

AGENDA ITEM # 43

Meeting Date

05/08/01

10 AM

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Requested Action	<small>(Identify appropriate Action or Motion, Authority or Requirement for Item and identify the outcome and/or purpose of item.)</small>
<p>MOTION TO EXECUTE a Delegation Agreement for a portion of the Florida Department of Environmental Protection and South Florida Water Management District’s responsibilities under the Environmental Resource Permit Program pursuant to Sections 373.441 and 373.103(8), Florida Statutes, to Broward County, for the Department of Planning and Environmental Protection.</p> <p>Why is Action Necessary: Board approval is required to execute a revised Delegation Agreement with the Department of Environmental Protection and the South Florida Water Management District to reflect changes proposed by the Joint Administrative Procedures Committee (JAPC) of the Florida Legislature.</p> <p>What Action Accomplishes: Delegation of the Environmental Resource Permit Program authority to Broward County will streamline the process for obtaining surface water management, wetland and environmental resource permits.</p>	
Summary Explanation / Background	<small>(Provide an executive summary of the action that gives an overview of the relevant details for the item. The first sentence includes the Agency recommendation.)</small>
<p>The Water Resources and Biological Resources Divisions of the Department of Planning and Environmental Protection recommend this action.</p> <p>This item was originally approved as Item #20 at the April 20,2001 Commission meeting. The revisions are administrative in nature and do not change the provisions of the agreement. Exhibit 1 provides a strike-through and underline version of the revisions and Exhibit 2 is the revised version of the Delegation Agreement.</p>	
Fiscal Impact / Cost Summary	<small>(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)</small>
<p>There is no change from the originally approved Delegation Agreement.</p>	
Exhibits Attached <small>(copies of original agreements)</small>	<small>(Please number exhibits numerically.)</small>
<p>Exhibit 1: Amendments proposed to the Delegation Agreement among Florida Department of Environmental Protection, the South Florida Water Management District, and Broward County to address questions raised by the Joint Administrative Procedures Committee of the Florida Legislature.</p>	

Authorized Signature <small>(Signature confirms that required approvals from other agencies have been received – e.g. Purchasing, Budget, Risk Mgt, Attorney)</small>		Scheduling <small>Cnty Admin initials</small>
Signature:	Date:	Type Name, Title, Agency and Phone: Steve Somerville, Director, 519-1202
Source of Additional Information: Type Name, Title, Agency and Phone: David Lee, Director, Water Resources Division, (954) 519-1271		

Exhibit 2: Delegation Agreement among Florida Department of Environmental Protection, the South Florida Water Management District, and Broward County.

Document Control	Commission Action
<p>_____ Executed original(s) for permanent record</p> <p><u> 4 </u> Executed copies to return to: David Lee, Water Resources Division, for submission to FDEP and SFWMD for counter signatures. One copy will be returned to County Records for permanent record.</p> <p>(number)</p> <p>_____ Other instructions:(Include name, agency, and phone)</p>	<p><input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED</p> <p><input type="checkbox"/> DEFERRED</p> <p>From: _____</p> <p>To: _____</p>

*Amendments Proposed to the
Delegation Agreement Among the Florida Department of Environmental Protection,
the South Florida Water Management District, and Broward County
to Address Questions Raised by the Joint Administrative Procedures Committee
of the Florida Legislature*

1. Amendment No. 1:

Section 10, paragraph C(4), is amended to read as follows:

(4) Processing and issuance or denial of requests for project specific variances under section 373.414(17) sections 120.542 or 403.201 of the Florida Statutes for mixing zones, turbidity, and dissolved oxygen associated with ERP, WRM, or SWM permits for which authority is delegated to DPEP. The DPEP shall publish, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and the DPEP shall afford interested persons an opportunity for a hearing on each application for a variance. If no request for hearing is filed with the DPEP within 14 days of published notice, the DPEP may proceed to final agency action without a hearing;

2. Amendment No. 2:

Section 14, paragraph C, is amended to read as follows:

C. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient, and the activity is one that otherwise could be delegated under section 373.441 of the Florida Statutes and rule 62-344 of the Florida Administrative Code; or

**DELEGATION AGREEMENT
AMONG
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
AND
BROWARD COUNTY**

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AND OTHER SURFACE WATERS

PART I ADMINISTRATION OF AGREEMENT

SECTION 1 - INTRODUCTION, PARTIES AND PURPOSE

A. This is an Agreement among the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as DEPARTMENT), a state agency created under section 20.255 of the Florida Statutes, the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT), a multipurpose water management agency existing by virtue of chapter 25270, Laws of Florida, 1949 and operating pursuant to chapter 373 of the Florida Statutes, and BROWARD COUNTY, FLORIDA (COUNTY), a political subdivision of the State of Florida, operating under the Broward County Charter. Article 1 of the Charter grants the COUNTY the authority to adopt ordinances and criteria necessary to exercise the powers delegated by this Agreement, and further grants the Department of Planning and Environmental Protection (DPEP), through Chapter 15 of the Broward County Administrative Code, the authority to implement ordinances and regulations adopted by the COUNTY. DPEP is a department of the Administrative Branch of Government of the COUNTY, operating under the authority of the Broward County Code, Chapter 27.

B. The Secretary of the DEPARTMENT, the Governing Board of the DISTRICT, and the COUNTY are empowered to execute this Agreement and carry out the responsibilities discussed herein.

C. The delegation will be implemented by the DPEP.

D. The purpose of this Agreement is to delegate to DPEP under authority contained in sections 373.103(8) and 373.441 of the Florida Statutes, certain permitting, compliance, and enforcement responsibilities, within the geographical area of Broward County, associated with implementation of the Environmental Resource Permit (ERP) program under part IV of chapter 373 of the Florida Statutes. This delegation also includes responsibilities for the Wetland Resource Management permit (WRM) and the Management and Storage of Surface Waters (MSSW) permit programs under subsections 373.414(11)-(16) of the Florida Statutes. This Agreement also describes the guidance and oversight responsibilities of the DEPARTMENT and the DISTRICT as they relate to the delegated programs. Further, the Agreement establishes the responsibilities of the COUNTY regarding maintaining adequate levels of administrative, technical and financial capabilities to implement and enforce the ERP, WRM, and MSSW¹ programs, and responsibilities for reporting to, and maintaining communication with the DEPARTMENT and the DISTRICT.

