



**LOCAL OPERATING AGREEMENT  
BETWEEN THE NATURAL RESOURCES CONSERVATION SERVICE, FLORIDA  
AND THE ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT  
CONCERNING  
COMPLIANCE WITH THE FOOD SECURITY ACT AND THE CLEAN WATER ACT**

**INTRODUCTION**

On February 25, 2005, the U.S. Department of Agriculture, Natural Resources Conservation Service and the Department of the Army, Corps of Engineers (hereafter referred to as the NRCS and COE, respectively) issued Joint Guidance concerning wetland determinations for the Clean Water Act and the Food Security Act of 1985. The Joint Guidance was issued to replace coordination procedures made obsolete upon withdrawal of the agencies from a 1994 Memorandum of Agreement concerning the delineation of wetlands under the respective Acts. The Joint Guidance reaffirms the agencies' commitment to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts to affected landowners consistent with the important goal of protecting wetlands.

In conjunction with the Joint Guidance, NRCS State Conservationists and COE District Engineers were encouraged to develop local partnerships and procedures to provide the best service to landowners and the best protections for wetland resources. This Local Operating Agreement represents the commitment of NRCS-Florida and the COE-Jacksonville District to continue coordinating to the extent appropriate and allowable under federal law in cases where an agricultural tract farmed by a USDA program participant is subject to Clean Water Act regulations.

**II. DEFINITIONS**

Terms used in this Agreement have been previously defined in the *Joint Guidance from the Natural Resources Conservation Service and the Army Corps of Engineers Concerning Wetland Determinations for the Clean Water Act and the Food Security Act of 1985*, issued February 25, 2005. This document may be found online at [http://www.nrcs.usda.gov/programs/compliance/pdf\\_files/COE\\_NRCS\\_wetland.pdf](http://www.nrcs.usda.gov/programs/compliance/pdf_files/COE_NRCS_wetland.pdf).

*Agricultural commodity* means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

*Agricultural use* refers to open land planted to an agricultural crop, used for the production of food or fiber, used for haying or grazing, left idle per USDA programs, or diverted from crop production to an approved cultural practice that prevents erosion or other degradation.

*Approved jurisdictional determination* means a COE document stating the presence or absence of waters of the United States on a parcel, or a written statement and map identifying the limits of waters

of the United States on a parcel. An approved jurisdictional determination is clearly designated an appealable action, and will include a basis of jurisdictional determination with the document.

*Certified wetland determination* means a wetland determination made by the Natural Resources Conservation Service (NRCS) that is of sufficient quality to make a determination of ineligibility for program benefits under the Food Security Act of 1985.

*Jurisdictional determination (JD)* means a written COE determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344), or a written determination that a waterbody is subject to regulatory jurisdiction under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.). Additionally, the term includes a written reverification of expired JDs and a written reverification of JDs where new information has become available that may affect the previously written determination. For example, such geographic JDs may include, but are not limited to, one or more of the following determinations: the presence or absence of wetlands; the location(s) of the wetland boundary, ordinary high water mark, mean high water mark, and/or high tide line; interstate commerce nexus for isolated waters; and adjacency of wetlands to other waters of the United States. All JDs will be in writing and will be identified as either preliminary or approved. JDs do not include determinations that a particular activity requires a DA permit.

*Preliminary Jurisdictional Determinations* are written indications that there may be waters of the United States on a parcel, or indications of the approximate location(s) of waters of the United States on a parcel. Preliminary JDs are advisory in nature and may not be appealed. Preliminary JDs include compliance orders that have an implicit JD, but no approved JD.

