



# Florida Conservation Coalition

TAKING ACTION FOR FLORIDA

Chairman

**Bob Graham**

Vice Chairman

**Lee Constantine**

Organizations

CONSERVANCY OF  
SOUTHWEST  
FLORIDA

DEFENDERS OF  
WILDLIFE

FLORIDA WILDLIFE  
FEDERATION

LEAGUE OF  
WOMEN VOTERS

1000 FRIENDS OF  
FLORIDA

SIERRA CLUB  
FLORIDA

ST. JOHNS  
RIVERKEEPER

Individuals

**Craig Diamond**

**Ryan Smart**

**Victoria Tschinkel**

**Estus Whitfield**

March 30, 2020

Secretary Noah Valenstein  
Florida Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, Florida 32399  
Noah.valenstein@dep.state.fl.us

**Re: State 404 Program Public Hearing, Request for Postponement**

Dear Secretary Valenstein,

The Florida Conservation Coalition is an alliance of over 80 conservation organizations dedicated to protecting Florida's lands, water, and wildlife. 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](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](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf).

On March 11, 2020, the Florida Conservation 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 and the Endangered Species Act 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. That same day, the Department noticed a single public hearing to be held in Tallahassee on April 2, 2020, *in conjunction with* a webinar.

In the intervening weeks, the COVID-19 pandemic has grown exponentially throughout the country and in Florida. As of March 30, 2020, Florida's Department of Health is reporting that there are more than 4,700 confirmed cases of COVID-19 in the state, with another 1,000 people being monitored. *See* <https://floridahealthcovid19.gov/#latest-stats> (last accessed March 30, 2020, 10:00 AM). Positive cases have now been confirmed in 51 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 Florida Conservation 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. There is too much uncertainty surrounding these threats for the state to ensure that it would even be physically possible for most members of the public to submit public comments. Proceeding with public comment on the State 404 Program during this time of crisis for Florida communities would preclude meaningful public participation.

Moreover, while the Florida Conservation 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 obvious 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.

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, *in conjunction* with webinars, on the matter once the public health emergency has subsided.

Sincerely,



Bob Graham  
Chairman  
Florida Conservation Coalition



Lee Constantine  
Vice Chairman  
Florida Conservation Coalition

CC: Administrator Heather Mason