.25	0.00
385226-005-SFRP	Lee	Yes	Direct	Permanent	Depression Marsh	0.23	0.00
397038-001-SFRP	Brevard	Yes	Direct	Permanent	Wet Prairie	0.18	0.12
397038-001-SFRP	Brevard	Yes	Direct	Permanent	Wet Prairie	0.68	0.51

Permit Number	County	Mitigation Required? *	Impact Type	Impact Timeframe	Impacted FNAI Community Type	Impact Area (Acres)	UMAM functional loss
397603-002-SFRP	Orange	No	Direct	Permanent	Wet Prairie	0.23	0.00
395675-002-SFRP	St. Johns	Yes	Direct	Permanent	Basin Swamp	0.02	0.09
395675-002-SFRP	St. Johns	Yes	Direct	Temporary	Basin Swamp	0.38	0.00
396442-001-SFRP	Walton	Yes	Direct	Permanent	Wet Flatwoods	1.43	1.32
396442-001-SFRP	Walton	Yes	Direct	Permanent	Wet Flatwoods	3.32	2.16
396477-001-SFRP	Bay	Yes	Direct	Permanent	Wet Flatwoods	10.73	6.97
398702-002-SFRP	Walton	Yes	Direct	Permanent	NA	5.37	3.49
					Totals	634.26	19.54

* Answer of “No” to “Mitigation Required?” means the project has insignificant individual, secondary, and cumulative impacts or has provided environmental benefit (i.e., restoration, enhancement).

Permitted Compensatory Mitigation – Mitigation Bank Credits

Permit Number	Permit Type	Corresponding Impact Area ID(s)	Mitigation Type	Federal Mitigation Bank Name	Number of Credits	Credit Type
200579-003-SFG	General Permit	1	In-kind	Big Cypress Mitigation Bank	0.04	Freshwater Transitional
205881-005-SFG	General Permit	1	In-kind	Panther Island Mitigation Bank	0.08	Palustrine
224168-005-SFG	General Permit	1	In-kind	Big Cypress Mitigation Bank	0.13	Palustrine
288253-004-SFG	General Permit	1	In-kind	Corkscrew Mitigation Bank	0.09	Palustrine Wetlands
349888-003-SFG	General Permit	1	In-kind	Little Pine Island Mitigation Bank	0.12	Palustrine Forested Wetlands
385226-005-SFRP	General Permit	ALL	In-kind	Panther Island Expansion Mitigation	0.41	Palustrine Wetlands
391855-002-SFG	General Permit	1	In-kind	Big Cypress Mitigation Bank	0.11	Palustrine
395675-002-SFRP	General Permit	1, 2	In-kind	Fishtail Swamp Mitigation Bank	0.10	Forested Freshwater Wetland
396123-002-SFG	General Permit	W-1	Unspecified	Barberville Conservation Area Mitigation Bank	0.12	Federal Wetland Credits

