

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

I. PREAMBLE:

Under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), the Jacksonville District, U.S. Army Corps of Engineers (Corps) has regulatory jurisdiction over all obstructions and alterations of any navigable water of the United States, the construction of any structures in or over any navigable water of the United States, and any work affecting the course, location, condition, or capacity of navigable waters of the United States. Additionally, under Section 404 of the Clean Water Act (33 USC 1344), the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the United States. Under both authorizations, the Corps has authority to issue general permits on a statewide basis for specific categories of work.

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

II. PURPOSE:

The Corps and the FDEP, in conjunction with the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA), and the Florida Fish and Wildlife Conservation Commission (FWC), have developed a State Programmatic General Permit (SPGP) for use in the State of Florida. The SPGP has undergone several iterations that we have designated SPGP I, SPGP II, SPGP III, SPGP III-R1, SPGP IV, and SPGP IV-RI. This Coordination Agreement, with referenced materials, will cover the implementation of the SPGP V, and is applicable in all counties within the State of Florida except those areas specifically excluded by conditions of the SPGP V. This Coordination Agreement is required to implement the processing of requests for authorization under the SPGP V.

III. PROCEDURES:

A. FDEP or Designee Procedures:

1. Upon receipt of a joint application or a request to verify qualification for an entity to use an exemption or general permit under Part IV of Chapter 373, and Sections 403.813 and 403.814, F.S., the FDEP or Designee will review the project to determine whether or not the project is a candidate for review under the SPGP V and, whether the project falls under the "green," "yellow," or "red" categories:

a. Green: Projects that are considered "green" will be processed by the FDEP or Designee and will not be forwarded to the Corps for review.

b. Yellow: FDEP or Designee will forward to the Corps projects described by Special Condition A.3. The Corps will reply whether to treat that Project as "red", as "green" or as "green" with additional (specified) special conditions. FDEP or Designee may also forward for reply by the Corps any other Projects that appear to be not covered by the SPGP and that permitting for the activities is not required by the Corps.

c. Red: The FDEP or Designee and the Corps review the project separately

2. The FDEP or Designee will evaluate a project's potential effects to Federally listed threatened or endangered species or designated critical habitat. The FDEP or Designee will categorize the project by applying the definitions of green, yellow, and red in the SPGP V permit instrument, and will implement, as applicable, the Special Conditions in the SPGP V permit, the restrictions and reporting requirements in the NMFS Biological Opinion, and amendments, if any, of these documents. The latest versions of the various tools referenced in the SPGP V (including the dichotomous keys, maps and Geographic Information System data) will be used. Any project not meeting the definition of "green" or "yellow" or not satisfying the Special Conditions or the Biological Opinion will automatically be placed in the "red" category. In the event additional information indicates that an evaluation was made in error, the NMFS or FWS retain the right to request the Corps to initiate consultation under the Endangered Species Act on the project.

3. For all projects that the FDEP or Designee have determined are "green" and within ten calendar days of receipt of the application, the FDEP or Designee will e-mail a copy of the Project Design Criteria (PDC) checklist which demonstrates the project complies with the NMFS Biological Opinion's PDCs to minimize impacts to listed species, to NMFS at the following address: nmfs.ser.programmaticreview@noaa.gov, with a copy of the email furnished to spgp@usace.army.mil.

a. The email to NMFS will be sent prior to issuing the Federal authorization.

b. This paragraph also applies to Projects that were previously marked

c. "yellow," but based on the procedures set forth in paragraph III.B.2, below, are to be processed by the FDEP or Designee as "green".

d. The FDEP or Designee's staff shall allow 10 calendar days for NMFS to review the information. If no response is received from NMFS after 10 calendar days have elapsed, the FDEP or Designee may proceed with issuing the Federal authorization.

e. For projects submitted by FDEP's "Self-Certification" web portal, FDEP may use alternate procedures (e.g., in lieu of submitting and waiting 10 calendar days), if agreed to by the Corps and NMFS.

4. For projects that qualify for the "green" category, and are authorized or verified by the FDEP or Designee, notification will be sent to the applicant.

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

"Your proposed activity as outlined in your application and attached drawings qualifies for Federal authorization pursuant to the State Programmatic General Permit V, and a SEPARATE permit or authorization will not be required from the Corps. Please note that the Federal authorization expires on (insert date 5 years from date of SPGP V). However, your authorization may remain in effect for up to 1 additional year, if provisions of Special Condition B.27 of the SPGP V permit instrument are met. You, as permittee, are required to adhere to all General Conditions and Special Conditions that may apply to your project. Special conditions required for your project are attached. A copy of the SPGP V with all terms and conditions and the General Conditions may be found at <http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>."

