



Everglades Coalition

March 31, 2020

Heather Mason
Environmental Administrator
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399
Heather.Mason@FloridaDEP.gov

Re: State 404 Program Public Hearing, Request for Postponement

Dear Ms. Mason:

The Everglades Coalition has over 60 member organizations committed to the protection and restoration of America's Everglades. We have repeatedly expressed opposition to the state's plan to assume jurisdiction over the federal Clean Water Act Section 404 dredge and fill permitting program. We are now concerned that the Department intends to conduct public comment on its State 404 Program proposal in the midst of the growing COVID-19 pandemic, and to hold no public hearings on this issue of critical importance to the state.

By way of background, on February 19, 2020, the Department published proposed rules to create the State 404 Program, making public comments due March 11, 2020. On March 1, 2020, Governor Ron DeSantis issued an executive order directing the declaration of a public health emergency in the state arising from the novel coronavirus, COVID-19. *See* Exec. Order No. 20-51, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf. On March 9, 2020, the Governor declared a state of emergency, finding that COVID-19 poses a risk to the entire state of Florida. *See* Exec. Order No. 20-52, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf.

On March 9, 2020, the Everglades Coalition requested that the Department heed the considerable public opposition to assumption and maintain the current system of state and federal authority over wetlands permitting, including review under the National Environmental Policy Act (NEPA) in waters of the United States. We also requested that, at a minimum, the Department hold public hearings around the state to permit stakeholders to express their views on this issue of exceptional importance. On March 11, the Department noticed a single public hearing to be held in Tallahassee on April 2, 2020, in conjunction with a webinar.

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1000 Friends of Florida
Angler Action Foundation
Audubon Florida
Audubon of Southwest Florida
Audubon of the Western Everglades
Audubon Society of the Everglades
Backcountry Fly Fishers of Naples
Calusa Waterkeeper
Cape Coral Friends of Wildlife
Center for Biological Diversity
Conservancy of Southwest Florida
Defenders of Wildlife
"Ding" Darling Wildlife Society
Earthjustice
Environment Florida
Everglades Foundation
Everglades Law Center
Everglades Trust
Florida Bay Forever
Florida Conservation Voters Education Fund
Florida Defenders of the Environment
Florida Keys Environmental Fund
Florida Native Plant Society
Florida Oceanographic Society
Friends of the Arthur R. Marshall
Loxahatchee National Wildlife Refuge
Friends of the Everglades
Hendry-Glades Audubon Society
International Dark-Sky Association,
FL Chapter
Izaak Walton League of America
Izaak Walton League Florida Division
Izaak Walton League Florida Keys Chapter
Izaak Walton League Mangrove Chapter
Lake Worth Waterkeeper
Last Stand
League of Women Voters of Florida
Martin County Conservation Alliance
Miami Pine Rocklands Coalition
Miami Waterkeeper
National Audubon Society
National Parks Conservation Association
National Wildlife Refuge Association
Natural Resources Defense Council
North Carolina Outward Bound School
Ocean Research & Conservation Association
Peace River Audubon Society
Reef Relief
Sanibel-Captiva Conservation Foundation
Sierra Club
Sierra Club Florida Chapter
Sierra Club Broward Group
Sierra Club Calusa Group
Sierra Club Central Florida Group
Sierra Club Loxahatchee Group
Sierra Club Miami Group
South Florida Audubon Society
Southern Alliance for Clean Energy
The Florida Wildlife Federation
The Institute for Regional Conservation
The National Wildlife Federation
Theodore Roosevelt Conservation
Partnership
Tropical Audubon Society

In the intervening weeks, the COVID-19 pandemic has grown exponentially throughout the country and in Florida. As of March 23, 2020, Florida's Department of Health is reporting that there are more than 1,100 confirmed cases of COVID-19 in the state, with another 1,000 people being monitored. See <https://experience.arcgis.com/experience/96dd742462124fa0b38ddeb9b25e429> (last accessed March 23, 2020, 2:00 PM). Positive cases have now been confirmed in 47 Florida counties. The pandemic has resulted in school closures, supply shortages, business restrictions, a steep rise in unemployment, and strains on our economy and health care system. On March 17, 2020, Governor DeSantis announced that all schools would remain closed until April 15, 2020. See [Florida coronavirus update for Tuesday: Three field hospitals slated to open; K-12 schools to close through April 15; state announces 7th death, 216 positive tests](#), Orlando Sentinel (Mar. 18, 2020).

On March 23, 2020, the Department announced that in light of federal social distancing guidance in response to the COVID-19 pandemic, it would hold no public hearings. The Department stated instead that it would offer three webinars on April 2, 2020, April 6, 2020 and April 10, 2020, and extend the comment period to April 17, 2020.

In light of current conditions, the Everglades Coalition strenuously objects to the Department's intention to proceed with public comment at a time when the public in Florida cannot meaningfully participate. Communities across the state are struggling to protect themselves and their loved ones from contracting a deadly virus. At the same time, they are struggling with the burdens of reduced services (school closures), loss of income and economic stability, short supplies of basic household necessities and caring for their families. Proceeding with public comment on the State 404 Program during this time of crisis for Florida communities would preclude meaningfully public participation.

Moreover, while the Everglades Coalition supports the Department's observance of federal social distancing guidance, webinars are no substitute for public hearings. Webinars may be helpful when paired with public hearings, providing access to those unable to travel, but are not equivalent to public hearings for a variety of reasons. Many affected stakeholders may not have the technological capabilities or know-how to participate by webinar. In addition, not all Floridians have access to reliable internet and many public facilities providing access like coffee shops and libraries have closed as a result of the current pandemic.

Members of the public should be afforded the opportunity to participate meaningfully in hearings in person with the Department. And since 404 assumption is a statewide issue, the public should be afforded the opportunity to participate in hearings where they live. Because that is not possible at this time, the Department should postpone the public comment and hearings until those can proceed with adequate opportunity for public participation.

The Department's proposed rulemaking for a State 404 program is discretionary. It is not an essential government function or statutorily mandated. It is not necessary to protect the public or the environment. To the contrary, it only places additional strains on state government resources during a time of crisis, to deal with a non-exigent matter of great public importance at a time when the public is struggling and cannot meaningfully participate.

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We therefore respectfully request that the Department postpone the public comment period on the proposed State 404 Program during the pendency of this statewide public health emergency. We further request that the Department schedule in-person public hearings on the matter once the public health emergency has subsided.

Sincerely,



Mark Perry
Co-Chair



Marisa Carrozzo
Co-Chair

cc: Noah Valenstein

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