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Permit Number	Permit Type	Corresponding Impact Area ID(s)	Mitigation Type	Federal Mitigation Bank Name	Number of Credits	Credit Type
396134-003-SFG	General Permit	1	In-kind	Big Cypress Mitigation Bank	0.06	Palustrine Wetland
396351-001-SFG	General Permit	1	In-kind	Hilochee Mitigation Bank	0.05	Forested
396351-001-SFG	General Permit	2	In-kind	Hilochee Mitigation Bank	0.13	Forested
396363-001-SFG	General Permit	1	In-kind	Nokuse Plantation Mitigation Bank	0.03	Palustrine
396436-001-SFG	General Permit	1	In-kind	Edwards Bottomlands Mitigation Area	0.70	Herbaceous Freshwater
396442-001-SFRP	General Permit	1, 2	In-kind	Devils Swamp Mitigation Bank	3.48	Palustrine
396459-001-SFG	General Permit	22211, 4220	In-kind	Nokuse Plantation Mitigation Bank	0.28	Palustrine Forested
396477-001-SFRP	General Permit	1	In-kind	Breakfast Point Mitigation Bank	6.97	Palustrine
396496-001-SFG	General Permit	1	In-kind	Pensacola Bay Mitigation Bank	0.13	Palustrine Forested
396509-001-SFG	General Permit	A, B, C, D, E	In-kind	Myakka Mitigation Bank	0.01	Palustrine Emergent
396566-001-SFG	General Permit	1	In-kind	Star 4 Mitigation Area	0.52	Palustrine Forested
396757-002-SFG	General Permit	1, 2	In-kind	Pensacola Bay Mitigation Bank	0.04	Palustrine Forested
396984-001-SFG	General Permit	1	In-kind	Colbert Cameron	0.15	Forested Wetlands
397038-001-SFRP	General Permit	1	In-kind	Colbert-Cameron Mitigation Bank	0.63	Palustrine
397456-002-SFRP	General Permit	1	In-kind	Pensacola Bay Mitigation Bank	0.13	Palustrine Forested
397665-001-SFG	General Permit	1	In-kind	Edwards Bottomlands Mitigation Area	0.20	Herbaceous Freshwater
398702-002-SFRP	General Permit	1	In-kind	Devils Swamp Mitigation Bank	3.49	Palustrine
399637-003-SFG	General Permit	1	In-kind	Big Cypress Mitigation Bank	0.19	Palustrine Wetland
396232-001-SFI	Individual Permit	1	In-kind	Lake Louisa Mitigation Bank	4.58	Palustrine
396366-001-SFI	Individual Permit	WI-1A, WI-2, WI-3, WI-6A, WI-7, WI-8, WI-9, WI-10, WI-11, WI-12, WI-1B, WI-4, WI-5, WI-6B, DI-1, DI-4	In-kind	Longleaf Mitigation Bank	1.94	Palustrine

Permit Number	Permit Type	Corresponding Impact Area ID(s)	Mitigation Type	Federal Mitigation Bank Name	Number of Credits	Credit Type
397140-001-SFI	Individual Permit	1	In-kind	Corkscrew Mitigation Bank	1.65	Palustrine Forested Wetlands
				Total	26.56	

Permitted Compensatory Mitigation – Permittee Responsible

Permit Number	Mitigation Type	Mitigation Acres	Notes
396420-001-SFG	Permittee-responsible	86.67	A Conservation Easement encumbering 86.67 acres was previously recorded to offset impacts in accordance with U.S. Army Corps of Engineers Permit No. 19960090 (IP-RVH), Modification No. 3, issued on December 18, 2006 (ACOE Permit).
396434-001-SFG	Permittee-responsible	86.67	A Conservation Easement encumbering 86.67 acres was previously recorded to offset impacts in accordance with U.S. Army Corps of Engineers Permit No. 19960090 (IP-RVH), Modification No. 3, issued on December 18, 2006 (ACOE Permit).
396406-001-SFG	Permittee-responsible	86.67	A Conservation Easement encumbering 86.67 acres was previously recorded to offset impacts in accordance with U.S. Army Corps of Engineers Permit No. 19960090 (IP-RVH), Modification No. 3, issued on December 18, 2006 (ACOE Permit).
396447-001-SFG	Permittee-responsible	86.67	A Conservation Easement encumbering 86.67 acres was previously recorded to offset impacts in accordance with U.S. Army Corps of Engineers Permit No. 19960090 (IP-RVH), Modification No. 3, issued on December 18, 2006 (ACOE Permit).
398702-002-SFRP	Permittee-responsible	21.48	Prior to construction, the permittee shall provide the Department with documentation that 21.48 acres of off-site wetlands within the Point Washington State Forest Conservation Unit placed in a conservation easement. Prior to commencement of authorized work, the applicant shall submit signed and executed conservation easements, including title search documents to the Department.

Permitted Compensatory Mitigation – FDOT Pursuant to Section 373.4147, F.S.

Permit Number	Corresponding Impact Area ID(s)	Mitigation Type	Description
396392-001-SFI	Direct, Secondary	FDOT pursuant to 373.4137, F.S.	SWFWMD's 2020 FDOT Annual Plan; Colt Creek State Park FDOT Mitigation Site
396414-001-SFI	Direct, Secondary	FDOT pursuant to 373.4137, F.S.	SWFWMD's 2020 FDOT Annual Plan and Colt Creek State Park FDOT Mitigation Site

Appendix 2

Delineations for Projects that May Require a State 404 Program Permit

The guidance below is provided to ensure successful implementation of the State 404 Program as proposed within the assumption package approved by the US Environmental Protection Agency (EPA) on December 17, 2020 and published in the Federal Register on December 22, 2020. It reflects the fact that the Florida Department of Environmental Protection (DEP) is the agency approved to implement the State 404 Program and is the agency required by EPA to review materials for State 404 Program permits.

