

## 5. Agency and Permit Coordination

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The proposed improvements for the Wekiva Parkway (SR 429)/SR 46 Realignment will require permits from federal and state regulatory agencies for wetland impacts, stormwater discharge, treatment and attenuation, and crossing of sovereign submerged state lands. Complying with all federal and state regulations concerning impacts to wetlands and water resources will satisfy local ordinances pertaining to such impacts.

Environmental coordination with the permitting agencies for wetlands and wildlife habitat is being performed on this study through several mechanisms during the PD&E Study process. Additional coordination has been performed with permitting agencies, local governments, and the public through Environmental Advisory Committee meetings as part of the overall public involvement process for the PD&E Study.

A list of the potentially required permits needed prior to construction are listed in **Table 5-1** and briefly summarized below.

TABLE 5-1  
Potentially Required Permits  
*Wekiva Parkway (SR 429)/SR 46 Realignment PD&E Study in Lake, Orange, and Seminole Counties*

Potentially Required Permits	Issuing Agency	Jurisdiction
Federal Dredge and Fill Permit (filed jointly with ERP)	USACE	Federal
National Pollution Discharge Prevention and Elimination System (NPDES) Permit	FDEP	State
Environmental Resource Permit (ERP)	FDEP	State
Sovereign Submerged State Lands Public Easement over the Wekiva River	FDEP	State

### 5.1 Federal Dredge and Fill Permit

All wetlands contiguous to waters of the United States are federally protected under Executive Orders 11990 (Protection of Wetlands) and 11988 (Floodplain Management), the Clean Water Act (CWA), and the Rivers and Harbors Act. Section 404 of the CWA requires that a permit be obtained from the USACE before discharge of dredged or fill material in wetlands within federal jurisdiction. Jurisdiction under this statute is broadly defined by Congress and by the USACE in 33 C.F.R. Part 323 to include all waters of the United States where alteration could affect interstate or foreign commerce.

The USACE is responsible for reviewing and processing the Environmental Resource Permit (ERP) application. The USACE Merritt Island/Cocoa Regulatory Office has jurisdiction over the study area and will be responsible for issuance of a Section 404 dredge and fill permit under the CWA.

The USACE issues different types of permits under the CWA, depending upon the nature of the activity and the specific adaptations for a permit type and for a particular proposed activity. Individual or standard permits are processed through an extensive review process which includes public notice, a public interest review and comment procedure, and receipt of comments from various federal agencies. The important commenting agencies in this process are the EPA, USFWS, and the National Marine Fisheries Service (NMFS).

Under Section 307 of the CWA, an activity (filling of wetlands) cannot violate the applicable state water quality standards or effluent standards. The operating agreement under the Florida Environmental Reorganization Act of 1993 provides that issuance of an ERP constitutes state water quality certification as required by Section 401 of the CWA, 33 U.S.C., 1341, unless the permit states otherwise. In addition, an activity cannot jeopardize the existence of federally listed endangered or threatened species or their habitat.

## 5.2 NPDES Permit

A National Pollutant Discharge Prevention and Elimination System (NPDES) permit is required for this project because the proposed construction activity will disturb more than one acre of land surface. These activities include stormwater discharges from clearing, grading, stockpiling soil, and/or excavation.

FDEP is the permitting authority for NPDES stormwater permits in Florida (except for Indian Country lands). As the NPDES stormwater permitting authority (Section 403.0885, F.S.), FDEP is responsible for promulgating rules and issuing permits, managing and reviewing permit applications, and performing compliance and enforcement activities. The NPDES stormwater permitting program is separate from the ERP program. NPDES general permits for stormwater discharges require that the applicant submit a Notice of Intent (NOI) prior to discharging under this permit (40 CFR 122.28(b)(2)).

