

**ORDER OF DELEGATION AND OPERATING AGREEMENT
BETWEEN THE FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE
ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
REGARDING THE REGULATION OF MANGROVES**

THIS Agreement is made and entered into this 19th day of October, 2006, by and between the Department of Environmental Protection (the Department) and the Environmental Protection Commission of Hillsborough County (EPC). By execution of this agreement, the Department delegates its authority to regulate the trimming and alteration of mangroves to the EPC.

WITNESSETH

WHEREAS, mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; and

WHEREAS, mangroves contribute to the economies of many coastal counties in the state through a combination of functions; and

WHEREAS, it is the intent of the Mangrove Trimming and Preservation Act ("the Act" sections 403.9321-403.9333, Florida Statutes, as it may be amended from time to time) to protect and preserve mangrove resources valuable to Florida's environment and economy from unregulated removal, defoliation, and destruction; and

WHEREAS, the Department has been directed by the Legislature to delegate its authority to administer and enforce the regulation of trimming and alteration of mangroves pursuant to the Act to any local government that makes written request for delegation, if the local government can demonstrate that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove regulatory program.

I. ORDER OF DELEGATION

- A. The EPC is delegated the authority to issue permits and verify qualification to use exemptions under the Act within the entire territorial limits of Hillsborough County for the trimming or alteration of mangroves, except when trimming and alteration is conducted as a necessary component of an activity qualifying for an exemption under Section 403.813, F.S., or is authorized in an environmental resource permit under Part IV of Chapter 373, F.S.
- B. In accordance with the Act, the EPC may impose stricter substantive standards than the Department for mangrove trimming or alteration permits, except that the EPC may not prohibit all mangrove trimming or alteration, and may not further restrict or limit the trimming of mangroves within riparian mangrove fringe areas as provided in Section 403.9326, F.S.
- C. Nothing herein shall preclude the EPC from administering and enforcing any lawfully adopted regulations, pursuant to the rules adopted by the EPC, in a manner consistent with the provisions of the Act.
- D. The EPC is delegated the authority to enforce the provisions of the Act within the territorial limits of the County, as it may be amended from time to time, for activities requiring a permit from the EPC. The EPC is also authorized to enforce any lawful regulation adopted by the EPC to the fullest extent

possible, in accordance with the provisions of this act. Nothing herein shall limit or restrict the EPC's authority to enforce any lawful regulation adopted by the EPC to the fullest extent possible. Nevertheless, nothing herein shall limit or restrict the Department's authority to enforce the provisions of the Act for activities that require a wetland resource or environmental resource permit under Part IV of Chapter 373, F.S.

II. OPERATING AGREEMENT

A. PURPOSE OF OPERATING AGREEMENT

1. The purpose of this Agreement between the Department and the EPC is to implement the legislative direction in Section 403.9324, F.S. to delegate the Department's authority to regulate the trimming and alteration of mangroves to counties and municipalities that meet the qualifications of the Act.
2. The EPC shall comply with the statutory requirements of the Act and the regulatory requirements of the Chapter 1-14, Rules of the Environmental Protection Commission of Hillsborough County, in decisions pertaining to the regulation of mangrove trimming and alteration.
3. The EPC shall not restrict or qualify the availability of the exemptions to trim mangroves in riparian mangrove fringe areas, except as provided by the Act. In accordance with the Act, the EPC may impose stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration activities outside of riparian mangrove fringe areas.
4. In order to ensure consistent implementation of the Act throughout the state, the EPC agrees that mangroves on lands that have been set aside for mitigation as provided in the definition of riparian mangrove fringe in the Act, shall mean mangrove areas on public or private land that have been created, enhanced, restored, or preserved as mitigation under a dredge and fill permit issued under sections 403.91-403.929, F.S., (1984 Supplement, as amended), a management and storage of surface waters permit, or environmental resource permit issued under Part IV of Chapter 373, F.S., or a wetland or environmental resource management permit issued by the EPC under its enabling act and rules promulgated thereunder, as amended from time to time, or a resolution of an enforcement action, or a conservation easement that does not provide for trimming. Mangroves may not be trimmed under exemptions applicable to riparian mangrove fringes.

B. MODIFICATION OF AGREEMENT

This Agreement may be modified in writing at any time as necessary by mutual consent of the Department and the EPC. 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 Secretary for the Department and the Chairperson, Environmental Protection Commission of Hillsborough County.

C. REPORTING REQUIREMENTS

The Department may annually review the performance of the EPC's delegated mangrove regulatory program to determine if the program is being properly administered and enforced. To allow the Department to effectively review the delegated mangrove regulatory program, the EPC shall submit an annual report to the Department that includes at a minimum:

1. number of trimming and alteration permit applications received during the reporting period;

2. number of trimming and alteration permits issued during the reporting period;
3. number of trimming and alteration permit denials issued during the reporting period;
4. number of exemption notifications verified during the reporting period;
5. number of violations reported and investigated during the reporting period; and
6. number and resolution of enforcement actions taken during the reporting period, including description of restoration, if required.