DEP is required to protect all waters of the United States (WOTUS) through our State 404 Program. To ensure that all WOTUS are protected, DEP adopted the Chapter 62-340, F.A.C. Data Form into Chapter 62-330, F.A.C. for use in all determinations of wetlands or other surface waters including permits and formal determinations. The Data Form is designed to reduce delineation errors and its use became effective when assumption became effective on December 22, 2020.

DEP's Submerged Lands and Environmental Resource Coordination (SLERC) program is tasked with ensuring statewide coordination and consistency in the delineation of surface waters and wetlands by providing training and guidance to the staff of DEP, the Water Management Districts (WMD), and local governments in implementing the methodology in Chapter 62-340, F.A.C. (see section 62-340.100(2), F.A.C.). SLERC created an internal, Agency-only, Certified Wetland Evaluator (CWE) certification to demonstrate that those who are reviewing wetland delineations under Chapter 62-340, F.A.C., evaluating loss or gain of wetland functions using Rule 62-345, F.A.C. (UMAM) or other methods where necessary (WRAP, WATER, etc.), and performing WOTUS determinations possess the minimum necessary skillset to satisfactorily carry out those responsibilities.

Florida's assumption package approved by EPA requires the following:

- DEP, as the agency approved to assume the Clean Water Act section 404 dredge and fill permitting program, is responsible for reviewing and approving State 404 Program actions.
- DEP CWEs must review delineation lines and UMAM (or WRAP, WATER, etc.) evaluations
 - Excerpt from the State 404 Program package, program description section e – *These auditing estimates reflect the requirement that any processing staff verifying delineations for State 404 Program permitting and compliance actions or conducting formal determinations are required to have passed the Department's internal Certified Wetland Evaluator (CWE) test, which is created and implemented solely by SLERC's delineation subject matter experts to ensure accurate and consistent interpretations of Chapter 62- 340, F.A.C., and Chapter 62-345, F.A.C.*
- DEP's program must be at least as stringent as the federal program and protect all WOTUS within assumed waters.

The following guidance is intended to ensure that the requirements listed above are met.

Existing delineations and determinations

DEP recognizes that human error may occur during delineation of wetlands and other surface waters. There may be a higher risk of error in delineations that were done prior to the adoption of the 62-340, F.A.C. data form in rule, and before any Agency staff became CWEs. When a delineation is proposed for use in a State 404 Program permit, a DEP CWE is required to review

the line and document the delineation using the 62-340, F.A.C. data form. If the DEP CWE determines that all wetlands and other surface waters onsite were not accounted for in the previous delineation, contact the applicant to have the delineation reevaluated as an administrative completeness item for the State 404 Program permit, and:

- If possible, obtain a shapefile of the delineation points/lines if flags are no longer reliably present in the field for use during the site visit. If not possible, other strategies may be used to assist review, such as overlaying drawings in GIS, inviting consultant to attend, etc.
- Document all discrepancies by completing at least one data form.
- Collect the following information, if possible, and write in the “Notes” section of the data form:
 - Location of discrepancy (flag numbers, wetland name, description, lat. long., etc.)
 - If discrepancy is in unflagged/unmapped area – record location and describe area. If possible, estimate acreage.
 - Provide a written narrative describing discrepancy.
- Notify SLERC:
 - Email documentation to SLERC@FloridaDEP.gov
 - Subject Line: Bound Line Discrepancy (File No.)
 - Cc: 404 Mentor

Binding delineation lines in permits

Some applicants have asked for their delineation lines to be bound in an ERP hoping that this will provide efficiencies in obtaining a State 404 permit because DEP would then be bound to that line for the duration of the permit. In these instances, notify the applicant that a DEP CWE is required to evaluate the delineation and any discrepancies will need to be corrected as an administrative completeness item for the State 404 Program permit.

