

**OPERATING AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS
AND
THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (SWFWMD)
LOCATED WITHIN THE GEOGRAPHICAL LIMITS OF THE SWFWMD
IN FLORIDA, PURSUANT TO PROGRAMMATIC GENERAL PERMIT
(PGP) PGP-SAJ-95**

THIS Agreement is made and entered into this 24th day of MARCH, 2008, by and between the U.S. Army Corps of Engineers (Corps) and the Southwest Florida Water Management District (SWFWMD). By execution of the agreement, the Corps authorizes the SWFWMD to verify this programmatic general permit (PGP) PGP-SAJ-95 on its behalf.

WITNESSETH

WHEREAS, the Corps is responsible for the issuance of Federal permits for activities located in the Waters that fall within the regulatory boundaries of SWFWMD, including the work described in PGP-SAJ-95;

WHEREAS, the SWFWMD is responsible for the issuance of state permits for activities located in the Waters that fall within the regulatory boundaries of SWFWMD, including the work described in PGP-SAJ-95;

WHEREAS, this PGP-SAJ-95 can only be used following the issuance of a Department of the Army permit which has been conditioned to allow for the subsequent use of PGP-SAJ-95 for applicable modification requests; and

WHEREAS, the SWFWMD has staff and a regulatory program in place that can expedite the processing of Corps permitting, improve overall efficiency and reduce duplication of regulatory effort.

I. AUTHORIZATION

A. The SWFWMD is authorized to verify programmatic general permit PGP-SAJ-95 subject to its terms and conditions once it has been issued by the Corps.

II. OPERATING AGREEMENT

A. PROCEDURES

1. During the pre-application process or early in the individual permit process the Corps in conjunction with the applicant and SWFWMD will determine if PGP-SAJ-95 will be applicable. The Corps will inform the commenting agencies and public in the public notice if the proposed project would qualify for PGP-SAJ-95.

2. Once SWFWMD provides the Corps a conceptual permit for the project and grants or waives 401 certification, the Corps will issue a Department of the Army (DA) permit which will attach PGP-SAJ-95 as a condition of the permit. The permit will also be conditioned that no work can begin until a construction ERP is issued by SWFWMD authorizing each construction phase. A copy of the DA permit shall be provided to the SWFWMD.

3. As provided in PGP-SAJ-95, a modification request can include additional wetland impacts not to exceed 10% of the total wetland impact acreage already permitted by the Corps, or one acre, whichever is greater. Further, sufficient mitigation to offset these additional impacts must be provided and approved by the SWFWMD as part of the construction ERP. The SWFWMD will refer to the Corps for processing any modification request which exceeds this stated threshold of new wetland impacts and/or where mitigation is not offered to offset the additional wetland impacts.

4. The Corps shall provide assistance to the SWFWMD as necessary should questions arise.

B. MODIFICATION OF AGREEMENT

1. This Agreement may be modified in writing at any time as necessary by mutual consent of the Corps and the SWFWMD. 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 Administrator for SWFWMD, or their designees.

C. REPORTING REQUIREMENTS

1. The Corps may review the performance of the SWFWMD's administration of the Corps' program as it pertains to this PGP at any time to determine if the program is being properly administered and enforced.

2. The SWFWMD shall submit to the Corps the following:

- a. Copies of all ERP construction permits for which PGP-SAJ-95 has been verified.
- b. Copies of all ERP construction permits for which PGP-SAJ-95 could not be verified.

3. If additional information is needed for the Corps to effectively review the SWFWMD's performance in administering and enforcing PGP-SAJ-95, the SWFWMD shall, upon request from the Corps' contact person, provide additional information concerning permitting, compliance and enforcement.

D. COMPLIANCE AND ENFORCEMENT

1. The SWFWMD shall be responsible for ensuring that the project is constructed in compliance with its ERP construction permit and with any conditions imposed by that permit. The Corps may provide assistance, intervene, or take the lead role in compliance or enforcement actions involving an ERP construction permit for which PGP-SAJ-95 has been verified by the SWFWMD, when deemed necessary by the Corps. The Corps shall give notice to the SWFWMD of its intent to pursue such an enforcement action.

2. The Corps shall be responsible for any Federal compliance issues that should arise with respect to general or specific conditions of PGP-SAJ-95 that are not also conditions of the SWFWMD permit.

3. The SWFWMD shall be responsible for enforcement of this Agreement and any ordinance, rule, or order adopted pursuant hereto.

4. Where appropriate, the Corps and the SWFWMD shall coordinate their enforcement activities in order to maximize the staff resources available to each.

5. Nothing in this agreement shall limit the enforcement authority of either party.

E. NOTIFICATION REQUIREMENTS

1. The SWFWMD shall notify the Corps prior to promulgating new or modified rules or policies that would affect PGP-SAJ-95.

2. The Corps shall notify the SWFWMD prior to promulgating new or modified rules or policies that would affect PGP-SAJ-95.

3. 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 to:

U. S. ARMY CORPS OF ENGINEERS
Regulatory Division
10117 Princess Palm Avenue, Suite 120
Tampa, FL 33610-8300
ATTN: Cynthia Wood

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
2379 Broad Street
Brooksville, Florida 34604
ATTN: Clark Hull

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

F. EFFECTIVE DATE OF AGREEMENT

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

G. TERMINATION OF AGREEMENT

1. Either party may terminate this Agreement upon written notice.

2. In the event of termination of this Agreement, the SWFWMD agrees to perform compliance inspections on those permits that were issued by the SWFWMD under this Agreement, and to report any violations to the Corps. The SWFWMD retains joint authority with the Corps to enforce the provisions of this Agreement for projects which were permitted while the SWFWMD was operating under the provisions of this Agreement.