### III. PROCEDURES

#### A. Wetland Determinations and Delineations:

##### 1. NRCS Responsibility

- (a) NRCS will conduct certified wetland determinations solely for Food Security Act purposes. The wetland conservation provisions of Food Security Act of 1985, as amended (FSA), authorize NRCS to conduct certified wetland determinations for USDA program participants when proposed activities on land they own or lease involve draining, dredging, clearing, filling, leveling or other manipulation (as defined in the FSA) for the purpose of, or that has the effect of making possible the production of an agricultural commodity on such land. These include alterations of the land necessary to enable or maintain agricultural production (e.g., ditching and mechanized land clearing).
- (b) NRCS also may conduct a certified wetland determination when a prior activity on agricultural land owned or leased by a USDA program participant involved such manipulation or alteration of land (i.e., to determine if a wetland has been converted to make production possible).
- (c) NRCS will inform USDA program participants and landowners that wetland determinations performed by NRCS may not be valid for Clean Water Act (CWA) jurisdiction and permitting requirements. NRCS will include the following language, as quoted from the *Joint Guidance, Part III. A. 1(b)*, in all certified wetland determinations: *"This certified wetland determination/delineation has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination/delineation may not be valid for identifying the extent of the COE's Clean Water Act jurisdiction for this site. If you intend to*

*conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting work."*

## 2. COE Responsibility

- (a) The COE will conduct wetland determinations and delineations solely for CWA purposes. Section 404 of the CWA authorizes the COE to conduct wetland jurisdictional determinations for activities that involve a discharge of dredged or fill material.
- (b) The COE is also responsible for determining the geographic scope of jurisdiction on waters of the U.S. other than wetlands, located on agricultural land (e.g., rivers, streams, lakes, artificial waters, channelized waters, ditches, etc.).
- (c) The COE will inform landowners or persons requesting a jurisdictional determination that wetland determinations performed by COE may not be valid for FSA jurisdiction and compliance requirements. The COE will include the following language, as quoted from the *Joint Guidance, Part III. A. 2(c)*, in all approved wetland delineations/determinations: *"This delineation/determination has been conducted to identify the limits of COE's Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work."*

## 3. Coinciding Responsibilities

Certain land alteration activities may require the COE and NRCS to make separate determinations regarding the extent of wetlands and/or waters on an agricultural tract because different areas and activities may be subject to differing COE and NRCS regulations (e.g., isolated wetlands, other waters of the U.S., areas converted for specific uses). In cases where separate determinations are required, the agencies will promptly consult with each other and attempt to conduct joint onsite determinations and provide the determinations to the landowner concurrently to the extent possible.

## 4. Reliance by NRCS and COE on the Other Agency's Wetland Determinations

For agricultural lands owned or operated by USDA program participants, NRCS and COE will rely on each other's wetland determinations on areas of common jurisdiction to the maximum extent permissible by current statute and regulation. For lands not determined by one agency that may be regulated by the other, if a joint onsite determination is not possible, the determining agency will inform the landowner in writing and the other agency (to the extent allowed by law) that additional areas on the property may also be under Federal jurisdiction.

## B. Permitting, Exemptions and Violations:

### . CWA Section 404 Permits

- (a) If a CWA Section 404 individual or general permit is needed for a wetland conversion on an agricultural tract, the acquisition of such permit by the applicant shall be accepted by NRCS as authorization to exempt the permitted area from the wetland conservation provisions of the FSA, provided that the wetland acreage and functions were adequately mitigated according to

requirements of the provisions. This applies whether or not the permitted area was in agricultural use when it was permitted. The permitted area shall be labeled by NRCS as a Corps Permit with Mitigation (CPM) exemption.

- (b) Conversely, receipt of certain exemptions from NRCS may qualify an activity for a Section 404 permit, such as the *Nationwide Permit (NWP) for Agricultural Activities* (NWP 40). To the extent allowed by law, NRCS will provide wetland and exemption determinations to the COE to facilitate processing of such permit applications. (For specific permit requirements of the NWP 40, go to [http://www.usace.army.mil/inet/functions/cw/ccwo/reg/2002nwps\\_text.pdf](http://www.usace.army.mil/inet/functions/cw/ccwo/reg/2002nwps_text.pdf), beginning on page 18.)

## 2. FSA and CWA Exemptions

Wetlands considered jurisdictional under the FSA or CWA, respectively, where conversion takes place may be exempted from FSA or CWA regulations under specific circumstances. These circumstances are described in 7 CFR 12.5(b), and 33 CFR 323.4(a)(1-6), respectively. Activities in wetlands that qualify for an exemption under the FSA do not necessarily qualify for an exemption under the CWA, and vice versa. For exempted conversions, the NRCS and COE will inform the landowner in writing that the exempted area may remain subject to the compliance requirements of the other agency.