¹ Hereinafter to be referred to as Surface Water Management (SWM) permits—see Section 2.

SECTION 2 - DEFINITIONS

For purposes of implementing the delegated program, the definitions to be used are those in sections 373.019, 373.403, 403.031, 403.803 of the Florida Statutes, chapters 62-160, 62-4.244, 62-302, 62-312, 62-330, 62-340, 62-341, 62-343, 62-344, 40E-1, 40E-4, 40E-40, and 40E-400 of the Florida Administrative Code, the South Florida Water Management District Basis of Review for ERPs, the Broward County Charter, Chapter 15 of the Broward County Administrative Code, and Chapter 27 of the Broward County Code. Further, for purposes of this agreement, the term "Surface Water Management" (SWM) Permit shall include MSSW permits and the term "permitting" shall include the actions of acknowledging qualification for exemptions, no-notice general permits, and noticed general permits. Should a conflict exist under this Agreement between the definitions in the COUNTY code and the definitions in any of the above statutes or rules of the DEPARTMENT or DISTRICT when the COUNTY is acting under the authority of this Agreement, the definitions in the above noted statutes and rules of the DEPARTMENT and the DISTRICT shall govern.

SECTION 3 - EFFECTIVE DATE

This Agreement shall become effective after the Agreement is fully executed by all parties and on the effective date of the rules that adopt it by reference by both the DEPARTMENT and DISTRICT.

SECTION 4 - DURATION OF AGREEMENT

This Agreement shall remain in effect until terminated by any party in accordance with Section 9 of this Agreement.

SECTION 5 - AMENDMENT OF AGREEMENT

This Agreement, including its referenced Exhibits, may be modified in writing at any time as necessary by mutual consent of all parties. Any amendment may be made in whole, by part, or by section, and upon execution by the parties and adoption by the DEPARTMENT and DISTRICT by rule, shall supersede the corresponding provisions of previous versions of this Agreement.

SECTION 6 - CONFLICT BETWEEN AGREEMENTS

This Agreement shall supersede any prior understanding, agreement, memorandum, letter, rule, ordinance, or other written or oral arrangement between the DEPARTMENT or the DISTRICT and the COUNTY regarding the delegation of authority to issue, the processing of, or the enforcement of, requirements relating to MSSW

permits, ERP, or WRM permits under part IV of chapter 373 or sections 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended.

SECTION 7 - REVIEW OF AGREEMENT

This Agreement shall be jointly reviewed quarterly by the parties the first year following the effective date of this Agreement and every two years thereafter. The purpose of the review is to determine the effectiveness and efficiency of this Agreement and to identify and implement any needed modifications. Additional reviews shall be conducted periodically as necessary.

SECTION 8 - 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 all parties agree in writing that the material purposes of this Agreement can be implemented.

SECTION 9 - TERMINATION OF AGREEMENT

A. Any party may terminate this Agreement without cause upon 90 days prior written notice to the other parties. Within 30 days of a notice of intent to terminate this Agreement, all parties shall make good faith efforts to preserve the Agreement through a negotiated resolution. If after such negotiations, one or more of the parties still wish to terminate this Agreement, DPEP shall not accept any further applications under this Agreement, but, except as otherwise agreed upon by the parties, the DPEP shall complete processing of any pending applications submitted to the COUNTY in accordance with this Agreement. Notwithstanding the other provisions of this paragraph, upon the issuance of notice of intent to terminate the Agreement, the DEPARTMENT or the DISTRICT may require transfer to the DEPARTMENT or DISTRICT any one or more pending ERP, WRM, or SWM permit applications or enforcement cases, and copies of the files (or the original files at the discretion of the DPEP) on prior applications reviewed by the DPEP under this Agreement.

B. In the event of termination of this Agreement, the DPEP will transfer all files or copies thereof relating to permits issued, applications under review, or activities for which enforcement action has been taken under this Agreement to the DEPARTMENT or DISTRICT (in accordance with the "Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S. Between South Florida Water Management District and Department of Environmental Protection") within 30 days of the termination.

C. Any notice of termination shall be delivered by certified mail.

PART II PROGRAM RESPONSIBILITIES

SECTION 10 - SCOPE OF DELEGATION

A. Geographical Extent of this Agreement

This Agreement shall cover Broward County outside the geographic areas that are subject to the jurisdiction of the special taxing districts, independent drainage districts, water control districts or community development districts, the Everglades Buffer Strip, the Seminole Tribe of Florida Reservation and Tribal Trust Lands subject to the Water Rights Compact between the State of Florida, the South Florida Water Management District and the Seminole Tribe of Florida, and the Water Conservation Areas listed below (and shown in Exhibit A). These areas are commonly known as:

- (1) The Central Broward Water Control District;
- (2) The Coral Bay Community Development District;
- (3) The Coral Springs Improvement District;
- (4) The Indian Trace Development District;
- (5) The North Lauderdale Water Control District;
- (6) The North Springs Improvement District;
- (7) The Old Plantation Water Control District;
- (8) The Pine Tree Water Control District;
- (9) The Plantation Acres Improvement District;
- (10) The South Broward Drainage District;
- (11) The Sunshine Water Control District;
- (12) The Tindall Hammock Irrigation & Soil Conservation District;
- (13) The Turtle Run Community Development District;
- (14) The West Lauderdale Water Control District;
- (15) The Everglades Buffer Strip;
- (16) Water Conservation Areas; and
- (17) Seminole Tribe of Florida Reservation and Tribal Trust Lands subject to the Water Rights Compact between the State of Florida, the South Florida Water Management District and the Seminole Tribe of Florida and other Tribe owned or controlled lands.

Activities requiring an ERP, WRM, or SWM permit within the geographical territories described in (1) through (17) above will continue to be regulated by the DEPARTMENT, DISTRICT, and the COUNTY under their respective authorities.