H. SEVERABILITY

1. 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.

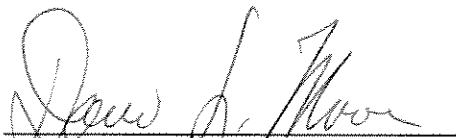
U. S. ARMY CORPS
OF ENGINEERS

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By:



Paul L. Grosskruger
Colonel, U.S. Army
District Engineer

By:


David L. Moore
Executive Director

This 24 day of MARCH, 2008.

This 31st day of January, 2008.

WITNESS: 
Approved as to Form and Legality

WITNESS: 
Approved as to Form and Legality

By: DOROTHY L. BOARDMAN

By: Karen E. West



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Regulatory Division

MAR 24 2008

**DEPARTMENT OF THE ARMY PERMIT
PROGRAMMATIC GENERAL PERMIT SAJ-95**

**Minor Modification of Department of the Army Permits for
Multi-Phased Developments within the jurisdiction of the
Southwest Florida Water Management District**

Upon recommendation of the Chief of Engineers, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), general authority is hereby given to the Southwest Florida Water Management District (SWFWMD) to administer this permit for the discharge of dredged or fill material into non-tidal waters of the United States, including wetlands, for minor modifications to construction phases of multi-phased developments, within the limits of the SWFWMD that are consistent with a valid Conceptual Environmental Resource Permit (ERP) approved by the SWFWMD and an issued Standard Permit from the Army Corps of Engineers (Corps) for the same activity containing a special condition specifically allowing the use of this Programmatic General Permit (PGP).

SPECIAL CONDITIONS:

1. The PGP is limited to multi-phased developments located within the following counties: Charlotte, Citrus, DeSoto, Hardee, Hernando, Highlands, Hillsborough, Lake, Levy, Manatee, Marion, Pasco, Pinellas, Polk, Sarasota, and Sumter.
2. Activities covered by this PGP must be approved by a conceptual ERP issued by the SWFWMD and a Standard Permit issued by the Corps for identical project designs.
3. This PGP applies to the discharge of dredged or fill material into non-tidal waters of the United States for minor modifications to multi-phased developments, including infrastructure and lot development.
4. Mitigation for all discharges of dredged or fill material will be required and must be consistent with watershed management objectives.
5. With the exception of mitigation added to offset additional minor impacts consistent with special Condition Number 7, any modification to change or reduce the mitigation requirements of the original permit will require separate authorization by the Corps.

6. In accordance with Section 7 of the Endangered Species Act, the initial standard permit will have undergone consultation with U.S. Fish and Wildlife Service. No activity shall be authorized under SAJ-95 if the proposed modification activity requires: 1) reinitiation of Section 7 consultation, or 2) new consultation on: a) Federally listed threatened or endangered species or a species proposed for such designation; or b) designated critical habitat for Federally listed threatened or endangered species or habitat proposed to be designated as critical habitat for Federally listed threatened or endangered species.

7. New or additional wetland impacts cannot exceed 10% of the total wetland impact acreage already permitted by the Corps, or one acre, whichever is greater. Sufficient mitigation to offset these additional impacts must be provided and approved by the SWFWMD as part of the construction ERP.

8. A construction ERP must be issued by SWFWMD authorizing each construction phase.

9. Discharges from construction phases must be consistent with the requirements of any established Total Maximum Daily Loads (TMDLs).

10. Coastal Zone Consistency Concurrency must be given or waived with the construction phase permit.

11. This PGP is valid for five years unless suspended or revoked by issuance of a public notice by the District Engineer. The Corps, in conjunction with the Federal resource agencies, will conduct annual reviews to ensure continued use of the permit during the five-year authorization period is not contrary to the public interest.

12. Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this PGP. The District Engineer reserves the right to require that any request for authorization under this PGP be evaluated as a standard permit.

13. Within 60 days of the authorized work and mitigation, the Self-Certification Statement of Completion must be completed and submitted to the Corps. Copies may be downloaded from: <http://www.saj.usace.army.mil/regulatory/forms/forms.htm> Mail the completed form to the U.S. Army Corps of Engineers, Jacksonville District, Enforcement Branch, Post Office Box 4970, Jacksonville, Florida 32232-0019.

14. No project will be authorized under SAJ-95 if the proposed fill activity will result in upstream waters of the United States being removed from Federal jurisdiction.

15. The permittee shall perform all work in accordance with the attached general conditions.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in black ink, appearing to read "Paul L. Grosskruger", with a long horizontal flourish extending to the right.

Paul L. Grosskruger
Colonel, U.S. Army
District Engineer

GENERAL CONDITIONS FOR DEPARTMENT OF THE ARMY GENERAL PERMITS

General Conditions

1. The time limit for completing the work authorized ends on _____.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature and mailing address of the new owner in the space provided below and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

1. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
2. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

3. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

4. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 3 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

5. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE-SIGNATURE)

(DATE)

(NAME-PRINTED)

(ADDRESS)

GENERAL PERMIT