A Stormwater Pollution Prevention Plan (SPPP) is a requirement of the NPDES permit. Stormwater runoff from construction activities can have a significant impact on water quality by contributing sediment and other pollutants to waterbodies. The SPPP must demonstrate that appropriate pollution prevention techniques, to minimize erosion and sedimentation and to properly manage stormwater, will be implemented at the project construction site. SPPPs will include a site description, a description of controls that would be used at the site (e.g., erosion and sediment controls, stormwater management measures), a description of maintenance and

inspection procedures, and a description of pollution prevention measures for any non-stormwater discharges that would exist. The applicant will submit a Notice of Termination (NOT) to FDEP after construction at the project site has undergone final stabilization and the site no longer discharges stormwater from the construction area.

### 5.3 Environmental Resource Permit

The Florida Environmental Reorganization Act of 1993 consolidated wetland resource and surface water management permits into a single regulatory approval referred to as an Environmental Resource Permit (ERP). Under an operating agreement, FDEP and the water management districts (WMDs) have divided permitting, compliance, and enforcement programs for regulated activities that affect wetlands and other surface waters within the State of Florida. The agreement also addresses determinations of concurrence with the state's federally approved coastal zone management program, procedures for coordinating review of applications and enforcement activities, and joint review of mitigation bank permits. Finally, the agreement provides for interagency permitting meetings to be held by each party on a rotating basis and establishes a process for terminating the agreement with or without cause.

Under this operating agreement, the WMDs assumed permitting responsibilities for all highway projects within the state. However, under the Central Florida Beltway Mitigation Trust Fund statute (338.250, F.S.) the Wekiva Parkway (SR 429 - Western Beltway) project will be permitted by FDEP with coordination on mitigation plans with the St. Johns River WMD (Altamonte Springs Office). Wetland mitigation requirements will be partly addressed under a specific Multi-Party Settlement Agreement between FDEP, FDOT, the Expressway Authority, and the Wekiva River Mitigation Bank, L.L.C., as presented in an agreement excerpt in **Appendix D**. In addition to wetland mitigation, the terms of the Agreement also provide for right-of-way for Wekiva Parkway and grant a conservation easement over the mitigation bank property formerly known as "New Garden Coal", which was identified in the *Wekiva Parkway and Protection Act* as one of the properties to be acquired for conservation purposes.

Several types of permits are issued as ERPs. The type of permit that is required for a project depends on the type and size of the project and the total area of wetlands that is proposed to be impacted. The types of ERPs issued by the state are listed in Chapter 40C-4 and 40C-42, F.A.C. This project will require an Individual Permit.

The FDEP will, at a minimum, send copies of the ERP application to the USACE, the FWC, and the Florida Department of State, Division of Historical Resources, within three business days after receipt of the application for their review and comments. The state has 30 days to request additional information from the applicant to process

the ERP application. The applicant has up to 60 days to supply the requested additional information, or to request in writing an additional 90-day waiver to submit the requested information. After receipt of the ERP application, the state has 90 days to either issue the permit, issue a notice of intent to grant the permit, or deny the permit.

## 5.4 Sovereign Submerged State Lands

In accordance with the ERP process, this project must also obtain a public easement from the FDEP, Division of State Lands, for traversing sovereign submerged state lands. It is known on this project that the Wekiva River is sovereign submerged state land and that the existing SR 46 crossing has a Trustees of the Internal Improvement Trust Fund (TIIFT) easement.

Sovereignty lands include all lands beneath navigable waters, extending to the mean high water line or ordinary high water mark that has not been validly transferred to the state. These lands became vested in the Sovereign State of Florida upon its admission to the Union on March 3, 1845. Under the provisions of Florida Statutes, title to all submerged lands not previously conveyed by deed or statute is vested in the Board of Trustees of the Internal Improvement Trust Fund (F.S. §253.12(a)). Most of the provisions of Chapter 253 are administered by the FDEP, Division of State Lands, which serves as staff to the Trustees. The Division is responsible for evaluating and processing all forms of requests for use of submerged sovereign lands, and will administer the required easement(s) as approved by the Board of Trustees. Lease fee schedules and provisions for managing activities on sovereign submerged lands will be required per Chapter 18-21.011, F.A.C.; along with proprietary authorization for activities located within Aquatic Preserves, per Chapter 18-20.004(1) Management Policies, Standards and Criteria, GENERAL PROPRIETARY, F.A.C.