## 3. Violations

- (a) Potential violations of the FSA and CWA must be independently evaluated by each agency. The NRCS and COE will, however, coordinate site visits to the extent possible to minimize delay and inconvenience to the landowner.
- (b) The NRCS and COE will make a reasonable effort to inform each other of any significant actions taken to resolve a violation. The agencies will also explicitly state in any written correspondence to the landowner that actions taken to resolve a violation for that agency may not resolve a violation for the other agency.

## 4. Mitigation

In cases where compensatory mitigation for the conversion of wetlands is required for compliance with both the FSA and CWA, the NRCS and COE will promptly consult with each other and attempt to coordinate mitigation requirements such as functional assessments, mitigation site location, etc., to the extent possible. This may include acceptance of a single wetland mitigation plan for compliance with both the FSA and CWA.

## C. Appeals and/or Litigation:

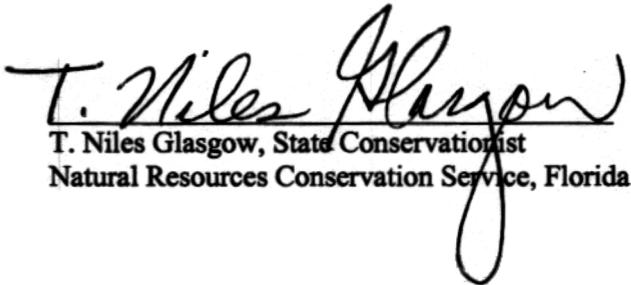
Wetland determinations conducted for FSA purposes may be appealed through the USDA appeals process. Wetland determinations conducted for CWA purposes may be appealed through the COE's appeals process. When an appeal or litigation results in a change to a wetland determination, each agency will so notify the other, and shall advise the landowner in writing that such changes in the wetland determination are not valid for the other agency's purposes until accepted by the other agency. For the purposes of the CWA and COE Administrative Appeals Regulations, NRCS certified wetland determinations on agricultural lands where the COE has not verified the wetland boundary onsite will be considered Preliminary Jurisdictional Determinations, as defined in 33 CFR §331.2.

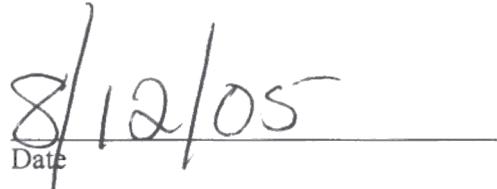
**IV. DISPUTE RESOLUTION**

The agencies will make every reasonable effort to resolve any concerns or disputes related to these procedures. Issues that cannot be resolved at the state level will be elevated to the appropriate headquarters office by the State Conservationist and/or District Engineer.

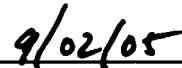
**V. GENERAL**

- A. The policy and procedures contained within this Agreement do not create any rights, either in substance or procedure, enforceable by any party. Deviation or variance from the administrative procedures included in this guidance will not constitute a defense for violators or others concerned with any CWA enforcement action.
- B. Nothing in this Agreement is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of either the NRCS or COE.
- C. Nothing in this Agreement is intended in any way to affect the authority of a State or Tribe to delineate or regulate wetlands pursuant to an approved CWA Section 402 or Section 404 program.
- D. Nothing in this Agreement will be construed as indicating a financial commitment by the NRCS or COE for the expenditure of funds except as authorized in specific appropriations.
- E. This Agreement remains effective unless revised or rescinded by the NRCS or COE, upon written notice to the other agency.

  
T. Niles Glasgow, State Conservationist  
Natural Resources Conservation Service, Florida

  
Date

  
Colonel Robert M. Carpenter, District Engineer  
Army Corps of Engineers, Jacksonville District

  
Date

**Erik L. Stor**  
**Major, U.S. Army**  
**Deputy District Engineer**