Joint site visits – delineation and UMAM coordination

- Joint site visits for applications or petitions for projects that require an ERP from the WMD or delegated local government should be conducted as a collaborative effort as both agencies should agree on the delineation line and UMAM scores. Site visit documentation should also be a collaborative effort (see next topic for more information).
- For formal determinations, DEP must log into PA as WD-01.
- All reasonable efforts should be made to conduct joint site visits:
 - Excerpt from the State 404 Program package, program description section a - *The Department and WMD processing staff will do a joint site visit to review site conditions and verify the landward extent of wetlands and other surface waters in accordance with Chapter 62- 340, F.A.C. If requested, the Department will also review the wetlands and other surface waters to determine if they are Waters of the United States (WOTUS).*
 - Excerpt from the State 404 Program package, program description appendix a-1 - *The Department will issue all State 404 Program permits. Department and WMD staff will coordinate review of the ERP and State 404 permits to the greatest extent practicable. Such coordination shall include:*

- *When an application or notice that contains activities within state-assumed waters is received by the WMD, the WMD shall forward a copy of the application or notice to the appropriate local office of the Department.*
- *Department staff will accompany WMD staff on the initial site visit to verify the delineation of wetlands and other surface waters for the State 404 Program permit.*
- *The Department and WMD will communicate frequently to streamline the permit reviews and ensure consistency between the ERP and State 404 authorization.*

Site visit documentation

- When the WMD or delegated local governments process the ERP for a project that also requires a State 404 permit, completion of the 62-340, F.A.C. Data Forms and UMAM forms should be a collaborative effort between agencies.
- Collaboration increases agreement and saves time. Examples of collaboration include, but are not limited to:
 - Share the work at each data point (one person calls out data, other person records)
 - Split a large site, then review each other's work when finished
- Agree on other potential efficiencies, where appropriate:
 - For large formals or large sites where DEP CWE may not be able to join for the full field time, arrange for DEP CWE to accompany on the last day or two of field review to go over line and discuss/resolve any disagreements.
- WMD staff and DEP CWE should date and sign or initial final data forms.

When an applicant/petitioner refuses joint site visit

- For permit applications:
 - If the applicant feels certain that there are not WOTUS onsite and does not want a WOTUS jurisdictional determination from DEP, the applicant may send an email to DEP to withdraw the State 404 Program permit from processing, stating that they are confident there are no WOTUS onsite and do not wish to apply for a State 404 Program permit. The email should be immediately placed in the project file (Oculus) for future reference.
 - DEP should inform the applicant that if they withdraw the State 404 Program application they are doing so at their own risk. If later inspections reveal that WOTUS were impacted without a permit they may be subject to enforcement action.
- For formal determinations where all or part of the site is within assumed waters:
 - DEP coordination is required in order to meet State 404 Program review requirements. If the petitioner does not agree to have both agencies onsite to perform the formal determination, then a Special Case Agreement should be made to transfer the petition to DEP for processing because DEP is able to more effectively process the application regulatorily within the State 404 Program framework.

DEP CWE Work Product

- Work product of the CWE should be protected as it is the official report of site conditions for a State 404 Program permit.
- DEP CWE should initial/sign final approved data forms.
- DEP CWE should fill out and sign a cover sheet document and place as a coversheet for site inspection materials, then upload all materials with signed cover sheet into Oculus.

Summary of Duties

WMD/Local Government CWE	DEP CWE
Attend joint site visits with DEP CWE	Attend joint site visits with WMD CWE/staff
Collaborate on site visit documentation with DEP CWE	Collaborate on site visit documentation with WMD CWE/staff
Sign/initial collaborative documents	Sign/initial collaborative documents
Work together with DEP CWE to resolve disagreements	Work together with WMD CWE to resolve disagreements, however DEP CWE is responsible for final site inspection results for purposes of the State 404 review
Ensure site visit documentation is deposited in agency document management system	Place final site visit documentation in Oculus file before issuance of permit or formal determination
	When WMD/Local government staff have already issued a permit or formal determination, review the delineation and document any discrepancies