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

5. For actions that are authorized by the FDEP or Designee but do not meet the criteria of "green" for the SPGP V, FDEP or Designee will send notification to the applicant, as part of the authorization or verification, that the project is not authorized under the SPGP V. Language in the notification shall read as follows

"Your proposed activity as outlined on your application and attached drawings does not qualify for Federal authorization pursuant to the State Programmatic General Permit and a SEPARATE permit or authorization shall be required from the Corps. A copy of your permit application has been forwarded to the Corps for their review. The Corps will issue their authorization directly to you or contact you if additional information

is needed. If you have not heard from the Corps within 30 days from the date your application was received at the local FDEP Office, contact the local Corps office for status and further information. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency."

6. For all projects that the FDEP or Designee have determined are "yellow," the FDEP or Designee will mark them "yellow," and as soon as possible and within 5 calendar days from receipt of application, will transmit them, preferably by email, to the Corps field office that has the responsibility for reviewing projects in the respective county in which the project is proposed. The Corps will handle the application in accordance with paragraph III.B.2, below. The transmittal will also be copied to a central Corps email address.

7. If the FDEP or Designee denies the State regulatory authorization for a project, then a copy of the denial and the Corps' copy of the joint application will be forwarded to the Corps, within 5 calendar days of the denial, for final Federal action.

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

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

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

"Our prior notification included a paragraph stating your proposed activity qualified for Federal authorization pursuant to the State Programmatic General Permit V. We hereby rescind that paragraph either because that was included through an administrative error or because we have received new information from the Corps. A SEPARATE permit or authorization shall be required from the Corps. A copy of your permit application has been forwarded to the Corps for their review. The Corps will issue their authorization directly to you or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date your application was received at the local FDEP Office, contact the local Corps office for status and further information. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency."

B. Corps Procedures:

1. Projects that are determined to be "red" will be evaluated by the Corps through the Federal permitting process.

2. Projects that are determined to be "yellow" by the FDEP or Designee will be processed as follows. The Corps will reply within 5 calendar days from the receipt of the project in the Corps field office. The reply will also be copied to a central Corps email address. If no reply is received by the FDEP or Designee within 5 calendar days from the receipt of the project in the Corps field office, the FDEP or Designee will automatically designate the project as "red".

a. The reply will also be copied to a central Corps email address. If no reply is received by the FDEP or Designee within 5 calendar days from the receipt of the project in the Corps field office, the FDEP or Designee will automatically designate the project as "red".

b. If the reply is that the project should be designated "red," the Corps field office will process the application.

c. If the reply states special conditions need to be added, the Corps will include those conditions in the transmittal of the reply. If inclusion of these special conditions in the authorization would result in the project being designated "green," the FDEP or Designee should process the application and include these conditions as part of the Federal authorization.

d. If the reply states that there are no objections (i.e., qualifies for SPGP as-is), the project will be designated "green," and FDEP or Designee should process the application.

e. If the reply states that the particular Project is not covered by the SPGP and that permitting for the activities is not required by the Corps, the FDEP or Designee should so advise the requestor.

IV. MONITORING:

1. The FDEP will furnish to the Jacksonville District office a report of the projects verified under the SPGP V on a quarterly basis in a mutually agreed upon format. Where a Designee is the administering entity and the Designee is not entering data directly into the FDEP database, the Designee will furnish the information to the Corps. Copies of the authorizations will either be made available for the Corps to download or will be transmitted to the Corps at time of the authorization.

2. The FDEP will inspect at least 10% of all projects verified under the SPGP V within one year after verification. FDEP will furnish to the Jacksonville District office a

report, including inspection data and summaries of findings, on a quarterly basis in a mutually agreed upon format. Where a Designee is the administering entity and the Designee is not entering data directly into the FDEP database, within ten working days of the end of the quarter, the Designee will furnish the information to the FDEP, and the FDEP will forward it to the Corps as part of the FDEP report. If the project does not appear to fully comply with the terms of the SPGP, the full inspection report for that project will be sent by e-mail to SAJ-RD-Enforcement@usace.army.mil.

V. COORDINATION WITH OTHER FEDERAL AGENCIES:

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


2. Once the implementation is underway, the Corps may meet with the FDEP and/or Designee on a regular interval to evaluate whether the issued permits are in compliance with the respective Federal regulations. Initially the meetings will be scheduled as needed, and the interval will be adjusted accordingly as the implementation proceeds. The meetings may be conducted telephonically if everyone agrees.

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

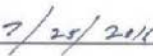
VI. MODIFICATIONS AND TERMINATION:

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


2. Either party may terminate this agreement upon 90 days written notice.




John A. Coates, P.E.
Director
Division of Water Resource Management
Florida Department of
Environmental Protection



Date



for Jason A. Kirk
Colonel, U.S. Army
District Engineer



Date