B. Program Activities over which Authority is Retained by the DEPARTMENT or the DISTRICT.

The DEPARTMENT or DISTRICT, as determined in accordance with the "Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., Between South Florida Water Management District and Department of Environmental Protection," dated

October 27, 1998, and effective December 3, 1998, as adopted by reference in paragraph 62-113.100(3)(e) of the Florida Administrative Code, and 40E-4.091(1)(c) of the Florida Administrative Code shall retain authority for permitting, compliance, and enforcement for:

(1) Activities that require a Joint Coastal Permit under section 161.041 and part IV of chapter 373 of the Florida Statutes;

(2) Applications for activities located in whole or in part in, on, or over sovereign submerged lands that require an authorization from the Board of Trustees of the Internal Improvement Trust Fund, other than a consent by rule under rule 18-21.005(1)(a) of the Florida Administrative Code. This shall include activities on lands that are riparian to sovereign submerged lands and facilities that are accessory to the activities or uses on sovereign submerged lands. For the purposes of this agreement, the term "accessory to" shall refer to development and works that would not otherwise occur but for the proposed activity or use of sovereign submerged lands. This is intended to cover activities such as:

(a) development that requires a shore protection structure at or waterward of mean or ordinary high water with or without associated filling to enable the proposed upland development to exist; and

(b) parking areas, dry storage facilities, boat sale and supply facilities, maintenance and repair facilities, seafood loading and processing facilities, ports, restaurants, harbor master and marina administration facilities, residential units, commercial development, or industrial development that are proposed to have as part of the application docks, piers, boat ramp or launch facilities, channel dredging, or other uses or activities on sovereignty submerged lands.

However, the provisions of (2)(a) and (2)(b) shall not prevent the DPEP from reviewing and taking agency action on applications for single family, multifamily, commercial, industrial, public, or other development on lands that are riparian to sovereign submerged lands where no activities are proposed on sovereign submerged lands as part of the application, but which may include future, non-accessory uses or activities on sovereign submerged lands, provided that the DPEP advises the applicant of the need to apply to the DEPARTMENT or DISTRICT for any subsequent uses or activities on sovereign submerged lands. Applicants and the DPEP are advised that the future authorization to use sovereign submerged lands may require the DEPARTMENT or DISTRICT to be provided with specific details of the upland development so that the proper form and extent of authorization to use sovereign submerged lands may be determined.

Additional provisions for processing applications in whole or in part in, on, or over sovereign submerged lands are contained in Section 12.C. of this Agreement.

(3) Projects owned, operated, or controlled by the COUNTY such that, if the DPEP did the permitting, compliance, or enforcement, there would be an appearance of a conflict of interest;

(4) Hazardous waste facilities required to obtain a permit pursuant to Chapter 62-730 of the Florida Administrative Code;

(5) Industrial wastewater treatment facilities, including those involving aquaculture, required to obtain a permit pursuant to Chapters 62-660 or 62-670 of the Florida Administrative Code;

(6) Mining projects that include on site grading or sorting facilities;

(7) Activities located in part outside the geographical area covered by this Agreement;

(8) Mitigation banks;

(9) Activities proposed by the Florida Department of Transportation;

(10) Activities proposed by the U.S. Coast Guard or the Department of Defense;

(11) Electrical distribution and transmission lines and other facilities related to the distribution of electricity which do not require certification under Sections 403.52 through section 403.5365 of the Florida Statutes;

(12) Natural gas or petroleum exploration, production, transmission or distribution activities including pipelines, associated facilities and product pipelines;

(13) Except as provided in Section 10.C(4), below, petitions to process waivers and variances under sections 120.542 or 403.201 of the Florida Statutes, and petitions for declaratory statements under section 120.565 of the Florida Statutes, except such declaratory statements shall not address the applicability of stricter local standards;

(14) Permitting, compliance, and enforcement under part IV of chapter 373 of the Florida Statutes for domestic wastewater treatment facilities and solid waste management facilities, except when other permitting responsibility for such facilities has been delegated to the DPEP in separate delegation agreements between the COUNTY and the DEPARTMENT;

(15) Projects owned and operated by the DISTRICT or the DEPARTMENT;

(16) Aquaculture and activities directly associated with aquaculture that are not the responsibility of the Florida Department of Agriculture and Consumer Services.

(17) All other permitting, compliance, and enforcement responsibilities associated with implementation of the regulatory and proprietary programs under part IV of chapter 373 of the Florida Statutes, and chapters 253 and 258 of the Florida Statutes, not specifically delegated to the DPEP in Section 10.C of this Agreement, including responsibilities for rulemaking, establishing state water quality standards, and granting exceptions or variances thereto.

C. Activities over which Authority is Delegated to the DPEP

Except for those activities over which authority is retained by the DEPARTMENT or the DISTRICT in Section 10. B. of this Agreement, the COUNTY, through DPEP, shall be responsible for:

(1) Permitting, compliance and enforcement for all applications including permit modifications, reviewed during the term of this Agreement for ERPs under part IV of chapter 373 of the Florida Statutes, including permit applications reviewed during the term of this Agreement for WRM Permits and Management and Storage of Surface Waters Permits under section 373.414(11)-(16) of the Florida Statutes;

(2) Compliance and enforcement for all unpermitted activities for which DPEP has received delegated authority under this subsection 10.C.;

(3) Processing and issuance or denial of petitions for formal determinations of the landward extent of wetlands and other surface waters under sections 373.421(1) and 373.421(2) of the Florida Statutes within the geographical boundaries for which authority is delegated to the DPEP;

(4) Processing and issuance or denial of requests for project specific variances under sections 373.414(17) of the Florida Statutes for mixing zones, turbidity, and dissolved oxygen associated with ERP, WRM, or SWM permits for which authority is delegated to DPEP. The DPEP shall publish, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and the DPEP shall afford interested persons an opportunity for a hearing on each application for a variance. If no request for hearing is filed with the DPEP within 14 days of published notice, the DPEP may proceed to final agency action without a hearing;

(5) Compliance and enforcement for ERP, WRM, or SWM permits issued by the DEPARTMENT or the DISTRICT prior to the effective date of the Agreement that are specifically agreed upon by the parties;

(6) Issuing, waiving or denying state water quality certification for those activities over which the DPEP has permitting responsibility under this Agreement in accordance with the Operating Agreement between the U.S. Army Corps of Engineers (USACE), the DEPARTMENT, the DISTRICT, and three other water management

districts concerning regulatory programs for activities in wetlands and other surface waters (Exhibit B).