If additional information is needed for the Department to effectively review the EPC's performance of administering and enforcing the delegated mangrove regulatory program, the EPC shall, upon request from the Department's contact person, provide additional information concerning permitting, compliance and enforcement for mangrove trimming and alteration activities.

D. COMPLIANCE AND ENFORCEMENT

1. The EPC shall be responsible for ensuring that appropriate compliance inspections are conducted on all permits issued pursuant to this Agreement.
2. The EPC shall be responsible for enforcement of this Agreement and any ordinance, rule, or order adopted pursuant hereto. The Department may provide assistance in compliance and enforcement cases, and intervene or take the lead role in any enforcement actions within the EPC's jurisdiction, when deemed necessary by the Department. The Department shall give notice to the EPC of its intent to pursue such an enforcement action.
3. Where appropriate, the Department and the EPC shall coordinate their enforcement activities in order to maximize the staff resources available to each.
4. Nothing in this Agreement shall limit the enforcement authority of either party.

E. NOTIFICATION REQUIREMENTS

1. The EPC shall notify the Department prior to promulgating new or modified mangrove regulations.
2. The Department shall notify the EPC of any request to obtain delegation by a municipality within the EPC's area of jurisdiction.
3. The EPC shall notify the Department of any request from a local government within Hillsborough County to obtain delegation from the EPC, so that the Department may set up the process for review of their delegation request in accordance with S. 403.9324, F.S.
4. The EPC shall submit all proposed mangrove regulations to the Department for its comments prior to promulgating new or modified mangrove regulations.
5. All notices and reports required or permitted to be given under the terms and provisions of this Agreement by a party to the other party shall be in writing and sent by registered or certified mail, return receipt requested, as follows:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Mangrove Coordinator
Office of Submerged Lands and Environmental Resources, MS 2500
2600 Blair Stone Rd., Mail Station 2500
Tallahassee, Florida 32399-2400

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
Jadell Kerr, Director, Wetlands Management Division
3629 Queen Palm Drive
Tampa, Florida 33619

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt.

F. CONFLICT OF INTEREST

No employee or independent contractor with the EPC, who is responsible for permitting or compliance and enforcement for mangrove trimming or alteration pursuant to this order, shall supervise or perform mangrove trimming or alteration as part of any private business activity within the jurisdictional boundaries of Hillsborough County. Furthermore, no employee or independent contractor with the EPC shall have or hold any employment or contractual relationship that will create a conflict between his private interests and the performance of his public duties as they relate to mangrove trimming or alteration pursuant to this order.

G. EFFECTIVE DATE OF AGREEMENT

1. This agreement shall become effective on the latest day and year executed by either the Department or the EPC as noted below.

H. TERMINATION OF AGREEMENT

1. Either party may terminate this Agreement upon written notice of not less than ninety (90) days.

2. The Department may revoke this Order of Delegation upon a determination by the Department that the delegated program has failed to properly administer or enforce the terms and conditions of the delegation, including compliance with the terms and conditions of Sections 403.9321-403.9333, F.S. In such circumstances, the Department shall provide the Environmental Protection Commission of Hillsborough County written notice of its intent to revoke the authority to operate the delegated program. The Department's revocation of this authority is subject to review under Chapter 120, F.S.

3. The Department may revoke this Order of Delegation if the EPC promulgates new or modified mangrove regulations that are not consistent with Sections 403.9321-403.9333, F.S. Nevertheless, nothing herein shall be interpreted to prohibit the EPC from promulgating stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration outside of riparian mangrove fringe areas, as authorized by Section 403.9324(6), F.S.

4. In the event of termination of this Agreement, the EPC agrees to perform compliance inspections on those permits that were issued by the EPC under this Agreement, and to report any violations to the Department. The EPC retains joint authority with the Department to enforce the provisions of the Act for any mangrove trimming or alteration activities which were permitted while the EPC was operating under the provisions of this Agreement.

I. SEVERABILITY


If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below.

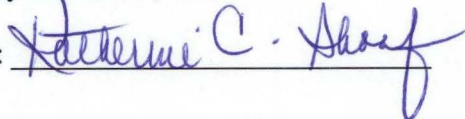
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

By: 
COLLEEN M. CASTILLE
Secretary
3900 Commonwealth Blvd.
Tallahassee, FL 32399


ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

By: 
RONDA STORMS
Chairperson, EPC
3629 Queen Palm Drive
Tampa, Florida 33619

This 6 day of October, 2006.

WITNESS: 

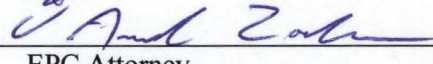
Approved as to Form and Legality

By: 
Department Attorney

This 19th day of October, 2006.

WITNESS: 

Approved as to Form and Legality

By: 
EPC Attorney