

Ex-DEP official: Wetlands targeted for development



A little green heron rests on a tree branch in a wetland system. Florida took authority over Section 404 of the Clean Water Act earlier this year, and wetland destruction permits have gone up, at least anecdotally.
ANDREW WEST/THE NEWS-PRESS

State now has oversight

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USA TODAY NETWORK – FLORIDA

Are our wetlands in danger?

A former high-ranking Florida Department of Environmental Protection official says more wetlands are being targeted for development now than just nine months ago, when the federal government had

oversight of what's known as Section 404 of the Clean Water Act.

And that has environmentalists worried the Sunshine State will lose more of its ecologically precious wetlands.

Jeff Littlejohn, who was deputy secretary and retired from the agency in 2014, says DEP was trying even then to take over a portion of the wetland dredge and fill process from the U.S. Army Corps of

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Engineers.

"I'm hearing anecdotally that applications are way up, and I think that's increased development and Florida's macro economic issues," Littlejohn said. "(This will) speed up the projects because those project need permits. And with a project where the state is in the lead role, they would benefit from having one-stop permitting."

But the agencies don't make it easy to compare former Army Corps approvals with what the state has taken up so far this year.

It's difficult to compare apples to apples with the transfer of permitting authority because the Army Corps still has authority over developments that would directly impact what are known as Waters of the United States, basically all navigable waterways.

Environmental groups, though, are worried the state can't protect some of the Florida's most fragile lands as, anecdotally at least, the number of wetland destruction permits has increased since the state took over that authority.

"Looking at these permit numbers, they appear to pose a significant challenge to any wetland regulatory program because of the sheer volume," said Brad Cornell, with Audubon Florida and Audubon of the Western Everglades. "Knowing the state has not allocated any more staffing or funding resources for doubling its wetland regulatory work by taking over the (wetland permitting) program creates serious concern whether all these permits will receive adequate reviews consistent with the Clean Water Act and Endangered Species Act."

Calusa Waterkeeper John Cassani said he worries there will be more net loss of wetlands in Southwest Florida, which is one of the hot spots for applications, according to DEP records. The spirit of the Clean Water Act says there should be no net loss of wetlands, so the permitting program was created to allow that with mitigation.

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John Cassani Calusa Waterkeeper

gation required for those permits issued," Cassani said. "The 'no net loss of wetlands' seems to be an artificial construct that is not related to wetland function as much as it should be. Considering the rate of increase in water quality impairment, there couldn't be a worse time to lose wetlands, their function and value for cleaning water."

But DEP spokeswoman Alexandra Kuchta said the agency hired 17 permit reviewers to help the state take over wetland permitting.

Through Aug. 5, 1,643 permits were on file with the Florida Department of Environmental Protection, or DEP, the state agency charged with protecting Florida's water quality. That's up more than 100 from June 24, when 1,515 were being considered by DEP.

By comparison, the Army Corps received around 3,000 permits in 2019 and 2020, respectively. But, those numbers include permits that the Army Corps retains authority over.

So, to see how many would have qualified for review under the new system, the Army Corps would need to review all 3,000 of those applications, said Nakeir Nobles, spokeswoman for the Army Corps.

But we do know that nearly 1,000 applications have been submitted since DEP took over the program in January.

Twenty-three were denied and 589 applications have been withdrawn through Aug. 5, according to DEP records.

More than one-third (591) were transferred to DEP when it took over the program from the U.S. Army Corps of Engineers, according to DEP. Of those, 380 fell within state's new jurisdiction, but the other 211 were sent back to the Army Corps because the state doesn't have authority over wetlands that are part of what's known as the Waters of the United States.

Meredith Budd with the Florida Wildlife Federation said she's concerned about the sheer volume of permits and wondered if the state can adequately review dredge and fill developments that can negatively impact water quality and endangered species habitat.

"I think what is most concerning is that of the nearly 600 applications that were with the Army Corps, only 380 fell within the state's definition of a wetland," Budd said. "That is a lot of wetland impacts that won't even be considered by the state."

Kuchta said the volume of permits was due to the switch and that some developers were holding off on applications in the months prior to the state taking authority over Section 404.

"It is important to provide some context with these numbers," Kuchta said in an email. "First, as far back as a year before the state assumed the federal 404 permitting program, private industry was being advised to hold or withdraw their applications until the program was transferred as the U.S. Army Corps of Engineers would not complete processing in time and the applicant would have to start over. As a result, there is an inflated buildup of pending permits that would have likely already been in progress during 2020."

It wasn't clear who Kuchta was referring to when she said the development industry was told to hold off on permits, but the Army Corps says the federal agency would never discourage anyone from applying for a timely permit.

"The Corps did not encourage the public to 'hold' their applications until the State assumed a portion of Section 404 of the Clean Water Act," Nobles said. "We always encourage timely permit applications and (the Army Corps) is neither a proponent nor opponent of any proposed project. We work to ensure we provide the regulated public

with fair and reasonable decisions while providing protection of the nation's aquatic resources."

The state may now have authority over some wetlands, but any impact that's part of a navigable waterway is still under the authority of the Army Corps. The wetlands the state has authority over are inland, often smaller wetlands that make up a much larger ecosystem.

DEP determined that permits were not needed in 125 situations through Aug. 5. That rate extended through the rest of the year would have DEP finding no permits were needed in more than 200 situations.

That's just more than half of similar findings by the Army Corps in a calendar year.

The Corps determined 328 applications did not require a permit in 2019, and that number increased to 397 in 2020, according to Nobles. In calendar year 2020, there was a slight increase to 397 "no permit required" determinations finalized.

But Kuchta said it's not a fair comparison because the number of permits Florida would have had authority over in past years is unknown.

"Additionally, I've previously explained how the U.S. Army Corps of Engineers transferred 591 projects to DEP, while only 380 actually fell under the purview of the State 404 Program," Kuchta said.

"Upon receipt of the transferred applications, DEP staff immediately realized that 211 of the applications (did not qualify for state authority), and those 211 applications were transferred back to the Corps."

Phil Flood, with the South Florida Water Management District, said he was unsure how the change in permitting authority will impact his agency.

"I don't know that we've seen efficiencies or that we'll see that or not. DEP just took it over, so we'll see," Flood said.

Littlejohn said the Army Corps will still be involved in permit reviewing and consultations regarding some wetland projects.

"The Corps is still going to be involved," Littlejohn said. "It's not like this was bad blood."