(7) Performing the duties and obligations of the DEPARTMENT or DISTRICT in accordance with the procedures established by the Florida Department of Community Affairs, the DEPARTMENT and the DISTRICT for:

(a) the determination of consistency or inconsistency of a proposed activity with the federal and Florida Coastal Zone Management Acts;

(b) distributing copies of received ERP, WRM, and SWM applications to the USACE, the Fish and Wildlife Conservation Commission, the Department of State, the Department of Community Affairs, and other persons who have specifically requested a copy of the application in accordance with sections 62-343.090 and 40E-1.6058, of the Florida Administrative Code; and

(8) following the terms and provisions of the USACE's State Programmatic General Permit to the extent the DEPARTMENT is given authority by the USACE to allow DPEP to implement its provisions.

D. Additional Conformance with the Broward County Code, Chapter 27

Applications for projects or activities identified under Sections 10. B. and 10. C. of this Agreement shall continue to be submitted to DPEP for any COUNTY authorization required under the Broward County Code, Chapter 27. For activities reviewed under Section 10.B. of this Agreement, the application to the DPEP under the Broward County Code, Chapter 27, shall be in addition to, and not in lieu of, any permits or authorizations required from the DEPARTMENT or DISTRICT.

SECTION 11 - TECHNICAL CRITERIA AND STANDARDS

A. When acting under this Agreement, the DPEP shall apply the provisions of parts I and IV of chapter 373 of the Florida Statutes and the applicable rules of the DEPARTMENT or DISTRICT that are adopted thereunder, as amended from time to time. These rules include: rules 62-4.242; 62-4.244; 62-330.200(4), and the rules incorporated by reference therein; sections 62-343.020-.060, 62-343.090-.140, and 62-343.900; chapters 62-302, 62-312, 62-340, 62-341, 40E-4, 40E-40, and 40E-400 of the Florida Administrative Code; the District's "Basis of Review," effective 1995, as adopted by reference in section 62-330.200(4)(b) of the Florida Administrative Code, and the District's "Basis of Review," effective August 2000, as adopted by reference in section and 40E-4.091(1)(a) of the Florida Administrative Code. Broward County shall amend Sections 27-52 of the Broward County Code of Ordinances to codify a "general incorporation by reference" of these specified statutes and rules so that future amendments to these statutes and rules will be automatically incorporated.

B. When acting under this Agreement DPEP shall also apply any stricter standards -- within the meaning of section 62-344.200(9) of the Florida Administrative Code -- relating to water quality, water quantity and water resource related environmental criteria adopted in the Broward County Code, Chapter 27, as amended.

C. In addition to Chapter 27 of the Broward County Code, final action taken by DPEP regarding the issuance or denial of ERP, WRM, or SWM permits, or compliance and enforcement of activities regulated under the authorities delegated in this Agreement, shall be governed by the provisions of sections 120.569, 120.57(1)-(2), 120.573, 120.574, 120.595, 120.60, 120.62, 120.66, 120.665, 120.68, and 120.69 of the Florida Statutes.

D. No permit shall be issued by DPEP until the proposed activity has been determined to be consistent with the future land use element of the COUNTY's comprehensive plan.

E. Permits issued by DPEP under this Agreement shall consolidate in a single document the permit under part IV of chapter 373 of the Florida Statutes and any required Environmental Resource License or Surface Water Management License. However, except for activities that are exempt under Sections 373.406 or 403.813(2) of the Florida Statutes, or section 40E-4.051 of the Florida Administrative Code when DPEP otherwise may have required a license for an activity that does not require a permit under part IV of chapter 373 of the Florida Statutes, or that only requires a noticed general permit or a no-notice general permit under part IV of chapter 373 of the Florida Statutes, the DPEP may require an individual permit for that activity under their combined authority under this Agreement and Chapter 27 of the Broward County Code. Provided, however, that this Agreement in no way affects the authority of DPEP to require licenses under their separate authority under chapter 27 of the Broward County Code for an activity that is exempt under section 373.406 or subsection 403.813(2) of the Florida Statutes, or section 40E-4.051 of the Florida Administrative Code.

SECTION 12 - PERMIT APPLICATION PROCESSING

A. Those applications for activities under part IV of chapter 373 of the Florida Statutes submitted to the DEPARTMENT or DISTRICT prior to the effective date of this Agreement and which fall within the scope of delegation described herein shall continue to be reviewed and processed by DEPARTMENT or DISTRICT staff until issued, denied or withdrawn. Compliance and enforcement responsibilities for these permitted activities also shall remain with the DEPARTMENT or DISTRICT, unless such responsibilities are specifically delegated to the DPEP under Section 10.C of this Agreement.

B. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this Agreement shall be returned to the applicant or, with the applicant's concurrence, be forwarded to the correct agency. This shall include situations where DPEP receives or

begins processing an application for an activity that is later determined to be located in whole or in part in, on, or over sovereign submerged lands, in which case the DPEP shall, within three business days of being notified that such wetlands or other surface waters are sovereign submerged lands, return the application to the applicant, or with the applicant's concurrence, forward the application to the DEPARTMENT or DISTRICT (in accordance with the Operating Agreement Concerning Regulation under Part IV, chapter 373 of the Florida Statutes between the South Florida Water Management District and the Department). The application shall not be considered received for purposes of sections 120.60 and 373.4141 of the Florida Statutes, until it is received by the correct agency. A refund of any submitted fee shall be made to the applicant. Prior to transferring the application, the incorrect receiving agency shall coordinate with the proper reviewing agency and the applicant in order to inform all parties that the application has been submitted incorrectly and is being either returned or forwarded. The correct agency receiving the application will be responsible for sending copies of the application to the USACE, in accordance with the Operating Agreement between the USACE, the DEPARTMENT, and the Water Management Districts Concerning Regulatory Programs for Activities in Wetlands and Other Surface Waters.

C. The following provisions shall be followed to ensure that the DEPARTMENT or DISTRICT retains the responsibility for processing and taking agency action on applications for activities on sovereign submerged lands:

(1) Applications received by the DPEP for activities that are located in whole or in part on sovereign submerged lands shall be forwarded to the DEPARTMENT or DISTRICT, in accordance with the division of responsibilities in the "Operating Agreement Concerning Regulation under Part IV, Chapter 373, F.S., and Aquaculture General Permits Under Section 403.814, F.S., Between South Florida Water Management District and Department of Environmental Protection," and the provisions below, within three calendar days;

(2) Because determining the boundaries and locations of sovereign submerged lands may be difficult, the DEPARTMENT and DISTRICT shall retain responsibility for all activities under this agreement located waterward of the approximate mean or ordinary high water line of the following waters, as well as activities located within the wetlands that form the landward extent of such waters above the line of mean or ordinary high water. While the listing of such waters does not constitute an actual determination that such waters are sovereign submerged lands, these waters have a high likelihood of containing, in whole or in part, sovereign submerged lands. Therefore, this list is intended solely to streamline which agency shall retain responsibilities under this Agreement. These waters are:

- (a) the Intracoastal Waterway; and
- (b) all navigable or tidally influenced natural surface waters², including:

² Note: It is recognized that navigable, non-tidal waters, such as the Everglades, also may contain sovereign submerged lands. However, within Broward County, such waters largely are outside of the geographical areas where Broward County otherwise will be delegated responsibilities under this

1. Coral Waterway;
2. Cypress Creek and the Cypress Creek Canal;
3. Lake Placid;
4. Lake Sylvan;
5. Middle River, including the North and South Forks of the Middle River;
6. Mayan Lake;
7. New River, including the North and South Forks of the New River;
8. Osceola Creek;
9. Pond Apple Slough;
10. Stranahan River;
11. Tarpon River;
12. Three Islands; and
13. the canal system within Las Olas Isles.

Additional waters will be added or deleted as title determinations identify these or other waters, or portions thereof, to be or not to be sovereign submerged lands.

(3) The responsibility for reviewing and taking agency action on activities that involve isolated (not connected to other surface waters) wetlands or other surface waters, and artificial wetlands and other surface waters, shall remain with the DPEP (because it is presumed, solely for this agreement, such isolated and artificial wetlands and other surface waters are not sovereign submerged lands), except where DPEP has been advised by the DEPARTMENT or DISTRICT that such isolated or artificial wetlands or other surface waters, or portions thereof, are sovereign submerged lands;

(4) In those cases where the DEPARTMENT or DISTRICT begin or complete processing of an application under circumstances where it is believed the submerged lands are sovereign, but are later determined not to be, the DEPARTMENT or DISTRICT shall retain the full authority for the review and agency action on the application, and for any subsequent compliance and enforcement of the application or activity, regardless of other provisions of this Agreement;

(5) DPEP shall, within five business days of receiving an application under this agreement, request a title check from the DEPARTMENT'S Division of State Lands for all applications on artificial wetlands and other waters that are connected to other natural waters, and on any isolated wetland or other surface water, which it believes may historically have been sovereign submerged lands. Except, however, that such title check requests can be suspended where the Division of State Lands has determined that the particular wetland or other surface water is not sovereign submerged lands.

(6) Where the Division of State Lands has determined an artificial or isolated wetland or other surface water is on sovereign submerged lands, and an activity

agreement. In all cases where ANY waterbody is determined to be sovereign submerged lands, Broward County DPEP is expressly not delegated responsibilities under this Agreement.

proposed on such wetland or other surface water qualifies for an automatic consent of use under paragraph 18-21.005(1)(a) of the Florida Administrative Code or section 253.77(4) of the Florida Statutes, DPEP shall be authorized to acknowledge qualification for such consent of use, but not any kind of sovereign submerged lands easement. DPEP also shall have subsequent compliance and enforcement responsibilities under this Agreement for such activities other than enforcement of the authority of the Board of Trustees, unless such authority has been delegated by the Board of Trustees. For all other activities on artificial or isolated wetlands or other surface waters that have been determined to be sovereign submerged lands, DPEP shall comply with the provisions of Section 12.B. of this Agreement. This includes situations where DPEP has begun processing an application under circumstances where it is initially believed the wetland or other surface water is not sovereign submerged lands, but is later determined to be sovereign submerged lands. In such cases, the DEPARTMENT or DISTRICT shall retain the full authority for the review and agency action on the application, and for any subsequent compliance and enforcement of the application or activity, regardless of other provisions of this agreement.

(7) Each permit issued by DPEP shall contain provisions that allow the DEPARTMENT or DISTRICT to enforce compliance with permit conditions and the underlying provisions of Part IV of Chapter 373 of the Florida Statutes, and the rules adopted thereunder.

D. Pursuant to subsection 373.109(1) of the Florida Statutes, permit application fees received by DPEP under this Agreement shall be allocated for the use of DPEP.

SECTION 13 - COMPLIANCE AND ENFORCEMENT ACTIVITIES

A. DPEP shall be responsible for conducting compliance inspections on all permits issued by the DPEP pursuant to this Agreement. At a minimum, each project shall be inspected upon completion of construction. DPEP also shall be responsible for inspections on complaints and sites of potential unauthorized activities and for referrals to the DEPARTMENT or the DISTRICT as appropriate.

B. DPEP shall be responsible for implementation of this Agreement and any ordinance, rule, or order adopted by the COUNTY in order to fulfill its responsibilities under this Agreement, as described herein. Under sections 373.103(8), 373.129, and 373.441 of the Florida Statutes, DPEP has all rights, power and authority to enforce the provisions of chapter 373 of the Florida Statutes, and any rules and regulations adopted thereunder which are delegated under this Agreement. The DEPARTMENT or DISTRICT shall not file a separate enforcement action when the DPEP has resolved a violation under its delegated authority through a final order or judgement. The DEPARTMENT or DISTRICT may initiate an enforcement action when requested by the DPEP or when the DPEP is not resolving the violations in a timely or appropriate manner.

C. Where appropriate, the DEPARTMENT or DISTRICT and the DPEP shall coordinate their enforcement activities in order to maximize the staff resources available to each.

D. The COUNTY has established a local Pollution Recovery Trust Fund in which all moneys recovered in any enforcement action will be deposited. Moneys in the COUNTY's Pollution Recovery Trust Fund shall be used exclusively to restore polluted areas in the COUNTY's geographical jurisdiction to the conditions which existed before pollution occurred or to otherwise enhance pollution control activities or the environment, pursuant to the Broward County Code, Chapter 27.

E. Except as provided herein, nothing in this Agreement shall limit the authority of any party.

SECTION 14 - SPECIAL CASE AGREEMENTS

By written Agreement between the Director of DPEP and the Secretary of the DEPARTMENT or the Executive Director of the DISTRICT, as appropriate, or their designees, the responsibility of the parties to review and act on applications or enforcement cases for specific projects may deviate from the responsibilities outlined in this Agreement. Instances where this may occur include:

A. An extensive permitting or enforcement history by the DEPARTMENT, the DISTRICT, or DPEP exists with a particular project such that a deviation would result in more efficient and effective permitting;

B. A conflict of interest, or the appearance thereof, exists which could be resolved by deviating from this Agreement;

C. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient, and the activity is one that otherwise could be delegated under section 373.441 of the Florida Statutes and rule 62-344 of the Florida Administrative Code; or

D. In cases of emergencies, such as natural disasters, where processing by any of the agencies would expedite work required to abate the emergency.

SECTION 15 - NOTICES

All notices, reports or permits required to be given under the terms and provisions of this Agreement amongst the parties shall be in writing and addressed as follows:

To the *DISTRICT*:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
C/O Director, Environmental Resource Regulation Division
PO Box 24680
West Palm Beach, Florida 33416-4680

To the *DEPARTMENT*:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Chief, Bureau of Submerged Lands & Environmental Resources, MS 2500
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
- and -
Director, DEP Southeast District Office
PO Box 15425
West Palm Beach, FL 33416-5425

To the *COUNTY*:

Chair, Broward County Board of County Commissioners
115 South Andrews Avenue, Room 421
Ft. Lauderdale, Florida 33301-1872

AND

Director of DPEP
Department of Planning and Environmental Protection
218 SW 1st Avenue
Ft. Lauderdale, Florida 33301

or to such other address as may hereafter be provided by the parties in writing.

PART III PROGRAM MANAGEMENT

SECTION 16 - BUDGET

DPEP shall not later than 30 days after budget adoption of each year provide a summary to the DEPARTMENT and DISTRICT of its approved budget outlining funding and staffing relevant to the delegated program. DPEP shall maintain adequate program funding, staffing, and equipment to comply with all statutes, rules, and policies pertaining to the delegated programs.

SECTION 17 - PERSONNEL

The COUNTY shall hire and maintain a staff capable of performing the duties specified in this Agreement. A Table of Organization and descriptions of positions provided as part of the petition shall be updated at least annually or more frequently as appropriate and be provided to the DEPARTMENT and DISTRICT within thirty days of any modifications.

SECTION 18 - COMPUTER, SOFTWARE, DATA ENTRY SYSTEMS, AND OTHER EQUIPMENT

The COUNTY agrees to maintain all computer hardware and software necessary to enter data into the DEPARTMENT'S permit tracking systems, including Permit Application (PA), Water Assurance Compliance System (WACS), and Compliance and Enforcement Tracking (COMET), as those systems currently exist or are modified in the future. The DEPARTMENT agrees to provide the necessary access and training in the use of those systems.

SECTION 19 - STAFF TRAINING

The DEPARTMENT or DISTRICT will timely invite DPEP representatives to attend appropriate training sessions or workshops held by the DEPARTMENT or DISTRICT. DPEP's staff responsible for implementing the terms of this Agreement shall regularly attend training sessions and workshops related to the ERP program, including wetland delineation training, at the expense of the COUNTY to maintain and improve their knowledge and competence in implementing the programs delegated by this Agreement. The DEPARTMENT, DISTRICT and the DPEP also agree to conduct periodic meetings to ensure program implementation consistency and resolve issues of mutual interest to the parties, with particular emphasis during the initial implementation of this Agreement. The DEPARTMENT shall provide the DPEP with guidance and instructional information as they become available. The DPEP will be responsible for distributing copies of these manuals and their subsequent updates to staff.

SECTION 20 - RECORDS MANAGEMENT

The COUNTY shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement which is intended to perpetuate, communicate or formalize knowledge. Retention and availability of public records shall be in accordance with chapter 119 of the Florida Statutes.

SECTION 21 - PUBLICATION OF PRECEDENTIAL ORDERS

Orders entered by the DPEP pursuant to administrative hearings shall be published in the Florida Administrative Law Reporter, or on the Broward County internet site in a manner that is searchable in conformance with section 120.53(1)(a)2.b, if they have precedential significance.

SECTION 22 - REPORTING REQUIREMENTS TO THE DEPARTMENT AND DISTRICT

A. The DPEP shall submit an annual report to the DEPARTMENT and the DISTRICT which describes the DPEP's permitting and enforcement activities for the previous year for its responsibilities outlined in this Agreement. The report shall include:

(1) Application activity by the DPEP, consisting of information such as number of applications received, time frames, actions taken, acknowledgements of consents of use, and hearings conducted.

(2) A listing of all DPEP enforcement and compliance activities.

(3) A summary of any variances granted under paragraph 10.C.4 of this Agreement and determinations of *de minimis* impacts under subsection 373.406(6) of the Florida Statutes.

(4) A summary of all formal determinations performed.

B. DPEP shall provide a copy of determinations of *de minimis* exemptions under subsection 373.406(6) of the Florida Statutes, formal wetland determinations under sections 373.421(1) and 373.421(2) of the Florida Statutes, and all notices and agency actions taken on variances under paragraph 10.C.4 of this Agreement to the DEPARTMENT or the DISTRICT, as applicable, in accordance with the Operating Agreement between the DEPARTMENT and the DISTRICT, within 5 business days of issuance.

C. DPEP shall provide electronic data to the DEPARTMENT and the DISTRICT as described in below. However, DPEP may ultimately implement a compatible database system to accomplish the transferring of the requested electronic data to the DEPARTMENT and the DISTRICT when agreeable to the DEPARTMENT and DISTRICT.

(1) For activities delegated by the DEPARTMENT and the DISTRICT, the DPEP shall enter permit application data into the DEPARTMENT's Permit Application tracking system.

(2) For activities delegated by the DEPARTMENT, the DPEP shall enter permit compliance and enforcement data into the DEPARTMENT's COMET system or its successor.

(3) For activities delegated by the DEPARTMENT and the DISTRICT, DPEP shall utilize the "wetland inventory table" that is utilized by the DEPARTMENT and the DISTRICT for tracking of wetland impacts associated with the ERP Delegation.

SECTION 23 - PROGRAM OVERSIGHT AND COORDINATION

A. In order to promote consistency, the DEPARTMENT or DISTRICT, as appropriate, may review, upon reasonable notice to the DPEP, any delegated ERP application that the DPEP is reviewing pursuant to this Agreement. The DEPARTMENT or DISTRICT may also randomly inspect project sites for which an application is being processed by the DPEP, in cooperation with the DPEP and (as necessary) with the applicant.

B. The DEPARTMENT or DISTRICT, as appropriate, will periodically conduct programmatic performance evaluations of DPEP's implementation of the delegated program. The purpose of the performance evaluations is to determine if permit applications, monitoring programs, compliance efforts, and enforcement actions are being managed in accordance with applicable rules and statutes, and that appropriate files are being maintained for all delegated permitting actions taken, monitoring programs, enforcement actions, and other responsibilities delegated to the DPEP. The files shall be maintained for the period required under chapter 119 of the Florida Statutes. DPEP will be given adequate time to complete pre-audit surveys and to comment on draft audit findings.

C. In the event that an informal delineation or jurisdictional determination performed by the COUNTY is disputed by the property owner, the COUNTY shall advise the land owner that he or she may request that the Wetland Evaluation and Delineation Section of the DEPARTMENT resolve the dispute. The COUNTY may at anytime request assistance or advice from the DEPARTMENT in resolving a dispute.

D. The parties shall conduct regular quarterly meetings to ensure program implementation consistency and resolve issues of mutual interest to the parties for the first year following the effective date of this Agreement and every two years thereafter.

PART IV MISCELLANEOUS PROVISIONS

SECTION 24 - RIGHTS OF OTHERS

Nothing in this Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

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:


BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS

ATTEST:

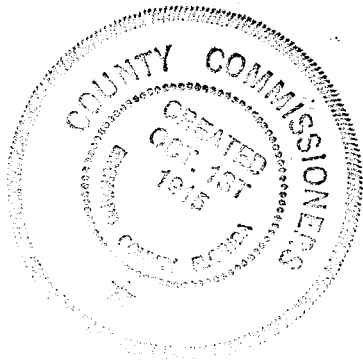


County Administrator and Ex-Officio Clerk of the
Board of County Commissioners of Broward
County, Florida

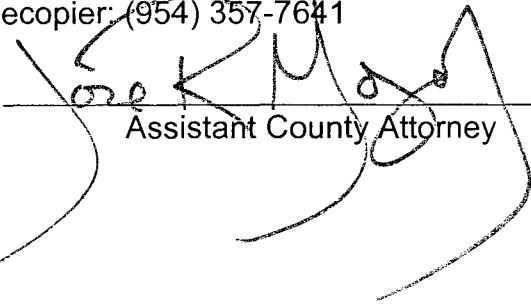
BROWARD COUNTY, through its BOARD OF
COUNTY COMMISSIONERS

By  _____
Chair

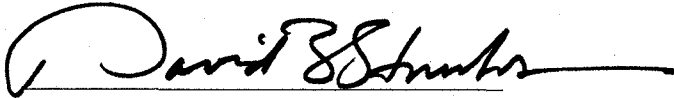
8th day of May, 2001.



Approved as to form by
Office of County Attorney
Broward County, Florida
Government Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  _____
Assistant County Attorney

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



David B. Struhs
Secretary
DEPARTMENT of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

22 day of May, 2001.

Approved as to form by
Office of General Counsel

By Robert Beach 5/18/01
Assistant General Counsel

22nd day of May, 2001.

ATTEST:

By Cynthia L. Husey
Deputy Clerk

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ATTEST:

By [Signature]
Deputy Clerk
Secretary

By [Signature]
Chairman, Governing Board

10th day of May, 2001.

Legal Form Approved

By Susan Martin

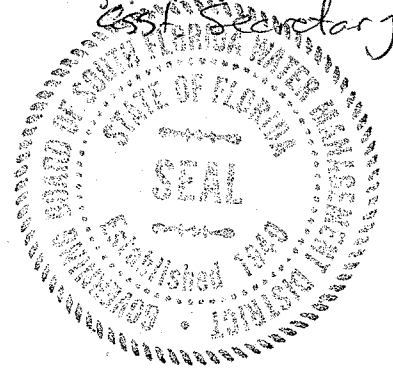


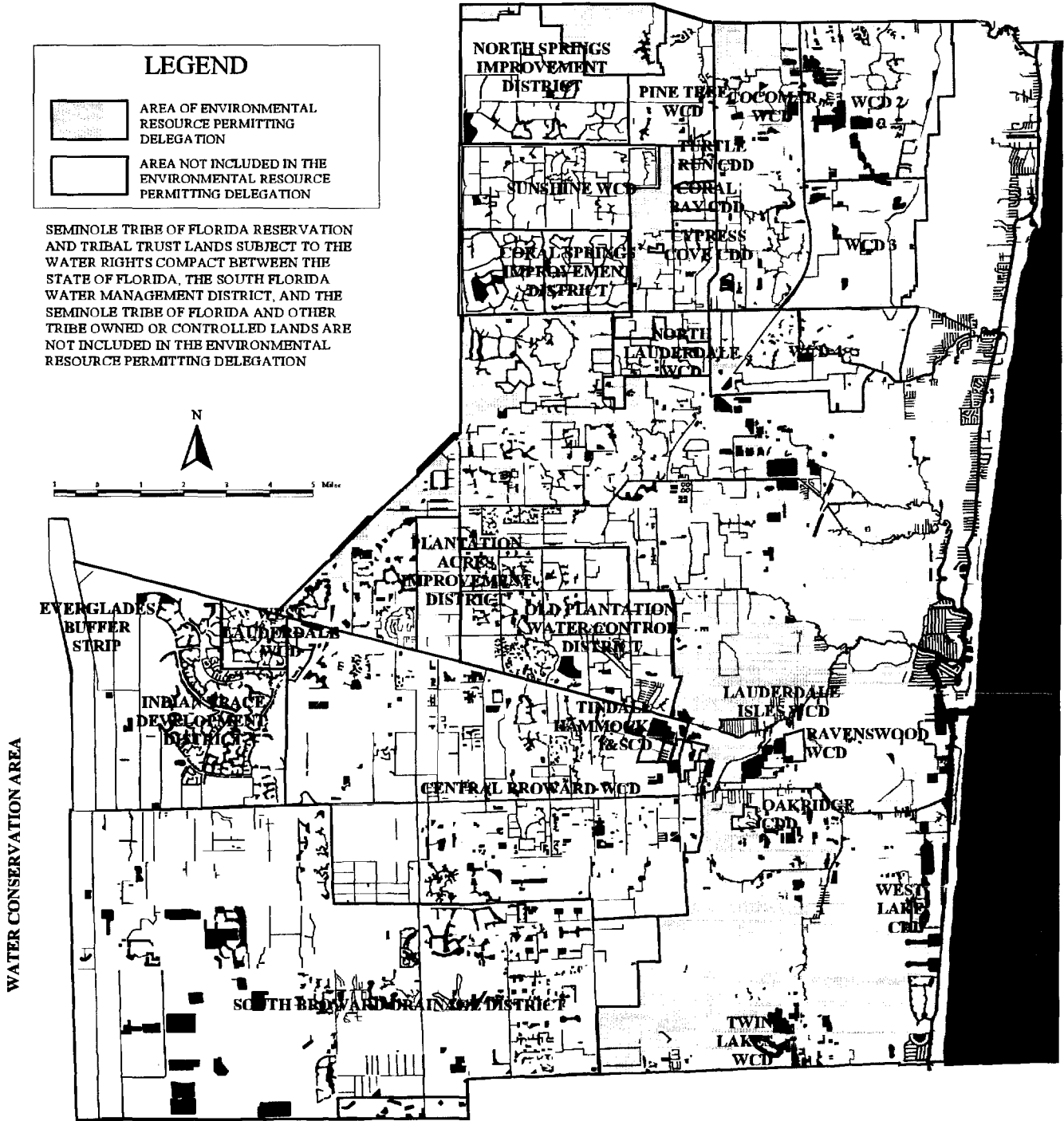
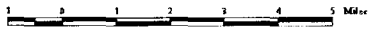


EXHIBIT A GEOGRAPHICAL AREA OF THE ENVIRONMENTAL RESOURCE PERMITTING DELEGATION TO BROWARD COUNTY

LEGEND

-  AREA OF ENVIRONMENTAL RESOURCE PERMITTING DELEGATION
-  AREA NOT INCLUDED IN THE ENVIRONMENTAL RESOURCE PERMITTING DELEGATION

SEMINOLE TRIBE OF FLORIDA RESERVATION AND TRIBAL TRUST LANDS SUBJECT TO THE WATER RIGHTS COMPACT BETWEEN THE STATE OF FLORIDA, THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, AND THE SEMINOLE TRIBE OF FLORIDA AND OTHER TRIBE OWNED OR CONTROLLED LANDS ARE NOT INCLUDED IN THE ENVIRONMENTAL RESOURCE PERMITTING DELEGATION



**Broward County
Department of Planning and Environmental Protection
January 2001**



Exhibit B
USACE agreement

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

I. PARTIES, PURPOSE AND GOALS

A. The Parties

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

B. Purpose

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

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

C. Goals

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

II. WATER QUALITY CERTIFICATION

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

A. Grants or Waivers of Water Quality Certification

1. The following will constitute the granting of water quality certification by the Department or Districts, unless a permit is issued pursuant to the net improvement provisions for water quality provided by paragraph 373.414(1)(b), F.S., or unless otherwise specifically stated in the permit or authorization:

- (a) noticed general environmental resource permits and wetland resource general permits issued under part IV of chapter 373, F.S.;
- (b) standard general, individual, or conceptual approval environmental resource permits, and individual wetland resource permits issued under part IV of chapter 373, F.S.;
- (c) management and storage of surface waters permits for agricultural activities or agricultural water management systems issued under part IV of chapter 373, F.S.;
- (d) joint coastal permits issued under section 161.055 and part IV of chapter 373, F.S.; and
- (e) individual and conceptual mitigation bank permits issued under part IV of chapter 373, F.S.;

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

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

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

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

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

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

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

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

B. Denial of Water Quality Certification

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

C. Time Frames

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

D. Corps Nationwide General Permits

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

III. COASTAL ZONE CONSISTENCY CONCURRENCE (CZCC)

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

A. Determination of Concurrence

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

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

B. Determination of Inconsistency

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

C. Time Frames

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

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

D. Corps Nationwide General Permits

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

IV. PERMIT APPLICATION COORDINATION

A. Joint Application Forms

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

B. Processing of Applications

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

C. Distribution of Final Actions

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

V. MITIGATION BANKS

A. Joint Review Teams

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

B. Team Coordination

The Team shall coordinate the following:

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

VI. COMPLIANCE AND ENFORCEMENT

A. Discovery of Potential Violations

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

B. Development of Settlement Proposals

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

C. Advisory Note

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

VII. INTERAGENCY MEETINGS

A. Permitting Meetings

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

B. Enforcement Meetings

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

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

C. Cross Training

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

VIII. COMPUTER LINK AND GIS

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

IX. DELEGATED PROGRAMS

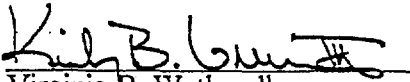
Where the Department or Districts delegate to a local government all or a portion of the permitting or enforcement authority under part IV of chapter 373, F.S., the delegation agreement shall include a provision that the local government shall be subject to all the terms and conditions of this Agreement,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

X. EFFECTIVE DATE


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

XI. TERMINATION

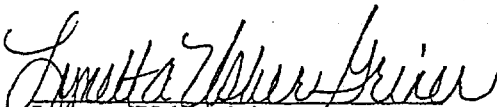
Any party who wishes to terminate this agreement with or without cause shall provide 60 days prior written notice to the other parties. The notice submitted by the Corps shall be signed by the District Engineer of the Jacksonville or Mobile District. The notice submitted by a Water Management District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


Virginia B. Wetherell
Secretary
Department of Environmental Protection

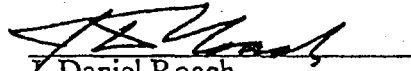
30 November 1998
Date


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


20 NOVEMBER 1998
Date


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

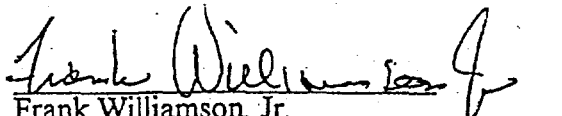
Date


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

Date


James L. Allen
Chair, Governing Board
Southwest Florida Water

Date 8/25/98


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

Date